ANDHRA PRADESH HIGH COURT

The State of Andhra Pradesh

Vs

Pyarelal Malhotra

(S Raju,CJ.Venkatesam, J.)

23.03.1962

JUDGMENT

Venkatesam, J.

1. This tax revision case is preferred by the State of Andhra Pradesh against the order of the Sales Tax Appellate Tribunal in Tribunal Appeal No. 256 of 1960 on its file. The relevant facts are these.

2. The assessee-respondent opened a branch office at Masulipatnam on 14th July, 1958, as dealers in Usha Sewing Machines and their spare parts. For the assessment year 1958-59 they failed to submit a return in Form A of the estimated turnover, or Form A-1 of the actual turnover. They, however, got themselves registered as dealers soon after they opened the branch at Masulipatnam. The concerned Assistant Commercial Tax Officer inspected the business premises of the assessee and checked the accounts, and found the turnover relating to their sales for the year ending March, 1959, to be Rs. 17,177-37 nP. Thereafter, the dealers voluntarily filed the annual return in Form A-1 on 17th August, 1959, disclosing the turnover of Rs. 17,177-37 nP. Subsequently, the Assistant Commercial Tax Officer, Bandar, who was the assessing authority, called on the assessee to produce his accounts, and, after examining them, accepted the return made by the assessee as complete and correct, and by his order dated 25th September, 1959, assessed him to tax at Rs. 340-56 nP., which was paid.

3. The assessing authority, after completing the assessment, issued a show-cause notice why penalty at 11/2 times the tax, amounting to RS. 5I5-31nP" should not be levied under Section 14(3) of the Andhra Pradesh General Sales Tax Act (hereinafter referred to as "the Act"). The Commercial Tax Officer reduced the penalty to Rs. 343 and against that order the matter was carried in appeal to the Appellate Tribunal.

4. Two members of the Tribunal took the view that, in a case like this, where the return has been accepted, Section 14(1) of the Act will apply, and there is no question of levying any penalty

when an assessment is made on the basis of an accepted return, and that the levy was, therefore, without jurisdiction. The learned Chairman of the Tribunal took the view that, as the appellant had not filed the return as contemplated under Section 13, he would necessarily come under Section 14(4) for levy of assessment and penalty, and that the penalty levied is valid irrespective of the fact whether it is an original assessment or not. The opinion of the majority was made the final order of the Tribunal, and the penalty was set aside.

5. It is the correctness of this order that is challenged by the State before us.

6. The contention raised on behalf of the Department is that penalty can be levied under Section 14(3) of the Act in cases where the returns are not submitted within time. As the validity of this contention depends on the construction of Section 14(3), the section may usefully be extracted.

14. (1) If the assessing authority is satisfied that any return submitted under Section 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 inquiry 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 Sub-section (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.

(3) If no return is submitted by any dealer liable to tax under this Act before the date prescribed in that behalf, the assessing authority may, at any time within a period of four years from the expiry of the year to which assessment relates, after issuing a notice to the dealer and after making such inquiry as he considers necessary, assess to the best of his judgment, the amount of tax due from the dealer on his turnover for that year, and may 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.

(4) 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 underassessed or assessed 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...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 :Provided that 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 information, and make such inquiry as he considers necessary.

7. The effect of this section may be summed up as follows:-

Under Section 14(1) where the assessing authority is satisfied that the return submitted under Section 13 is correct and complete, the dealer shall be assessed to the amount of the tax on that basis. If, however, the return is incorrect or incomplete, after the necessary inquiry, the assessment to the best of his judgment could be made, and the amount of tax determined thereon.According to Sub-section (2) of Section 14 where an assessment to the best of judgment under Sub-section (1) as aforesaid has been made, the assessing authority may direct the dealer to pay in addition to the tax a penalty not exceeding one and half times the tax due on the turnover, which was not disclosed in the return.

Sub-section (3) of Section 14 deals with a case where no return is submitted by the dealer before the date prescribed, and the assessing authority issues a notice within the period of four years from the expiry of the year of assessment, and after inquiry, assesses to the best of his judgment the amount of tax due from the dealer on the turnover for that year. The sub-section says that the assessing authority may direct the dealer to pay, in addition to the tax so assessed a penalty not exceeding one and half times that tax. The sub-section makes it manifest that the essential conditions for its application are: (1) no return should have been submitted by the dealer within the time prescribed ;

(2) the assessing authority, within the period of four years from the expiry of the year of assessment, should issue a notice to the dealer ;

(3) after making the necessary inquiry assess to the best of his judgment the amount of tax on the turnover for that year ; and (4) levy a penalty not exceeding one and half times the amount of that tax in addition to the tax so assessed, i.e., assessed to the best of judgment.

8. Sub-section (4) deals with a case where, for any reason, a part of the turnover of the business of the dealer has escaped assessment to tax or been under-assessed, or assessed at too low a rate. In such a case, the assessing authority may assess the tax on the turnover which has escaped assessment, and also levy a penalty not exceeding one and half times the tax.

9. The meaning of the phrase "escaped assessment" was considered by a Full Bench of the Madras High Court in State of Madras v. Louis Dreyfus and Company Ltd. [1955] 6 S.T.C. 318 (F.B.). In considering the scope of Rule 14(2) and Rule 17 of the Madras General Sales Tax

Rules, it was laid down by the Full Bench that the distinction between those two provisions might be expressed by saying that Rule 14(2) deals with escaped assessments, and Rule 17(1) with escaped turnovers, notwithstanding that the latter also would mean that a lesser amount of tax has been levied. It was held that the "escape" that serves as the foundation of the jurisdiction to reopen an assessment is that of "turnover" and not an assessment, that the "turnover" escapes when it is not noticed by the officer either because it is not before him by reason of an inadvertence, omission or deliberate concealment on the part of the assessee, or because of want of care on the part of the officer the turnover though in the books has not been taken notice of, and that this would be the natural and normal meaning of the expression "turnover which has escaped" in Rule 17(1). Section 14(4) of the Act, therefore, which deals with the case of a turnover which escaped assessment, can only be invoked if, as pointed out by the Full Bench, it has not been noticed by the officer by reason of inadvertence or omission or concealment by the assessee or want of care of the officer. This sub-section cannot, therefore, apply to the instant case, where in fact a return has been submitted, and accepted by the Department.

10. Let us now consider, whether Section 14(3), under which the show-cause notice was issued applies. To our minds, the requirements of Section 14(3) enumerated above are not present in the instant case. There is no notice from the assessing authority, nor any enquiry resulting in a best of judgment assessment. It is only after the tax was assessed on the basis of the best of judgment assessment that the penalty not exceeding one and half times that tax could be levied. The best of judgment assessment is a condition precedent, or a sine qua non, for the levy of the penalty. Any other construction would not be giving effect to the words "direct the dealer to pay in addition to the tax so assessed a penalty not exceeding one and half times the amount of the tax." Where a return, though submitted late, has not been rejected as being incorrect or incomplete, but was accepted by the assessing authority, and the tax has been assessed on that basis, it will not be correct to state that such an assessment is a best of judgment assessment, in a case where no return is made.

11. The view of the Chairman that because the return was made beyond time, even though it was accepted by the assessing authority, the case would fall under Section 14(4), cannot be accepted and is opposed to the view expressed in decided cases.

12. In a recent decision of this Court in State of *Andhra Pradesh v. Donthala Rajaiah*[1] Chandra Reddy, C.J., and Srinivasachari, J., on a consideration of the authorities and the provisions of the Hyderabad. General Sales Tax Act and Rules framed thereunder, ruled that it is open to the Department to accept a return submitted by an assessee as the basis of assessment even after the expiry of the period prescribed by the statutory rules. There is no legal bar to complete the assessment on the return so made. Though the assessee could not claim as of right to have the delay condoned in the submission of the return, it was competent for the taxing authority to

excuse the delay in the exercise of its discretion and make the assessment on the basis of it. It was also ruled that there was nothing in the Act or the Rules which fix a definite period of limitation excluding the jurisdiction of the taxing authority to finalise it after the closing of the succeeding year. Their Lordships followed the decisions in *State of Madras v. Louis Dreyfus, and Company Ltd*[2]. and State of *Madras v. Ibrahim Kunhi*[3]

13. We respectfully follow this decision and hold that, though the return had not been made within time, the assessment made on the basis of a voluntary return is an original assessment made as per Section 14(1) of the Act. Such an assessment can hardly be said to be a best of judgment assessment or an assessment of the escaped turnover contemplated in Section 14(4). The acceptance of the return by the assessing authority would mean by implication that it has condoned the delay in the submission of the return. In this view, we agree with the opinion of the majority members of Tribunal and hold that neither Sub-section (3) nor (4) of Section 14 of the Act has any application to the case.

14. The tax revision case accordingly fails, and is dismissed with costs. Advocate's fee Rs. 50.

Cases Referred.

1[1960] 11 S.T.C. 819
2[1955] 6 S.T.C. 318 (F.B)
3[1956] 7 S.T.C. 617