

(1967) 03 AP CK 0007

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 6 to 8 of 1964

T.K. Khadar Mohiuddin

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 23-03-1967

Acts Referred:

Citation : (1968) 21 STC 45

Hon'ble Judges : P. Jaganmohan Reddy, C.J.;Kumarayya, J

Bench : Division Bench

Advocate : T. Narasinga Rao, for C.P. Sarathy, for the Appellant; Venkatappaiah Sastry, for Principal Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Kumarayya, J.—These three tax revision petitions are directed against the order of the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad, dated 30th November, 1963, whereby the said Tribunal dismissed the three appeals preferred by the present petitioner, Sri T. K. Khadar Mohideen against the orders of the Assistant Commercial Tax Officer, Palmaner, as confirmed on appeal by the Assistant Commissioner (Commercial Taxes), Anantapur, imposing additional tax and penalty for the escaped turnover for the years 1955-56, 1956-57 and 1957-58.

2. The scope for dispute has arisen on account of the repeal of the Madras General Sales Tax Act, 1939 (Madras Act 9 of 1939) which has been replaced by the Andhra Pradesh General Sales Tax Act, 1957, with effect from 15th June, 1957. The petitioner is a dealer in tamarind, charcoal and groundnut etc. He submitted his returns for the said years and was assessed to sales tax by the Assistant Commercial Tax Officer, Palmaner. On 9th May, 1959, the said tax officer paid a surprise visit to the business premises of the petitioner and recovered private account books disclosing turnovers which were not accounted for in the regular books of accounts submitted for the said years. On this turnover which escaped assessment additional tax together with penalty, 1 1/2

times the tax, was levied for the respective years. The plea of the petitioner was that the recovered books refer to private properties belonging to him and four others, that the transactions mentioned therein cannot be assessed to tax and that at any rate those transactions cannot be clubbed with the private business of the petitioner. This plea did not find favour with the taxing authority. The Assistant Commissioner also negatived the said contention. So did the Appellate Tribunal because it found that the petitioner in spite of opportunity failed to substantiate the same by any evidence. The petitioner took further grounds as to jurisdiction and limitation; but they also were repelled by the Tribunal. The petitioner, therefore, has come to this Court in revision.

3. Two questions arise for determination in these cases. The first is whether it was competent for the taxing authority, after the Madras General Sales Tax Act has ceased to be in force, to make additional assessment in respect of transactions made during the period of the said Act. The second question is, if so, whether such additional assessment is barred by limitation.

4. Before we answer the first question we may notice summarily the nature of the obligation of a dealer and the right of the assessing authority in relation to tax under the Madras General Sales Tax Act. It would appear that under that Act, a dealer had to pay tax on the total turnover of the year. The charging Section 3 in no uncertain terms declared to that effect. The obligation is absolute and is dependent on no other factor. The Act at the same time provides a machinery for quantifying and collecting the same. As the tax is leviable on the total turnover, the extent thereof is determined by process of assessment in the prescribed manner. As and when the tax is thus quantified, the assessee, subject to the result of appeal and revision, has to pay the same on pain of penalty and recovery thereof as though it were government dues. As the obligation to pay is according to the total turnover, if for any reason any part of the turnover for a particular year has escaped assessment, Rule 17 of the Madras General Sales Tax Rules, 1939, empowers the assessing authority to bring it to tax at any time within 3 years following the prescribed procedure. Whether one may call it original assessment or additional assessment, original turnover or escaped turnover, the end and aim of assessment in all these is to bring the total turnover of a dealer to tax for that is the avowed object of the Act. If, at the time of the original assessment, the total turnover was disclosed and brought to tax, no further assessment would be necessary. But, on the other hand, if the disclosure was found incomplete at any time within the statutory period additional assessment would necessarily follow. The additional assessment is in fact complementary to the original assessment as it is rendered necessary to bring to tax the total turnover for the year. All this because there is a statutory obligation on a dealer to pay tax on a total turnover for the year and the assessing authority has the right to assess the same subject to the law of limitation and collect it.

5. The question now is whether the said obligation on the dealer or the said right

of the assessing authority has undergone any change or suffered any set back respectively by reason of the repeal of the Madras General Sales Tax Act. The answer to this question may be found in the repealing statute itself which in this case is "The Andhra Pradesh General Sales Tax Act". Section 41 of the said Act which is the relevant provision reads thus :-

41. The Madras General Sales Tax Act, 1939 (Madras Act 9 of 1939), the Hyderabad General Sales Tax Act, 1950 (Hyderabad Act 14 of 1950), the Madras Tobacco (Taxation of Sales and Registration) Act, 1953 (Madras Act 4 of 1953), the Andhra General Purchase Tax Act, 1956 (Andhra Act 13 of 1956), and Section 21-A of the Madras Prohibition Act, 1937 (Madras Act 9 of 1937), are hereby repealed :

Provided that such repeal shall not affect the previous operation of the said Acts or section or any right, title, obligation or liability already acquired, accrued or incurred thereunder, and subject thereto, anything done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate, licence or permit) in the exercise of any power conferred by or under the said Acts or section shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amounts due at the commencement of this Act may be recovered as if they had accrued under this Act.

(2) * * *

6. Sub-section (1) declares the repeal of the Madras General Sales Tax Act together with some other Acts. But the proviso thereto naturally preserves intact any right, title, obligation or liability already acquired, accrued, or incurred under the repealed Act. In other words the right to tax that has already accrued and the obligation to pay that has been already incurred under the Act remain unaffected notwithstanding the repeal. We have already noticed that there is a statutory obligation imposed on every dealer to pay tax on the total turnover of the relevant year under the clear mandatory provisions of the charging section. The actual extent thereof, of course, has to be determined by resorting to a process of assessment following the prescribed procedure. We have also said that the enactment having declared the obligation has devised a machinery for quantifying the extent of liability by means of assessment and also for collecting the same. We have been referred to the fact that the obligation on a dealer to pay tax is founded on the charging section. This liability is absolute. It flows wholly and essentially from the charging section itself. It is not made dependent on the assessment which is but a process or means of quantifying the extent of the tax enjoined by the charging section. The charging section creates the liability and the process of assessment and collection are means of giving effect thereto. A dealer incurs obligation to pay tax by the very reason of his transactions of purchases and sales for the year, though the enforcement of this liability, for obvious reasons, is postponed till the assessment is made. Thus,

when a statute in clear terms imposes an obligation for purchases and sales which are exigible to tax, it is idle to contend that the obligation to pay tax arises only on assessment. The creation of the obligation to pay tax is one thing and the determination of its extent or enforceability thereof is another. Indeed the payment of tax becomes enforceable on assessment; but there can be no doubt that the liability to pay tax was incurred much earlier on account of the transactions which are exigible to tax. It is the liability or the obligation already incurred at the time of repeal that is material for purposes of Section 41(1). We do not think it necessary to enter into an elaborate discussion on this aspect of the matter as this Court in *Kannaiah v. Deputy Commercial Tax Officer, Guntur* (1964) 2 A.W. R. 16 had occasion to deal at length referring to case-law on the point including the following speech of Lord Dunedin in *Whitney v. Inland Revenue Commissioners* [1926] A.G. 37 :

Now, there are three stages in the imposition of tax : there is the declaration of liability that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, *ex hypothesi*, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.

7. It is clear from this speech that the obligation to pay tax flows from the charging section and is not dependent upon assessment.

8. Relying on the above speech and also the dicta of the Federal Court and the Supreme Court in certain Income Tax cases, the learned Chief Justice, who delivered the opinion of the Court, held in the case mentioned above, that the liability to pay tax springs from the charging section which imposes obligation to pay tax. It is not dependent on the assessment. He further held that the expression "liability... incurred thereunder" used in the proviso to Section 41(1) of the Andhra Pradesh General Sales Tax Act denotes taxability. The proviso protects all obligations incurred by virtue of purchase and sale made under the repealed Act. When once that is saved it is open to the department to quantify that obligation or liability and collect it. We are in respectful agreement with these conclusions and the reasons given therefore. To our minds it appears that the repealing Act has preserved intact the obligation of the dealer to pay tax already incurred under the repealed Act and also necessarily protected the corresponding right of the assessing authority to assess and recover the same. It is plain that for the years when the old Act was in force the liability to pay tax incurred under the old Act notwithstanding the repeal of the said Act must be discharged. The additional assessment being but a continuation of the original, the purpose thereof being to bring to tax that part of the turnover which has escaped assessment in the original assessment, it was within the competence of the assessing authority to proceed with such additional assessment notwithstanding the repeal of the old Act provided, of course, it was not barred by time.

9. The question now is whether the statute of limitation stands in the way of the assessing authority. It is clear that the Madras General Sales Tax Act was in force up to 14th June, 1957, and the original assessment was made thereunder. It is also clear that steps for the additional assessment were started after that Act had been repealed and the Andhra Pradesh General Sales Tax Act had come into force, Whereas Rule 17(1) of the Madras General Sales Tax Rules provided that reassessment could be made within three years, the new Act has fixed a larger period in Section 14(4-A). It is further obvious that the old period of three years in these cases had not expired when this section, i.e., Section 14(4-A) came into force. That being the case, it follows the extended period of limitation would apply, Perhaps the case would have been different if the period of 3 years had expired before the extended period of limitation had come into force. In *Munaga Peraiah v. The State of Andhra, Pradesh* [1962] 18 S.T.C. 26 this Court has held that where the period of limitation prescribed by law was enlarged before the right of the assessing authority to reassess was barred, it is the amended law that determines the liability of the assessee, Therefore the assessing authority would be well within its right in making the additional assessment within four years next succeeding the assessment year. It was further held that an assessment already made would not be said to have become final the moment it was made but becomes final only after the period for filing appeal or revision or for making additional assessment has expired. We are in respectful agreement with both these propositions as enunciated by the learned Judges. It is clear, therefore, that when the additional assessment has been made within four years as contemplated by Section 14(4-A) of the Andhra Pradesh Act, no question of limitation would arise, The additional assessment was perfectly within time. It is also clear that the penalty imposed was well within the competence of the assessing authority and did not exceed the limit fixed by the statute,

10. It may further be noted that if any question of limitation could arise at all in these cases it could have been only in relation to the assessment year 1955-56; but even that being made within four years no such objection can validly arise,

11. The result is that these petitions fail and they are dismissed with costs. Advocate's fee Rs. 250.