

(1969) 06 AP CK 0011

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 59 of 1966

The State of Andhra Pradesh

APPELLANT

Vs

Sri Immadisetty Venkateswarlu

RESPONDENT

Date of Decision : 17-06-1969

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14, 14(2)

Citation : (1970) 25 STC 46

Hon'ble Judges : Kumarayya, Acting C.J.;Kondaiah, J

Bench : Division Bench

Advocate : Principal Government Pleader, for the Appellant; G.V.R. Mohan Rao, for the Respondent

Final Decision : Allowed

Judgement

Kumarayya, Ag. C.J.

1. This tax revision case, directed against the order of the Sales Tax Appellate Tribunal, passed on 14th May, 1966, raises a short point as to the competence of the Deputy Commercial Tax Officer to levy penalty in a case where the assessment was initially made by the Commercial Tax Officer.

2. The assessment relates to the year 1962-63 and was completed on 30th March, 1964, by the Commercial Tax Officer, Guntur, as a result of inspection of business premises on 30th January, 1963, and. discovery of some incriminating material by the Special Assistant Commercial Tax Officer, Evasions, Guntur. The Commercial Tax Officer estimated the probable suppressed turnover at Rs. 1,33,549 and made his assessment order on the total turnover for the year. But the suppressed turnover determined was reduced to Rs. 44,516 in appeal. After the appeal was disposed of, the assessment file was transferred from the office of the Commercial Tax Officer to the Deputy Commercial Tax Officer, Macherla, because of the change of jurisdiction consequent on certain amendment made in the Andhra Pradesh General Sales Tax Act (hereinafter called "the Act") and the

rules framed thereunder. The Deputy Commercial Tax Officer, who became thus seized of the matter, revised the assessment order in terms of the appellate order. Then he started proceedings for levy of penalty. He levied penalty in a sum of Rs. 1,350, which was equivalent to one and half times the tax demanded on the suppressed turnover. The petitioner herein appealed in vain against the order of penalty before the Appellate Commissioner. He carried the matter in further appeal before the Sales Tax Appellate Tribunal. The Tribunal by a majority allowed the appeal on the ground that the levy was bad because the authority which levied the penalty is not the same as that which made the original assessment order. Aggrieved by this order, the State has come to this court in revision.

3. The main point for determination is whether, once the original assessment has been made by a particular assessing authority, the penalty could be levied by its successor to whom the file was transferred by reason of change in jurisdiction.

4. It is necessary to notice here the relevant provisions of the Act. Section 14 is the relevant section relating to the assessment of tax. Sub-section (1) thereof provides for the procedure to be followed by the assessing authority while making the assessment order on submission of a return. Sub-section (2) refers to the power of the assessing authority to direct the dealer to pay in addition to the tax assessed a penalty not exceeding one and half times the amount of the tax on the turnover that was not disclosed by the dealer in his return. Sub-section (3) relates to a case where no return is submitted by the dealer. Sub-sections (1) and (2) are material for our purpose. Sub-section (4), which deals with cases of escaped assessments, etc. may also be noticed here.

5. Sub-sections (1), (2), (4), (4-B) and (4-C) are in the following terms :

(1) If the assessing authority is satisfied that any return submitted u/s 13 is correct and complete, he shall assess the amount of tax payable by the dealer on the basis thereof; but if the return appears to him to be incorrect or incomplete he shall, after giving the dealer a reasonable opportunity of proving the correctness and completeness of the return submitted by him and making such enquiry as he deems necessary, assess to the best of his judgment, the amount of tax due from the dealer. An assessment under this section shall be made only within a period of four years from the expiry of the year to which the assessment relates.

(2) When making an assessment to the best of judgment under Subsection (1), the assessing authority may also direct the dealer to pay in addition to the tax assessed, a penalty not exceeding one and half times the tax due on the turnover that was not disclosed by the dealer in his return.

* * * (4) In any of the following events, namely, where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax, or has been under-assessed or assessed at a rate lower than the correct rate, or where the licence fee or registration fee has escaped levy or has been levied at a rate

lower than the correct rate, the assessing authority may, after issuing a notice to the dealer, and after making such enquiry as he may consider necessary, by order, setting out the grounds therefore-

(a) determine to the best of his judgment the turnover that has escaped assessment and assess the turnover so determined ;

(b) assess the correct amount of tax payable on the turnover that has been under-assessed.

In addition to the tax assessed or fee levied under this sub-section, the assessing authority may also direct the dealer to pay a penalty as specified in Sub-section (8).

* * * (4-B) Before issuing any direction for the payment of any penalty under Sub-section (2), Sub-section (3) or Sub-section (4), the assessing authority shall give the dealer a reasonable opportunity to explain the omission to disclose the turnover or to furnish correctly any particulars and shall make such inquiry as he considers necessary.

(4-C) The powers conferred by Sub-section (4) on the assessing authority may, subject to the same conditions as are applicable in the case of that authority, be exercised also by any of the authorities higher than the assessing authority including the Deputy Commissioner concerned.

6. The power to make assessment order and levy penalty is given to the assessing authority by the Act. The term "assessing authority" has been defined in the Act and it means any person authorised by the State Government or by any other authority empowered by them in this behalf to make assessment under this Act. The State Government in this regard in its Notification G.O. Ms. No. 1091, Revenue, dated 10th June, 1957, has provided in clause II as follows :

(1)(a) Assistant Commercial Tax Officer to exercise the powers of an assessing authority in the case of dealers whose total turnover does not exceed rupees fifty thousand a year ;

(b) Deputy Commercial Tax Officer to exercise the powers of an assessing authority in the case of dealers whose total turnover exceeds rupees fifty thousand, but is less than rupees three lakhs or more a year ;

(c) Commercial Tax Officer to exercise the powers of an assessing authority in the case of dealers whose total turnover is rupees three lakhs or more a year :

Provided that-

(i) any of the higher authorities mentioned above may, in his discretion, exercise the powers of a lower authority within his jurisdiction in respect of any dealer or class of dealers....

7. Thus, the assessing authorities have been defined in the Act and their pecuniary jurisdiction is determined by the notification and the rules framed

under the Act.

8. The point now for consideration, as already noticed, is whether by reason of the fact that the Commercial Tax Officer had made the original assessment, the Deputy Commercial Tax Officer, who is the statutory assessing authority, was rendered incompetent to initiate proceedings and levy penalty after making a revised assessment order in terms of the appellate order. The further question that has to be considered is whether the penalty proceedings are bad in law as they were not initiated simultaneously with or in continuation of the initial assessment order but only after the appellate order was made.

9. It is indisputable that the Deputy Commercial Tax Officer was, according to the definition in the Act, an assessing authority inasmuch as he was authorised and empowered to make assessment by the State Government. It is also plain that the matter was well within his jurisdiction both on pecuniary and territorial basis. So then, merely because it was not he but the Commercial Tax Officer, who had originally made the order, notwithstanding the jurisdiction that he got after the appellate order reducing the suppressed turnover, was he precluded in law from initiating the penalty proceedings after making the revised assessment order and in continuation thereof ? Learned counsel Sri G.V.R. Mohan Rao, relying on the dictum of the Madras High Court in *State of Madras v. V. P. Ramulu Naidu* [1965] 16 S.T.C. 865, has urged that the penalty should be levied by the same authority as had made the original assessment order and further, it should be simultaneous with the original assessment order but not the revised order. The learned Judges in that case on one of the points involved chose to differ from the view taken by this court in *Sri Radhakrishna & Co. v. State of Andhra Pradesh* [1962] 13 S.T.C. 117, which is binding on us unless overruled by a Full Bench of this court. This court in that case has held that Sub-section (2) of Section 14 of the Act only vests jurisdiction or power in the authority concerned to levy on the assessee penalty in certain cases and there is nothing to compel the officer to levy a penalty or issue a notice for that purpose only at the time when assessment u/s 14(1) is made. It was further observed that Section 14(2) is merely a provision enabling the revenue to have recourse to levy of penalty proceedings in certain contingencies. It does not indicate the time at which it should be put into operation. It was also observed that the levy of penalty does not automatically follow upon assessment being made u/s 14(1) of the Act and the officer concerned should exercise his mind to consider whether a particular case is a proper one for resorting to Section 14(2). The Act does not envisage proceedings u/s 14(2) being necessarily initiated along with the making of the best judgment assessment. Further the proviso precludes the imposition of penalty without affording opportunity to the assessee to explain the omission to disclose the information. The learned Judges of the Madras High Court differed from the view taken by this court and held that the provisions of Sub-section (3) did not warrant an independent inquiry for levying penalty and that penalty could be levied only as part and parcel of an assessment order made after the inquiry as prescribed by the proviso to Sub-section (2) relating to assessment by the

best judgment. We do not think that the decision of this court could be assailed on that basis in view of the clear wording of Sub-section (4-B), which requires that before issuing any direction for the payment of any penalty under Sub-section (2), (3) or (4), the assessing authority shall give the dealer a reasonable opportunity to explain the omission to disclose the turnover or to furnish correctly any particulars and shall make such inquiry as he considers necessary. We are of the view that no penalty can be imposed unless a reasonable opportunity to explain the omission to disclose the turnover is given. The assessing authority has to make such inquiry as it considers necessary in relation to the levy of penalty even after making the assessment order. This inquiry is distinct and separate from the inquiry made at the time of the original assessment order. It is observed even by the learned Judges of the Madras High Court that the words "when making an assessment to the best of judgment under Sub-section (1)" are not indicative of any time-limit. So then, the argument that the initiation of proceedings for the levying of penalty must needs be simultaneous with the making of order of assessment cannot be sustained. As observed by this court, Section 14(2) is only a provision enabling the revenue to have recourse to the levy of penalty in certain contingencies and does not indicate the time at which it should be put into operation. Therefore, it is not at all necessary for the legal validity of the levy of penalty that the proceedings should have started simultaneous with the making of the original assessment order. The Madras case may also be distinguished on the ground that it was not a case where on the facts it could be said that there was suppression of turnover for, on behalf of the assessee himself, the discrepancy between the turnover disclosed in the return and that assessed was already brought to the notice of the authority. We see no reason to doubt the correctness of the view taken by this court that the opening words of Section 14(2) are not indicative of any time-limit.

10. Now, coming to the question whether the Act permits the successor-assessing authority to initiate penalty proceedings, we do not think that so long as the successor is the assessing authority within the meaning of the Act, the legality of levy can be assailed on the ground that he is not competent to levy penalty. We are no doubt referred to the decision of this court in *Pallapothu Sarveswara Rao v. State of Andhra Pradesh* [1962] 13 S.T.C. 122. But that case was attracted by Section 14(4) and the interpretation turned on the words "such authority" used therein. It is further to be noted that in this case it was not the appellate authority who had assessed the appellant on an additional turnover but it was the Deputy Commercial Tax Officer who had levied the penalty on this additional assessment which he himself was not competent to make. It is in these circumstances that the learned judges observed that in view of the expression "such authority" used, which of necessity has relation only to the authority which has made the additional assessment, which was the appellate authority, the levy of penalty by the Deputy Commercial Tax Officer was without jurisdiction.

11. The rule in that case, therefore, has no application to the facts of the present

case which is concerned with Sub-sections (1) and (2) of Section 14 and not with Sub-section (4). On the facts of the present case, it is obvious that though the Commercial Tax Officer was originally the assessing authority, at the relevant time when the penalty was levied it was the Deputy Commercial Tax Officer who was the statutory assessing authority. It is on that ground that the file was transferred to him. It is he who made the revised assessment and to the extent the suppression was disclosed, he initiated penalty proceedings. Indisputable according to Section 14(2) it is the assessing authority who can direct the dealer to pay in addition to the tax assessed a penalty on the turnover that was not disclosed by the dealer in his return. If the original assessing authority did not take steps before the appeal was filed, it does not follow that the very right to levy penalty became extinguished by reason of delay because, as already noticed, the statute does not provide any time-limit for exercise of these powers. Sub-section (2) being an enabling provision and being available for the assessing authority, the successor-assessing authority who had also made the revised assessment order, was competent to initiate proceedings for levy of penalty. It is wrong to think that the "assessing authority" used in Sub-section (2) implies the same person or officer who had made the original assessment. It cannot be accepted on principle also that the person who imposes penalty should be the same as the person who had made the assessment order. If immediately on making the assessment, the officer is transferred or the jurisdiction is conferred on another authority, certainly such authority is competent to take up the case from that stage to its final stage. What is required by law is that the assessing authority has to initiate the proceedings for the levy of penalty and not whether the same person or officer, who had made the assessment.

12. Judged thus, it is plain to us that the Appellate Tribunal has erred in holding that the Deputy Commercial Tax Officer, who was seized of the matter by reason of the transfer of the file, the matter being within his territorial and pecuniary jurisdiction, and who had revised the assessment order was not competent to initiate penalty proceedings. The order of the Tribunal is, therefore, set aside and the petition is allowed. No order as to costs. Advocate's fee Rs. 100.