

ANDHRA PRADESH HIGH COURT

The State Of A.P

Vs

Lalitha Oil Mills

(S.O Reddi, CJ. N Rao, J.)

06.02.1978

JUDGMENT

S. Obul Reddi, C.J.

1. These three revisions arise out of three separate orders of the Sales Tax Appellate Tribunal, but raise two common questions. We, therefore, propose to dispose of these three revisions by a common judgment. The two questions that arise for our consideration are :

- (1) Whether the Deputy Commissioner was justified in exercising his revisional jurisdiction under Section 20(2) of the A. P. G. S. T. Act on the facts and in the circumstances of the case ?
- (2) Whether the disputed turnover which represents the purchase value of groundnut kernel or groundnuts sold to oil-millers within the State by the assessee, who is both a dealer and miller, is liable to tax ?

2. For purposes of determining the questions involved, we shall state the facts of the case of the assessee, a firm known as "Sri Lalitha Oil Mills, Gudur". This firm is an oil-miller and dealer in groundnuts. The assessee reported the gross and net turnovers of Rs. 9,07,174.80 and Rs. 3,84,648.24 respectively for the assessment year 1969-70 in the A-1 return filed by it. The Commercial Tax Officer determined the net taxable turnover at Rs. 2,78,008.29. The disputed turnover of Rs. 1,10,875.57, which represented the purchase value of the groundnut kernel sold to oil-millers in the State, was exempted from tax having regard to the judgment of this court in *Madar Khan and Co. v. Assistant Commissioner*¹ The Deputy Commissioner, in exercise of his revisional powers under Section 20(2) of the Andhra Pradesh General Sales Tax Act, hereinafter referred to as "the Act", after following the procedure prescribed, brought this turnover to tax on the basis of a subsequent decision of the Supreme Court in *Sri Venkateswara etc. Oil Mill v. State of Andhra Pradesh*² The Supreme Court did not endorse the view of this court in *Madar Khan and Co. v. Assistant Commissioner* [1971] 27 S.T.C. 18, but affirmed the earlier decision of this court in *State of Andhra Pradesh v. Lakshmi Oil Mills*³ The Deputy Commissioner disallowed the exemption granted by the Commercial Tax Officer in respect of the disputed turnover of Rs. 1,10,875.57 and directed the turnover to be brought to tax at 3 per cent. It is against that order of the Deputy Commissioner that the assessee preferred an appeal before the Sales Tax Appellate Tribunal. As similar exemptions were granted by the Commercial Tax Officer in respect of the other two assesseees also on the sale of groundnuts or groundnut kernel to millers in the State and

as the exemptions were disallowed by the Deputy Commissioner in exercise of his revisional jurisdiction, they also preferred appeals to the Tribunal. The Tribunal was of the view that, at the time when the Commercial Tax Officer granted exemption he granted that exemption having regard to the view expressed by this court in *Madar Khan and Co. v. Assistant Commissioner*⁴ and that, therefore, there was no illegality attached to the exemption granted by the Commercial Tax Officer and hence the Deputy Commissioner was in error in exercising his revisional powers under Section 20(2) of the Act. On the question whether the assesseees were entitled to exemption in respect of the sales of groundnut kernel effected by them to the millers in the State, the Tribunal held, following the decision in *Madar Khan and Co. v. Assistant Commissioner* [1971] 27 S.T.C. 18(Supra), that the sales were rightly exempted.

3. We may first consider the question whether the Deputy Commissioner acted within the bounds of the authority conferred upon him in exercising his revisional jurisdiction. It is the case of Mr. Dasaratharama Reddi, appearing for the assesseees, that the proper and correct provision applicable in cases of this nature is Section 14(4) of the Act and not Section 20(2) and that it was open to the Deputy Commissioner to exercise the powers of the assessing authority by virtue of the provisions of Section 14(4-C) and reopen the assessment, but not revise the assessment in exercise of his powers under Section 20(2) as if there was an illegality in the order of the assessing authority. Mr. D. V. Sastry, the learned counsel appearing for the department, which has filed these revisions, contended that the question is not whether, at the time of the assessment proceedings, correct law was applied by the assessing authority, but whether that was the correct law at the date when the Deputy Commissioner exercised his revisional power. The relevant provisions to be noticed are Sections 14 and 20. To the extent material, they are in these terms:

Section 14. (4) In any of the following events, namely, where 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 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 making such inquiry as he considers necessary, assess the correct amount of tax payable or levy the correct amount of licence fee or registration fee....

(b) within a period of four years from the expiry of the year aforesaid, if any such event has occurred due to any other causes....

(4-C) The powers conferred by Sub-section (4) on the assessing authority may, subject to the same conditions as are applicable in the case of that authority, be exercised also by any of the authorities higher than the assessing authority including the Deputy Commissioner concerned.

Section 20. Revision by Board of Revenue and other prescribed authorities.-(1) The Board of Revenue may suo motu call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to it, under the provisions of this Act, including Sub-section (2) of this section, for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such proceeding and may pass such order in reference thereto as it thinks fit.

(2) Powers of the nature referred to in Sub-section (1) may also be exercised by the Deputy Commissioner and the Commercial Tax Officer, in the case of orders passed or proceedings recorded by authorities, officers or persons subordinate to them.

(2-A)....

(3) In relation to an order of assessment passed under this Act, the powers conferred by Sub-sections (1) and (2) shall be exercisable only within such period not exceeding four years from the date on which the order was served on the dealer, as may be prescribed.

4. Entry 6 of schedule III provides the rate of tax at 4 paise in the rupee for groundnut when purchased by a miller other than a decorticating miller in the State, at the point of purchase by such miller and in all other cases at the point of purchase by the last dealer who buys in the State.

5. Section 14(4) enumerates the events under which an assessing authority including a Deputy Commissioner can exercise jurisdiction and also prescribes the period of limitation for exercising that jurisdiction. For exercising jurisdiction under Section 14(4), there should be either escapement of whole or part of the turnover or the turnover should have been assessed at a rate lower than the correct rate. Mr. D. V. Sastry, having regard to the language of Section 14(4), contended that the revisional assessments made by the Deputy Commissioner do not fall under any of the categories contemplated by Sub-section (4). It is his case that it is a simple case of exercise of revisional jurisdiction applying the correct law as laid down by the Supreme Court. In other words, it is his case that, although at the time when exemption was granted to the assessee on the turnover, the assessing authority had acted in accordance with the law, as it then stood, that was not the correct law to be applied at the date of revision, in view of the decision of the Supreme Court. The assessment orders were made on 25th February, 1971 and the Deputy Commissioner passed the impugned orders on 16th October, 1974, within the period of limitation prescribed in Sub-section (3) of Section 20. If we are to find that the Deputy Commissioner, in exercise of the power conferred upon him under Section 14(4), could have only acted as an assessing authority, the impugned order would be beyond the period of limitation prescribed in Section 14(4-A).

6. Mr. Dasaratharama Reddi invited our attention to the decision of a Division Bench of this Court consisting of Madhava Reddy and Ramachandra Raju, JJ., in *Sri Balaganesh Textiles v. Commercial Tax Officer, Tirupathi*⁵ filed under Article 227 of the Constitution of India, to contend that the Deputy Commissioner was in error in exercising the revisional jurisdiction instead of reopening the assessment under Section 14(4). That was a case where the assessee filed returns showing the turnover and claimed exemption in respect of a portion of the turnover. The Commercial Tax Officer allowed exemption under various heads totalling Rs. 11,10,594.17 and assessed the assessee on a net turnover of Rs. 5,680.42. The exemptions allowed also included a turnover of Rs. 4,27,564 being the sales of cotton yarn to dealers within the State. The Commercial Tax Officer then issued a notice which was challenged in this court, stating that on subsequent verification of the accounts of the purchasers, it was found that the assessee was the last seller liable to pay tax because there were no subsequent sales in the State by the purchasers. Therefore, the claim for exemption in respect of that turnover was found to have escaped assessment to tax and he proposed to assess the assessee on the escaped turnover. The learned Judges, on those facts, held that at the time of assessment, the exemptions were properly given. It was on account of the verification of accounts of the purchasers that it was found that the exemptions were wrongly granted and, therefore, they upheld the impugned notices given by the Commercial Tax Officer on the ground that he had not acted without jurisdiction. Before the learned Judges, the contention raised was that it was not a case for reopening or making a reassessment but a case where the revisional jurisdiction should have been exercised by the

Deputy Commissioner under Section 20(2). The learned Judges negated that contention on the ground that on account of the verification of the accounts of the purchasers, it was a case falling under Section 14(4) and not one falling under Section 20(2). It may thus be seen that, on facts, that case is distinguishable. That was not a case where, by reason of any law as laid down or interpreted by the Supreme Court, the exemptions granted earlier became illegal. Therefore, that decision can have no application to the facts of the present case.

7. Mr. Dasaratharama Reddi next invited our attention to the decision of a Division Bench of this Court in *State of Andhra Pradesh v. Polireddi Satyanarayana*⁵ to which one of us (Obul Reddi, J., as he then was) was a party. That was a case where an assessment order for the year 1963-64 was passed on a dealer in jaggery which commodity at that time was taxable at the purchase point up to 31st July, 1963 and at the sale point from 1st August, 1963. The assessing authority found that he had committed a mistake in applying the correct rate for the two periods. The Tribunal held that the assessing authority had no power to make a reassessment of the case. On those facts, the Division Bench held that Section 14(4) confers wide powers upon the assessing authority to make a reassessment if the circumstances referred to in the provision exist and that he can make a reassessment where the whole or any part of the turnover escapes assessment to tax or if he fails to assess it correctly and makes under-assessment or assesses the turnover at a lower rate and not at the rate prescribed. In that case, the reassessment was made as the correct rate was not applied to the turnover. Therefore, it was held that the assessing authority was competent to do so. That was a clear case of reopening of an assessment as there was an under-assessment in the sense that the correct rate was not applied. In the case before us, we are not concerned with the correct rate of tax, but we are only concerned with the question whether the Deputy Commissioner had jurisdiction to exercise revisional jurisdiction under Section 20(4). The learned counsel sought to place reliance upon another decision of this court in *Additional Commissioner of Income-tax v. M. J. Devda*⁷. That was a case where an application was filed in this court under Section 256(2) of the Income-tax Act to direct the Tribunal to refer the question of law to the High Court. The learned Judges rejected the application on the ground that the correctness or otherwise of the decision of the Tribunal will have to be decided only in the light of the law that was in force when the Tribunal rendered the decision. The learned Judges were only concerned with the scope of Section 256(2) in that case. We fail to see how the ratio of a decision rendered on the powers of the High Court under Section 256(2) could be extended to a case where the scope of revisional powers conferred upon a Deputy Commissioner under a different enactment is to be considered. Section 256(2) of the Income-tax Act does not confer any revisional jurisdiction on this court. That was not a case where any question was referred to the High Court on the basis of the subsequent amendments. The High Court, therefore, declined to direct the Tribunal to refer the question in respect of a subsequent amendment of the law.

8. *Maharaj Kumar Kamal Singh v. Commissioner of Income-tax*⁸ only deals with the meaning of the expression "information" occurring in Section 34(1)(b) of the Indian Income-tax Act, 1922. The Supreme Court held that the word "information" would include information as to the true and correct state of the law and so would cover information as to relevant judicial decisions. According to Mr. Dasaratharama Reddi, the decision of the Supreme Court in *Sri Venkateswara etc. Oil Mill v. State of Andhra Pradesh*⁹ would constitute information and it would be open to the assessing authority to reopen the assessment. As already noticed, Section 14(4) specifically lays down the conditions for reopening an assessment. Section 20(1) provides as to when a revisional authority can exercise its revisional powers. Section 20(1) makes it manifest that a revisional power could be exercised by the revisional authority for satisfying itself as to the

legality or propriety of an order or as to the regularity of a proceeding of a subordinate authority. What the Deputy Commissioner was concerned with was the legality of the order passed by the Commercial Tax Officer. He was not concerned with the question whether the exemption was rightly granted at the date when the assessing authority passed the order. He had to apply the law as it stood at the date when he chose to exercise his revisional authority. If, at the date when he chose to exercise his revisional power, it was found that the correct law that is applicable was the one laid down by the Supreme Court, then it would be open to him to issue a notice to the assessee and, after affording him a reasonable opportunity of being heard, revise the assessment in accordance with the law as laid down by the Supreme Court.

9. Now, let us see what this court said in Madar Khan's case [1971] 27 S.T.C. 18(Supra). In that case, a Division Bench of this Court consisting of Chinnappa Reddy and Madhava Reddy, JJ., held that the word "miller" in the entry can only mean the person who crushes groundnuts into oil by the employment of machinery and does not include a person who merely decorticates groundnuts and if such a "miller" also functions as a "dealer" he will be liable to tax only if the purchase can be brought within the second limb of entry 3, that is, if it is the last purchase within the State. The learned Judges expressed their disagreement with the view expressed by another Division Bench of this Court in *State of Andhra Pradesh v. Lakshmi Oil Mills* [1967] 20 S.T.C. 489(Supra) and also *Radhakrishna and Co. v. State of Andhra Pradesh*¹⁰ The Supreme Court, in *Sri Venkateswara etc. Oil Mill v. State of Andhra Pradesh*¹¹ disapproved the view of this court in Madar Khan's case [1971] 27 S.T.C. 18(Supra) and said, that they were in entire agreement with the reasoning of the High Court in *State of Andhra Pradesh v. Lakshmi Oil Mills* [1967] 20 S.T.C. 489(Supra) and in *Sri Venkateswara etc. Oil Mill v. State of Andhra Pradesh*¹² The Supreme Court held that the event which attracts tax is the act of the miller purchasing groundnut and not his act of crushing the groundnut purchased or dealing with it in any other manner. It was further observed :It is now well-settled that even under the sales tax laws, the charge in respect of a sale or purchase becomes effective as soon as the sale in the case of sales tax and purchase in the case of purchase tax is made, though the liability of the dealer can be computed only at the end of the year. The incurring of the charge is one thing and its computation is a totally different thing.

10. This court had occasion to consider on more than one occasion the scope and ambit of Section 14(4) vis-a-vis Section 20 of the Act. A Division Bench of this Court in *Rajmal Multanmal and Co. v. Commercial Tax Officer*¹³ to which one of us (Obul Reddi, J., as he then was) was a party, held that where no part of the turnover of the business of the petitioner had escaped assessment to tax on account of any inadvertence on the part of the officer or omission or deliberate concealment on the part of the assessee, but exemption was granted by the appellate authority, which exemption the petitioner was no longer entitled to in view of the retrospective amendment of the law, Section 14(4) was not applicable and Section 20(2) was the correct provision to be applied. In *State of Andhra Pradesh v. Polireddi Satyanarayana*¹⁴ a Division Bench of this Court to which one of us (Obul Reddi, J., as he then was) was a party, construing Section 14(4), held that it conferred wide powers upon the assessing authority to make a reassessment if the circumstances referred to in the provision existed and that he could make a reassessment where the whole or any part of the turnover escaped assessment to tax or if he failed to assess it correctly and made under-assessment or assessed the turnover at a lower rate and not at the rate prescribed. It was held by the court that, on the facts of the case, the reassessment was made as the correct rate was not applied to the turnover and the assessing

authority was competent to reassess under Section 14(4). The decision of the Supreme Court in *Deputy Commissioner v. Dhanalakshmi Vilas Cashew Co*¹⁵. puts the question beyond the pale of any controversy. There, the question arose whether the Deputy Commissioner was correct in exercising revisional jurisdiction under Section 15(1)(i) of the Kerala General Sales Tax Act. There, the learned Judges clearly pointed out the distinction between the revisional jurisdiction and the jurisdiction to tax the escaped turnover. The revisional jurisdiction under Section 15(1)(i), as stated by the learned Judges, is quite distinct and separate from the one created under Rule 33 to tax escaped turnover. The Deputy Commissioner, while exercising revisional jurisdiction under Section 15(1)(i), would be restricted to the examination of the record for determining whether the order of assessment was according to law. Rule 33, which confers powers to assess escaped turnover, is normally to be exercised in matters de hors the record of assessment proceedings. The facts of that case as appear in that Report are: In the present case the Tribunal proceeded to say : The turnover was before the officer. There was no inadvertence on the part of the officer in not taxing the turnover. But he did not tax the turnover stating that "the stock of pepper and ginger available is not liable to tax because they have been sold subsequently". This only shows that the assessment was illegal and improper as exemption ought not to have been given as stock was not sold in the year of assessment but subsequently. We therefore find that the turnover had not escaped assessment but that the assessment was made illegally and improperly.

11. On those facts, the Supreme Court said: As has been observed in *State of Kerala v. M. Appukutty*¹⁶ in which similar provisions relating to the Madras General Sales Tax Act came up for consideration, the Deputy Commissioner while exercising revisional jurisdiction would be restricted to the examination of the record for determining whether the order of assessment was according to law. The rule which confers power to assess escaped turnover is normally to be exercised 'on matters de hors the record of assessment proceedings' before the assessing authority. It has been pointed out that although the substantive provisions of the Act do not expressly deal with the power and procedure for assessment of escaped turnover but the legislature has left it to be dealt with by statutory rules. In our judgment, the present case is covered by the previous decision of this court.

12. Therefore, when the record was examined by the Deputy Commissioner and he found that on the basis of the law as laid down by the Supreme Court, the exemption granted was illegal, he could have only exercised his revisional jurisdiction under Section 20(2). For the reasons recorded, we set aside the finding of the Tribunal that the Deputy Commissioner erred in law in exercising his jurisdiction under Section 20(2) of the Act.

13. As regards the next question, the Supreme Court has clearly observed in *Sri Venkateswara etc. Oil Mill v. State of Andhra Pradesh* [1971] 28 S.T.C. 599 (S.C.) that, In none of the cases before us it was shown that any of the assesseees had purchased groundnuts with a view to sell them. Hence we need not go into the question as to what would be the position in law where a miller purchases some groundnut for milling and the rest for sale.

14. It, therefore, follows that the learned Judges of the Supreme Court did not decide the question as to what would be the position in law where a miller purchases a part of the turnover of groundnut for milling and the rest for sale. The burden is upon the assesseees to show that they purchased a part of the turnover for milling and the rest for sale. The Tribunal has not chosen to give any finding on this question, that is to say, how much of the turnover was intended for

milling and how much was intended for sale. We are, therefore, constrained to remit back the case to the Tribunal to decide the question as to how much of the turnover in each case was purchased by the assessee for milling and the rest for sale. If the Tribunal finds that any part of the turnover was purchased by each of the assessees here with the intention of resale, to that extent the Tribunal will give them relief. The three revisions are accordingly remitted back to the Tribunal for disposal afresh in the light of our decision. No costs. Advocate's fee Rs. 200 in each.

Cases Referred.

- 1[1971] 27 S.T.C. 18
- 2[1971] 28 S.T.C. 599 (S.C)
- 3[1967] 20 S.T.C. 489
- 4[1971] 27 S.T.C. 18
- 5[1978] 41 S.T.C. 445 (C. R. P. Nos. 209 and 238 of 1977)
- 6[1972] 29 S.T.C. 512
- 7[1977] 109 I.T.R. 484
- 8[1959] 35 I.T.R. 1 (S.C.)
- 9[1971] 28 S.T.C. 599 (S.C.)
- 10[1969] 24 S.T.C. 320
- 11[1971] 28 S.T.C. 599 (S.C.)
- 12[1967] 20 S.T.C. 489 (T. R. C. Nos. 48, 43, 49 and 74 of 1966)
- 13[1976] 37 S.T.C. 252
- 14[1972] 29 S.T.C. 512
- 15[1969] 24 S.T.C. 491 (S.C)
- 16[1963] 14 S.T.C. 242 (S.C.)