

(1994) 10 AP CK 0035

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 126 of 1986

State of Andhra Pradesh

APPELLANT

Vs

Vutukuru Venkaiah, J. Pullaiah and Company

RESPONDENT

Date of Decision : 18-10-1994

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14, 20, 20(2), 21, 22
Central Sales Tax Act, 1956 — Section 8A, 9(2A)

Citation : (1995) 99 STC 44

Hon'ble Judges : S.S. Mohammed Quadri, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : Government Pleader for Commercial Taxes, for the Appellant; P. Srinivasa Reddy, Amicus Curiae, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—This is a revision u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the State Act"), preferred by the State against the order dated October 9, 1985, passed by the Sales Tax Appellate Tribunal, Hyderabad, in T.A. No. 72 of 1985.

2. For the assessment year 1975-76, under the Central Sales Tax Act, 1956 (for short "the Central Act"), the assessing authority allowed the exemptions under the heads "lorry advances" and "collections u/s 8-A to the Central Act". The Deputy Commissioner (Commercial Taxes) proposed to withdraw the exemptions and issued a show cause notice dated May 10, 1978, u/s 20(2) of the State Act read with section 9(2-A) of the Central Act. Against the said show cause notice, the assessee filed W.P. No. 2275 of 1978. It may be apt to note here that this Court declined to grant stay of all further proceedings pursuant to the show cause notice issued by the Deputy Commissioner. On December 23, 1983, the writ petition was dismissed. Thereafter, a fresh show cause notice was issued by the Deputy Commissioner for revising the assessment by withdrawing the exemptions referred to above. On July 10, 1984, the Deputy Commissioner revised the order withdrawing the exemptions. That order was appealed against

by the assessee before the Sales Tax Appellate Tribunal. The Tribunal allowed the appeal on October 9, 1985. It is this order which is the subject-matter of the revision.

3. The short ground that arises for consideration in this revision is whether the order of the Deputy Commissioner revising the order of assessment passed by the assessing authority, is within limitation ?

4. The order of assessment was passed by the Commercial Tax Officer, the assessing authority, on July 16, 1977. The order withdrawing the exemptions in exercise of the revisional powers was passed by the Deputy Commissioner of Commercial Taxes on July 10, 1984, i.e., after seven years of the order of the Commercial Tax Officer which was revised by the Deputy Commissioner.

5. Sub-section (3) of section 20 of the State Act provides that the power conferred under sub-sections (1) and (2) of the Act, i.e., the power to revise the order of the assessing authority may be exercised within such period not exceeding four years from the date on which the order was served on the dealer as may be prescribed. Sub-rules (8) and (9) of rule 14-A of the Central Sales Tax (Andhra Pradesh) Rules, 1957, read with sub-rule (11), prescribed a period of four years for exercise of the powers of revision. Admittedly, under these rules the order of revision is barred by limitation. However the order was sought to be justified u/s 24-A of the said State Act. That provision deals with the limitation in respect of the orders of assessment and reassessment which are passed pursuant to the order of remand under sections 14 and 20 of the Act or by way of rectification in or revision of assessment to give effect to any finding or direction contained in an order u/s 19, section 20, section 21, section 22 or section 23 of the State Act. Admittedly, the order passed by the Deputy Commissioner was not passed to give effect to the order passed under any of the provisions referred to above. Therefore, section 24-A has no application. However, yet another provision needs reference and that is sub-section (6) of section 20 of the State Act. But that is attracted only in a case where any proceeding u/s 20 has been deferred on account of any stay order granted by the High Court in any case or by reason of the fact that an appeal or other proceeding is pending before the High Court or the Supreme Court involving a question of law having a direct bearing on the order or proceeding in question. This sub-section has the application only (i) when stay of further proceedings is granted by the High Court or the Supreme Court in an appeal or other proceeding or (ii) when an appeal or other proceeding involving a similar question of law is pending before the High Court or the Supreme Court. None of the situations apply to the facts of the case. Therefore, even sub-section (6) of section 20 cannot be called in aid to save the limitation, as stay of further proceedings pursuant to the show cause notice was not granted by the High Court. As none of the provisions, saving the limitation is applicable, the order passed by the Deputy Commissioner is clearly barred by limitation. This is the conclusion reached by the Tribunal. We, therefore, find no illegality in the order

of the Tribunal. There are no merits in the revision and accordingly the tax revision case is dismissed, but in the circumstances without costs.

6. Petition dismissed.