

The State of Andhra Vs. Chippada Govaraiah and ors.

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Court : Andhra Pradesh

Decided On : Oct-29-1959

Reported in : [1960]11STC207(AP)

Judge : Satyanarayana Raju and ;Kumarayya, JJ.

Appeal No. : Tax Revision Case No. 25 of 1957

Appellant : The State of Andhra

Respondent : Chippada Govaraiah and ors.

Advocate for Def. : G. Ramanujulu Naidu, Adv.

Advocate for Pet/Ap. : D.V. Sastry, Adv. for ;the Second Government Pleader

Disposition : Petition dismissed

Judgement :

Kumarayya, J.

1. The short point for determination in this case is whether the Appellate Tribunal was right in holding that the Deputy Commissioner was not the proper authority to rectify the mistake alleged to have been committed by the Commercial Tax Officer.

2. To appreciate the arguments advanced, it is necessary to make a brief statement of the facts. The respondent was assessed to sales tax on a turnover of

Rs. 1,21,383-12-7 for the year 1949-50 by the Deputy Commercial Tax Officer, Bobbili, on 31st March, 1952. Aggrieved by this he went in appeal before the Commercial Tax Officer, Srikakulam, who was then the Appellate Authority, claiming deduction of certain items from the turnover. The Commercial Tax Officer, however, allowed certain items and disallowed certain others.

3. Now, we are concerned only with an item of Rs. 16,590-8-0 in respect of which the Commercial Tax Officer had held against the respondent but failed to include the same in calculating the aggregate turnover in the order. This order was passed on 7th June, 1953. The respondent went in appeal before the Sales Tax Appellate Tribunal which gave him relief to the extent of Rs. 10,000 and directed the original authority to make an assessment on that basis. At that time no reference was made to this item of Rs. 16,590-8-0. Neither of the parties went in revision against the order.

4. Long after the Appellate Tribunal's order had thus become conclusive, there were amendments effected in the Act on 24th June, 1954 and also in the rules on 24th August, 1954. As a result, the Deputy Commissioner now became the Appellate Authority. Section 13, which is relevant in this connection, reads thus :-

Notwithstanding anything contained in the principal Act or in the principal Act, as amended by this Act,-

(i) the appeals or applications specified in column (1) of the Table below pending on the date of commencement of this Act before the authority specified in the corresponding entry in column (2) of that Table shall stand transferred to the authority specified in the corresponding entry in column (3) thereof, for disposal as if it were an appeal preferred under and in accordance with the provisions of Section 11 or 12-A, as the case may require, of the principal Act, as amended by this Act.

TABLE.

(1)	(2)	(3)
Appeal under Section 11 of the principal Act relating to an order of assessment Taxes concerned.	Deputy Commercial Tax Officer.	Deputy Commissioner.
Application under Section 12(i)(ii) of the principal Act.	Deputy Commercial Tax Officer.	Deputy Commissioner.

Commissioner the principal Act of Commercial relating to an order Taxes concerned. passed or proceeding recorded by a Deputy Commercial Tax Officer. (3) Application under Deputy Commi- Appellate Section 12(2)(ii) of ssioner of Tribunal. the principal Act. Commercial Taxes. (4) Application under Board of Revenue. Appellate Section 12(3)(ii) of Tribunal. the principal Act. (ii) Against an order passed or proceeding recorded before the date of commencement of this Act under the provisions of the principal Act, by the authority mentioned in column (1) of the Table below, an appeal shall lie to the authority mentioned in the corresponding entry in column (2) thereof, within sixty days from the date on which the order was served on the dealer and any such appeal shall be deemed to be an appeal preferred under Section 12A of the principal Act.

TABLE. (1) (2) (1) By a Commercial Tax Officer Appellate Tribunal. under Section 12(1) (ii) of the principal Act. (2) By a Deputy Commissioner Appellate Tribunal. of Commercial Taxes under Section 12(2)(ii) of the principal Act. (iii) Any application under Section 12(i)(ii) of the principal Act relating to an order passed or proceeding recorded by an Assistant Commercial Tax Officer and pending before the Commercial Tax Officer on the date of commencement of this Act shall be disposed of as if it were an appeal filed under the provisions of the principal Act, as amended by this Act.

5. It would appear from this provision that the Deputy Commissioner in connection with appeals and applications already registered became the appellate authority only so far as appeals or applications specified in column No. (1) pending on the date of the commencement of that Act before the then appellate authority were concerned and: only such appeals stood transferred to that authority and that authority was empowered to dispose of such appeals as if they were preferred in accordance with the provisions of Section 11. Neither Sub-section (i) nor (ii) nor (iii) gives any power to the Deputy Commissioner, which is now the appellate authority, to deal with or revive the appeals or petitions already disposed of, or take any steps with regard to them. His powers in respect of cases and petitions instituted before the date of enforcement of the Amending Act are fully defined and cannot, therefore, go beyond what is specified in the relevant provision. In spite of the same it appears that on 28th September, 1955, the Deputy Commissioner,

under Rule 18, sought to correct the mistake committed by the Commercial Tax Officer on 7th June, 1953. The respondent took exception to the same and went in appeal before the Sales Tax Appellate Tribunal which, as already stated, allowed his appeal on the ground that having regard to the clear language of Rule 18, the act complained of was beyond the competence of the Deputy Commissioner. It is this finding that has been canvassed on behalf of the State before us.

6. Rule 18(1) of the Madras General Sales Tax Rules, 1939, reads thus:-

An assessing, appellate or revising authority may, at any time within three years from the date of any order passed by him, rectify any mistake apparent from the record.

7. Tho expression 'passed by him' provided sufficient difficulty for the Tribunal and rightly too, for the draftsmanship is most inartistic and does not convey the sense it, probably, intended to convey. However, there is no difficulty in holding that the Deputy Commissioner was not the proper authority for the purposes of Rule 18(1). Learned counsel on behalf of the State has argued that as the Deputy Commissioner has been invested with appellate powers and should on that account be considered as the successor-in-office, he is the proper person within the meaning of Rule 18 to rectify mistakes apparent on the record. We cannot agree with this when it is clear that the authority vested with the Deputy Commissioner in relation to appeals preferred and petitions made prior to the date of amendment is not unfettered and is circumscribed by the limitations in Section 13 which in this behalf defines the exact scope of his authority, namely, that he could hear only. those appeals or applications pending at that time. The language of this section clearly brings out the intention of the Legislature that he cannot be deemed to be appellate authority to deal in any manner with the closed cases. The necessary consequence of this is that he had no power to reopen closed matters or revive those proceedings which were finally settled. Having regard to the scheme of the amending Act, it is obvious that the extent to which the Act was intended to be retroactive in its operation has been fully brought out in its various provisions. But Section 13 has not gone back to the extent now desired. Thus against the clear language and intendment of the enactment, the powers of the

Deputy Commissioner could not reach back to acts done by the Commercial Tax Officer.

8. In this View of the law, we have no hesitation in holding that the Tribunal was right in allowing the appeal. This revision case fails and it is hereby dismissed with costs. Advocate's fee Rs. 100.

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