

The State of A.P. Vs. M.A. Rahim

The State of A.P. Vs. M.A. Rahim

SooperKanoon Citation : sooperkanoon.com/431063

Court : Andhra Pradesh

Decided On : Mar-04-1977

Reported in : [1977]40STC173(AP)

Judge : A. Sambasiva Rao, Ag. C.J. and ;Madhusudhana Rao, J.

Appeal No. : Tax Revision Case Nos. 56 and 65 of 1976 and 1 and 5 of 1977

Appellant : The State of A.P.

Respondent : M.A. Rahim

Advocate for Def. : Mir Baquer Ali, Adv.

Advocate for Pet/Ap. : The Government Pleader for Sales Tax

Disposition : Petition allowed

Judgement :

Sambasiva Rao, Ag. C.J.

1. A question of some consequence relating to the scope of Section 14(4) of the Andhra Pradesh General Sales Tax Act arises for decision in this batch of tax revision cases.

2. These cases are four in number. Out of them, T. R. C. Nos. 56 of 1976 and 1 of 1977 are of one assessee ; while T. R.C. No. 65 of 1976 and T. R. C. No. 5 of

1977 are of another assessee. The question is in respect of assessment years 1968-69 and 1969-70. Since there are two assessees and two assessments for two years, we are having on the whole four tax revision cases.

3. The facts are not complicated and are very brief. Both the assessees trade in cloth and other articles. They filed A-1 (annual return) for these two assessment years showing turnover of less than Rs. 10,000 per year. At that time, turnovers of Rs. 10,000 and below were exempt from sales tax. The assessing authority accepted these returns and passed nil assessment. Sometime thereafter, information reached the officer that the assessees had other transactions like purchasing from third parties, which were not shown in the returns. Then proceedings under Section 14(4) of the Act were started. There is no doubt that the requirements of Section 14(4) were complied with. Afterwards, the assessing authority found out the turnover which was not shown in the returns. After finding the undisclosed turnover, he added the disclosed turnover to the undisclosed turnover and levied tax on the total turnover. In appeal, this was confirmed. In further appeal before the Tribunal, it held on a consideration of the jurisdiction under Section 14(4), that the assessing authority has no power to include the original turnover and that the authority's jurisdiction under that provision is limited to taxing only the newly discovered turnover. We may as well quote from the judgment of the Tribunal to have a precise idea of what it decided. It said:

In proceedings under Section 14(4)(a), the assessing authority cannot make a reassessment inconsistent with the original assessment in respect of the turnover which is not the subject-matter under Section 14(4)(a). In other words, he has to confine himself to the turnover that has escaped assessment and he has absolutely no jurisdiction to touch, disturb or reopen the assessment on the turnover that was either already assessed or exempted.

4. Having thus understood the scope of the power under Section 14(4), the Tribunal proceeded to fix the tax on the newly discovered turnover and allowed the appeal to that extent. The revenue has filed these tax revision cases challenging this interpretation of Section 14(4) given by the Tribunal.

5. Sri Venkatappaiah Sastry, the learned Government Pleader, contends that the Act postulates the taxing of the entire turnover of a dealer for the year. That is so laid down under Section 5(1) of the Act. Section 14 provides for assessment of tax. No interpretation can be given to any portion or part of Section 14 which is inconsistent with the policy of the Act to levy tax on all turnovers which are above a particular limit fixed under Section 5(1). It is in that light, so argues Mr. Sastry, Sub-section (4) should be understood. Here, not only the newly discovered turnover but also the originally disclosed turnover escaped tax and, therefore, the assessing authority in exercise of his powers under Section 14(4), can assess the totality of the turnover for the year. He relies on Clause (b) of Sub-section (4) also to say that the assessing authority can assess the correct amount of tax payable on the turnover that has been under-assessed.

6. On the other hand, Sri Mir Baquer Ali for the assessee-respondent contends that the language of Sub-section (4) is very clear in conferring jurisdiction on the assessing authority to levy tax only on the escaped assessment, the escaped assessment in this case being the newly discovered turnover. Therefore, the authority has no power under Section 14(4) to add the originally disclosed turnover. If the authorities concerned so desired, they could have taken recourse to the revisional jurisdiction under Section 20 of the Act. But so long as they purport to act under Section 14(4), they cannot add the originally disclosed turnover also.

7. For us, the answer to this problem seems to be very simple. Section 14 provides that if the assessing authority is satisfied that any return submitted by an assessee is correct and complete, he shall assess the amount of tax payable by the dealer on the basis thereof. If, however, the return appears to the assessing authority to be incorrect or incomplete, he shall assess the dealer to the best of his judgment after giving him a reasonable opportunity of proving the correctness and completeness of the return. Sub-sections (1-A), (2) and (3) refer to other contingencies with which we are not now concerned. The material portion of Sub-section (4) may be extracted here :

(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 inquiry as he may consider necessary, by order, setting out the grounds therefor-

(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....

8. The other part of Sub-section (4) is not material for the present consideration. It is seen that Sub-section (4) postulates the following three contingencies:

(1) Where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax;

(2) Where such turnover has been under-assessed; and

(3) Where such turnover has been assessed at a rate lower than the correct rate.

9. These three contingencies are in addition to the failure to levy the licence fee or registration fee. Now, if any one of these contingencies is discovered, the assessing authority may, by order after issuing a notice to the dealer and after making such inquiry as he may consider necessary, determine to the best of his judgment the turnover that has escaped assessment and assess the turnover so determined.

10. Now, if the whole or any part of the turnover of the business of a dealer has escaped assessment to tax, under Section 14(4), the assessing authority is conferred power to determine to the best of his judgment the turnover that has escaped assessment and assess the turnover so determined. If, on further disclosure or inquiry, the authority comes to know that there has been some

undisclosed turnover, he can take action under Sub-section (4). If, in the case of a particular dealer, the original turnover shown in the return was below the taxable limit and was so accepted by the authority and if the newly discovered turnover added to the original turnover takes the total turnover beyond the taxable limit, then certainly the situation comes squarely within the ambit of Sub-section (4)(a). Since the original return showed a turnover which was less than the taxable limit, it escaped from assessment to tax. Later, more turnover was discovered. If both of them are added together and if the total goes beyond the exemption limit, then it means that the whole of the turnover of the business of the dealer for the year has escaped assessment. That is to say, if, in the first instance, the original turnover is below the exemption limit and the assessing officer has accepted it and later discovered some more turnover, thereby making the total turnover for the year more than the exempted limit, the authority is conferred with the power to impose tax on the total turnover. This power is clearly contained in the words 'where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax'. That should clearly mean that when fresh turnover was discovered and if it is added to the disclosed turnover, it goes beyond the taxable limit, the whole of the turnover of the business of the dealer has escaped assessment to tax and, consequently, such escaped assessment can be determined and assessed to tax under Clause (a). That is the significance of the words 'the whole or any part of the turnover' occurring in the main provision in Sub-section (4) and that idea is continued in Clause (a) by using the words 'escaped assessment'.

11. By showing his turnover below the taxable limit, the dealer has originally escaped assessment to tax. By virtue of new discovery, he comes within the taxable net. If he is not taxed on the whole of the turnover including the originally disclosed turnover and later discovered turnover, he would be escaping from assessment to tax on the whole of the turnover. Such a situation could never be postulated by the legislature. In cases where in the original assessment no tax was levied on the ground that the turnover was less than the taxable limit, certainly, when some more turnover is discovered, both of them can be added and assessed to tax under Clause (a) of Sub-section (4). In the light of this clear language of Sub-section (4)(a), it is untenable to say that in the circumstances of

the present cases the authority has no power to add the originally disclosed turnover to the newly discovered turnover and assess the total amount to tax. Such a power is clearly provided under Sub-section (4)(a). It would be a different matter if the original turnover was assessed to tax; then different considerations would prevail. In the present cases, all the original returns showed only turnovers of Rs. 4,000 to Rs. 5,000 per year and thus secured nil assessment orders from the assessing authority. Therefore, when new turnover was discovered which, along with the original assessment, took the total turnover beyond the exemption limit, the authorities were right in imposing tax on the total amount under Section 14(4) (a).

12. Though not directly in point, we may usefully refer to certain observations of the Supreme Court in its judgment in Deputy Commissioner of Commercial Taxes v. H. R. Sri Ramulu [1977] 39 S.T.C. 177 (S.C) (Civil Appeals Nos. 145 and 146 of 1972 decided on 11th January, 1977). Khanna, J., speaking for the court, observed:

The effect of reopening the assessment is to vacate or set aside the initial order for assessment and to substitute in its place the order made on reassessment. The initial order for reassessment cannot be said to survive, even partially, although the justification for reassessment arises because of turnover escaping assessment in a limited field or only with respect to a part of the matter covered by the initial assessment order. The result of reopening the assessment is that a fresh order for reassessment would have to be made including for those matters in respect of which there is no allegation of the turnover escaping assessment.

13. Sri Mir Baquer Ali relies on the decisions in Purushottam v. Commissioner of Sales Tax, Madhya Pradesh [1959] 10 S.T.C. 574, Tara Chand Kalloo Ram v. Sales Tax Officer [1962] 13 S.T.C. 957, Commissioner of Sales Tax, Madhya Pradesh v. Kunte Brothers [1962] 13 S.T.C. 366. and State of Andhra Pradesh v. Ravuri Narasimloo [1965] 16 S.T.C. 54. These decisions do not detract from the view we have taken nor do they help in any way the learned counsel's contention. Purushottam v. Commissioner of Sales Tax, Madhya Pradesh [1959] 10 S.T.C. 574, deals with the power of revision ; and the Madhya Pradesh High Court held

that the power does not include the power to tax a turnover which has escaped assessment. In *Tara Chand Kalloo Ram v. Sales Tax Officer* [1962] 13 S.T.C. 957, the Allahabad High Court held that assessment is a judicial function and that the Sales Tax Officers should apply their minds carefully to the assessment and the material placed before them. There cannot be any doubt or dispute about this position. In *Commissioner of Sales Tax, Madhya Pradesh v. Kunte Brothers* [1962] 13 S.T.C. 366, which is a case before the Madhya Pradesh High Court, earlier turnover was taxed and the tax was paid. Therefore, the facts of that case have no resemblance to the facts of the cases we are now considering. In *State of Andhra Pradesh v. Ravuri Narasimloo* [1965] 16 S.T.C. 54, a Division Bench of this Court said that the concept of best judgment assessment cannot be introduced into Section 14(4). But, we have already extracted the material portions of Section 14(4). Clause (a) of Sub-section (4) as it now stands, clearly enables the authority to determine to the best of his judgment the turnover that has escaped assessment. Therefore, this decision does not apply in the light of the provision as it now stands. So, these decisions are of no use in considering the question on hand.

14. The facts disclose that the assessing authority has determined the turnover that has escaped assessment and assessed the turnover so determined. In this particular case, the escaped assessment included not only the newly discovered turnover but also the original turnover, because no tax was then levied as it was below the taxable limit, Therefore, the view of the assessing officer is right and that of the Tribunal is wrong. Consequently, we allow these tax revision cases, set aside the decision of the Tribunal and restore the order of the assessing officer as confirmed by the appellate authority. Since there has been no authoritative pronouncement on this aspect of Section 14(4), we direct the parties to bear their own costs of these tax cases. Advocate's fee Rs. 100 in each case.