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Court : Andhra Pradesh

Decided On : Jul-19-1961

Reported in : [1962]13STC26(AP)

Judge : P. Chandra Reddy, C.J. and ;Jaganmohan Reddy, J.

Appeal No. : Tax Revision Case No. 69 of 1960

Appellant : Munaga Peraiah

Respondent : The State of Andhra Pradesh

Advocate for Def. : The Third Government Pleader

Advocate for Pet/Ap. : P. Rama Rao, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

P. Chandra Reddy, C.J.

1. The petitioner seeks to revise the order of the Sales Tax Appellate Tribunal dismissing an appeal preferred against the judgment of the Deputy Commissioner of Commercial Taxes, Guntur.

2. This petition relates to the assessment year 1954-55. The petitioner is a dealer in paddy and rice. He was assessed on a turnover of Rs. 2,06,930-9-3 on 1st December, 1955. A notice was issued to him on 31st October, 1958, to show cause why assessment should not be made on the additional turnover on the ground of its having been suppressed and it having escaped assessment in the previous assessment. The explanation submitted by the assessee was rejected and the assessing authority determined the suppressed turnover at Rs. 8,55,506-11-6 and levied a tax of Rs. 13,367-30 nP.

3. The assessee preferred an appeal to the Deputy Commissioner of Commercial Taxes against the additional assessment but it was dismissed and the dismissal was confirmed on further appeal by the Sales Tax Appellate Tribunal.

4. In this revision petition presented against the order of the Sales Tax Appellate Tribunal, the contention pressed upon us by Sri Rama Rao for the petitioner is that as the assessment was made under the Madras General Sales Tax Act, 1939, the re-assessment could have been made only within three years from the assessment year and the assessing authority had no jurisdiction to make the additional assessment after the period prescribed by the relevant rule framed under the Madras General Sales Tax Act. Section 14(4) of the Andhra Pradesh General Sales Tax Act, 1957, which fixes a longer period of limitation, is inapplicable to the assessment made under the earlier Act, contends the learned counsel.

5. The question for consideration is whether the view presented by the learned counsel is warranted by the relevant provisions of the Madras General Sales Tax Act and the Andhra Pradesh General Sales Tax Act, 1957.

6. As the answer to the question raised by the learned counsel depends upon Rule 17(1) of the Madras General Sales Tax Rules, 1939, as it stood then, which prescribes the period of limitation for making additional assessment, and Section 14(4) of the Andhra Pradesh General Sales Tax Act, it is necessary to read them here. Rule 17(1) as it stood then runs as follows :-

If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to the tax in any year or if the licence fee has escaped levy in any year, the assessing authority or licensing authority, as the case may be, subject to the provisions in Sub-rule (i-A), may, at any time within three years next succeeding that to which the tax or licence fee relates, determine to the best, of his judgment the turnover which has escaped assessment and assess the tax payable in such turnover or levy the licence fee, after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

* * * *

7. It is plain that this rule fixes a period of three years from the end of the year to which the tax relates, i.e., from the end of the assessment year. If the instant case is governed by this rule, the period of limitation would have expired on 31st March, 1958. But before the expiry of the period prescribed by this rule, the Andhra Pradesh General Sales Tax Act, 1957, was passed. It came into force on 15th June, 1957. Section 14(4) of this Act recites :

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.

8. It is seen that this Act has enlarged the period of limitation by four years for the purpose of making an additional assessment. The point that poses itself here is whether the instant case falls within the ambit of this section. The contention of Sri

Rama Rao is that this section has no application to the present case for the reason that the assessment in question would come within the scope of Rule 17(1) of the Madras General Sales Tax Rules, 1939, as Section 14(4) of the Andhra Pradesh General Sales Tax Act, 1957, is prospective and not retrospective in operation.

9. In support of this theory, the learned counsel relies upon the decisions of this Court in *Government of Andhra v. K. Rajaiah & Co.* [1957] 8 S.T.C. 164 and *Lakshminarayana Chetty v. Additional Income-tax Officer* [1956] 29 I.T.R. 419. We are not convinced that this argument is substantial or that the two rulings cited above lend any countenance to his proposition. In order to extend the provisions of Section 14(4), it is not essential that it should be retroactive. What is material is whether the period prescribed under Rule 17(1) of the Madras General Sales Tax Rules, 1939, had expired or not before the coming into effect of Section 14(4); in other words, whether the assessment made under the earlier Act had become final. If the assessment had not become final, Section 14(4) would apply to it and the additional assessment could be made within four years of the first assessment.

10. It is urged by Sri Rama Rao that the assessment had become final the moment it was made and as such the petitioner had acquired a vested interest and, consequently, the Andhra Pradesh General Sales Tax Act, 1957, which came into effect after that date, would be inapplicable to the instant case. There is a fallacy in this argument. The assessment cannot be said to have become final the moment it is made. The finality attaches itself only after the period prescribed for the filing of appeal or revision, or for making additional assessment, had expired. Till then, the assessment could not be deemed to have become final.

11. Neither *Government of Andhra v. K. Rajaiah & Co.* [1957] 8 S.T.C. 164 nor *Lakshminarayana Chetty v. Additional Income-tax Officer* [1956] 29 I.T.R. 419 lends any countenance to the proposition advanced by the learned counsel for the petitioner. A perusal of these judgments makes it clear that far from supporting his theory they negative it. In the first of the two cases, the assessment was for the year 1950-51. Under the then existing rules, the time for revising the assessment was two years. Therefore, the re-assessment could be made only on or before 31st March, 1953. Under Rule 17(1) of the Madras General Sales Tax Rules,

1939, as amended by G.O. 1635, Revenue, dated 11th June, 1953, the assessment could be revised within three years from the date of the original assessment. It is seen that this rule was amended after the expiry of the limitation prescribed under the old rule. The question for consideration was whether the amended rule could save the re-assessment made after two years next succeeding the assessment year. The learned Judges ruled that it could not, because the assessment had become final before the amendment and the amended rule was not retrospective. It was not laid down that the assessment had become final when it was made. It is clear from a reading of the judgment that the opinion of the learned Judges was that the finality accrued only after two years, the period prescribed by the unamended rule.

12. Similarly, it was held in *Lakshminarayana Chetty v. Additional Income-tax Officer* [1956] 20 I.T.R. 419, that the amendment would not apply to a case where the assessment had become final and the assessment could be said to have become final after the period fixed under Section 35 of the Indian Income-tax Act had expired. Therefore, the two rulings are not authority for the view presented by Sri Rama Rao.

13. On the other hand, there are two decisions of this Court and of the Madras High Court, *Venkateswara Row v. Deputy Commissioner of Commercial Taxes* [1959] 10 S.T.C. 162, and *Syed Mohammed Ravoother v. Deputy Commercial Tax Officer* [1958] 9 S.T.C. 1, for the position that the provisions of the amended rule would apply to a cause of action that arose before the amendment and, where the period of limitation prescribed by law was enlarged before the right of the assessing authority was barred, it is the amended law that determined the liability of the assessee. The considerations that are pertinent in regard to an amended law would equally govern a new enactment repealing an old one. Consequently, the assessing authority was well within his right in making the additional assessment within four years next succeeding the assessment year.

14. Sri Rama Rao then advanced an argument based on Section 41 of the Andhra Pradesh General Sales Tax Act, namely, that, in any event, the right which had accrued to the petitioner could not be disturbed as it was specifically saved by the

proviso to Section 41. This contention is again based upon the concept that the petitioner had acquired a vested right, i.e., the assessment had become final, and as such it could not be re-opened. The above discussion contains an answer to this contention, namely, that no finality attached on the date the new Act, i.e., the Andhra Pradesh General Sales Tax Act, 1957, came into operation. Therefore, this argument is also repelled.

15. In the result, the revision case is dismissed with costs. Advocate's fee Rs. 150.

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