

**(1961) 03 AP CK 0005**

**In the Andhra Pradesh High Court**

**Case No :** Tax Revision Cases No's. 24, 25, 26 and 27 of 1960

The State of Andhra Pradesh

APPELLANT

Vs

Sevak Automobiles

RESPONDENT

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**Date of Decision :** 14-03-1961

**Acts Referred:**

Andhra Pradesh General Sales Tax Act, 1957 — Section 14(4)

**Citation :** (1962) 13 STC 45

**Hon'ble Judges :** P. Chandra Reddy, C.J.; Chandrasekhara Sastry, J

**Bench :** Division Bench

**Advocate :** The Third Government Pleader and D. Venkatappaiah Sastry, for the Appellant; D. Rachappa, B.V. Subbarayudu and B.V. Narasimham, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Chandrasekhara Sastry, J.—The petitioner in these cases is the State of Andhra Pradesh and the respondent is the assessee under the Andhra Pradesh General Sales Tax Act. The respondent is a dealer in motor spare parts etc. The respondent-firm was assessed to sales tax on a turnover of Rs. 84,740-12-9. Subsequently, the special staff seized some account books from the respondent-firm and revised the assessment by including an escaped turnover of Rs. 66,000 disclosed from the books seized. The appeal by the respondent-firm to the Deputy Commissioner of Commercial Taxes was dismissed, but a further appeal to the Sales Tax Appellate Tribunal, Hyderabad, was allowed. The Appellate Tribunal held that a Special Commercial Tax Officer, who revised the assessment, has no jurisdiction to do so. Hence the State of Andhra Pradesh has filed this tax revision case.

2. The short question for decision is whether under the Andhra Pradesh General Sales Tax Act, and the Rules and the notifications thereunder, the Special Commercial Tax Officer had jurisdiction to revise the assessment already made by the Deputy Commercial Tax Officer on the ground that certain turnover had

escaped assessment. The power to assess tax on turnover which had escaped assessment is conferred by Section 14, Clause (4), of the Andhra Pradesh General Sales Tax Act, which is as follows :-

Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, or has been under assessed or assessed at too low a rate, or where the licence fee or registration fee has escaped levy or has been levied at too low a rate, the assessing authority may, at any time within a period of four years from the expiry of the year to which the tax or the licence fee or registration fee relates, assess the tax payable on the turnover which has escaped assessment or levy the correct amount of licence fee or registration fee, after issuing a notice to the dealer and after making such inquiry as he considers necessary. Such authority may also direct the dealer to pay in addition to the tax so assessed, a penalty not exceeding one and half times the amount of that tax, if the turnover had escaped assessment or had been under-assessed or assessed at too low a rate by reason of its not being disclosed by the dealer.

3. Under this clause, it is the assessing authority that may assess the tax payable on the turnover which has escaped assessment. Section 2, Clause (1) (b), defined "assessing authority" as any person authorised by the State Government or by any other authority empowered by them in this behalf, to make any assessment under this Act. By virtue of the power conferred by this Section 2(1) (b), the Government issued a Notification, G.O. Ms. No. 1091, Revenue, dated 10th June, 1957. The further proviso No. 3 to Clause II of this notification is as follows :-

A Commercial Tax Officer specially appointed for the investigation of evasions shall within his jurisdiction exercise, at his discretion, the powers of an assessing authority in the cases of all dealers in respect of whose transactions any suppression or omission (whether or not fraudulent or wilful) is detected by such officer or brought to his notice in any manner whatsoever.

4. In the present case, the officer who exercised the power to levy tax on the escaped turnover is the Commercial Tax Officer specially appointed for the investigation of evasions as per this G.O. Prima facie it appears to us that the said officer had jurisdiction to pass the order in question by virtue of this notification ; but the learned counsel for the assessee relies upon Rule 31 of the Andhra Pradesh General Sales Tax Rules. He contends that under Clause (2) of Rule 31, it is only the Deputy Commercial Tax Officer that is the assessing authority authorised to assess in this case as the turnover does not exceed 5 lakhs of rupees. Rule 31, Clause (2), is as follows :-

If after an assessment has been made on a turnover not exceeding fifty thousand rupees it is ascertained that a part of the turnover has escaped tax, and if with the addition of the turnover which has escaped assessment, the total turnover exceeds fifty thousand rupees but is not more than 5 lakhs of rupees, the assessing authority for the purposes of this rule shall be the Deputy

Commercial Tax Officer.

5. Similarly under Clause (3) of Rule 31, the Commercial Tax Officer is specified to be the assessing authority if the total turnover including the turnover which has escaped assessment exceeds 5 lakhs of rupees. Therefore, it is contended by the learned counsel for the respondent, that in the present case it is only the Deputy Commercial Tax Officer that has got jurisdiction to assess the tax payable on the turnover which has escaped assessment and no other. We are unable to agree with this contention. Under Clause (4) of Section 14, it is the assessing authority that is authorised to assess the tax payable on the turnover which has escaped assessment and the assessing authority is defined in Section 2, Clause (1) (b), as any person authorised by the State Government or by any other authority empowered by them in this behalf to make any assessment under the Act and by the G. O. above-mentioned, the Government has authorised the Commercial Tax Officer specially appointed for investigation of evasions to exercise the powers of an assessing authority, in the case of all dealers in respect of whose transactions, omission (whether or not fraudulent or wilful) is detected by such officer or brought to his notice in any manner whatsoever. We do not find that this G. O. is in any way inconsistent with Rule 31, Clause (2), which constitutes the Deputy Commercial Tax Officer the assessing authority for the purpose of Rule 31, when the total turnover including the turnover which has escaped assessment does not exceed 5 lakhs of rupees. In our view, it will be open to the Deputy Commercial Tax Officer, also to act under Clause 4 of Section 14, but it does not preclude the Special Commercial Tax Officer (Evasions) from assessing the tax payable on the turnover which has escaped assessment and which has come to his notice during investigation. In our view, either the Deputy Commercial Tax Officer in this case or the Commercial Tax Officer specially appointed for investigation of evasions as per the G. O. Ms. No. 1091, Revenue, dated 10th June, 1957, could have exercised the power u/s 14, Clause (4), of the Andhra Pradesh General Sales Tax Act. This G. O. above-mentioned empowers the Commercial Tax Officer, specially appointed for investigation of evasions to exercise the power with reference to the turnover of all dealers in respect of whose transactions any suppression or omission is detected by him or is brought to his notice in any manner whatsoever.

6. Further, under proviso (i) to para II, Clause (1), of the said notification, any of the higher authorities mentioned in the said para II may, in his discretion, exercise the powers of a lower authority within his jurisdiction in respect of any dealer or class of dealers. This also leads to the conclusion that the Commercial Tax Officer specially appointed for investigation of evasions is empowered to exercise the powers of the assessing authority, the Deputy Commercial Tax Officer in this case, to assess the tax payable on the escaped turnover under Clause (4) of Section 14 of the Andhra Pradesh General Sales Tax Act.

7. We are unable to agree with the view taken by the Sales Tax Appellate Tribunal that this notification cannot be stretched to go against Rule 31 of the

Andhra Pradesh General Sales Tax Rules.

8. In the result, the Tax Revision Case No. 24 of 1960 is allowed with costs. Advocate's fee Rs. 100.

9. A similar question arises in Tax Revision Cases Nos. 25, 26 and 27 of 1960. In view of our decision in Tax Revision Case No. 24 of 1960, these tax revision cases are allowed, but without costs.