

***HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
*HON'BLE SMT JUSTICE KIRANMAYEE MANDAVA**

+TAX REVISION CASE No.216 OF 2008

%10.05.2024

M/s. Sri Balaji Industries,
4-41, Bazaar Street,
Vayalpad – 517 299,
Chittoor District, rep. by its
Mr. S. S. Babu, GPA Holder.

.....Petitioner

And:

\$ State of Andhra Pradesh
rep. by its State
Representative,
Before Sales Tax Appellate
Tribunal, Hyderabad.

..... Respondent.

!Counsel for the petitioner

: Sri K. P. Amarnath
Reddy, learned
counsel, representing
Sri Karthik Ramana
Puttamreddy.

^Counsel for the respondent

: Sri Shreyas Reddy, learned
Government Pleader for
Commercial Tax

<Gist:

>Head Note:

? Cases referred:

1. TRC. No. 72/1989, dated 16.01.1990
2. (1983) 63 STC 340
3. (1993) 17 APSTJ 98
4. (1986) 63 STC 297 (AP)
5. (1994) 19 APSTJ 132
6. 2011 SCC Online AP 1152
7. (1988) 06 AP CK 0022
8. (2023) SCC Online AP 897
9. T.R.C.Nos.210, 211 & 212 of 2002, decided on 08.05.2024

HIGH COURT OF ANDHRA PRADESH
TAX REVISION CASE No.216 OF 2008

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..... Respondent.

DATE OF JUDGMENT PRONOUNCED: 10.05.2024.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SMT JUSTICE KIRANMAYEE MANDAVA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

KIRANMAYEE MANDAVA, J

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SMT JUSTICE KIRANMAYEE MANDAVA**

TAX REVISION CASE No.216 OF 2008

JUDGMENT:- *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri K. P. Amarnath Reddy, learned counsel representing Sri Karthik Ramana Puttamreddy, learned counsel for the petitioner and Sri Shreyas Reddy, learned Government Pleader for Commercial Tax for the respondent.

Facts of the case:-

2. This Tax Revision Case has been filed by M/s. Sri Balaji Industries under Section 22 (1) of the Andhra Pradesh General Sales Tax Act, 1957 (in short, the AP GST Act, 1957).

3. The petitioner has challenged the order of penalty, for the Assessment Year 1995-96 (AP GST) passed by the Commercial Tax Officer, Madanapelli which has been finally affirmed and maintained by the Sales Tax Appellate Tribunal (in short, the STAT), Andhra Pradesh, Hyderabad, T.A.No.327 of 2002 vide order dated 09.04.2018, with the modification that the petitioner has been levied three times, penalty of the tax due, as first detection, instead of 5 times.

4. The petitioner is a registered dealer under the provisions of AP GST Act, 1957 and Central Sales Tax Act, 1956 (in short, CST Act, 1956), respectively carrying on the business in manufacture and sale of polythene bags. During the assessment year 1995-96, the petitioner reported gross turnover of Rs.28,62,770/- through A2 returns. The Commercial Tax Officer, Madanapelli (in short, the Assessing Authority) issued notices for production of books for the purpose of assessment to which the petitioner did not respond. The business premises of the petitioner was inspected by the Regional Vigilance and Enforcement Officer (RVEO), Kurnool on 05.11.1996. During the course of such inspection, the purchase bills produced by the petitioner for the year 1995-96, towards the secondary transactions of polythene bags from M/s. Modi Plastic Industries, Hyderabad and M/s. Sundar Plastics, Hyderabad, disclosed certain bills for certain amount. On cross verification, with the Commercial Tax Officer (CTO) it was confirmed that M/s. Modi Plastic Industries, Hyderabad and M/s. Sundar Plastics, Hyderabad were not registered dealers on the rolls of the Commercial Tax Department and their registration numbers printed on the sale invoices related to different company i.e.,

M/s. Ramakrishna Tea Trading Company, Feelkhana, Hyderabad. It also came to light that sale invoices were not supported by waybills, vehicle numbers used for transporting the goods and mode of payment. The invoices issued by M/s. Sundar Plastics, Hyderabad were unsigned.

5. In the aforesaid circumstances, the CTO proposed to tax on the turnover of Rs.28,62,750/- by a pre-assessment show cause notice issued on 17.09.1997, sent through registered post, which was received by one Sri S. S. Babu, a partner of the petitioner's firm on 23.09.1997. The petitioner sought time for 30 days by letter dated 27.09.1997. In spite of the several invoices issued to him calling for production of books the petitioner did not respond. The Assessing Authority confirmed pre-assessment notice by order dated 02.12.1997 and levied a demand of Rs.2,76,090/-. Note was appended to the proceedings of Assessment dated 02.12.1997 that penalty under Section 7-A(2) of AP GST Act, 1957, will be initiated separately.

6. Learned counsel for the petitioner submitted that against order of assessment, the petitioner filed appeal which was allowed and the matter was remanded thereafter the CTO

passed fresh order of Assessment and the petitioner complied with such order by paying the tax so assessed.

7. The order of penalty under Section 7-A(2) was passed, separately on 02.12.1997 by the Commercial Tax Officer imposing penalty of Rs.2,53,000/-. Before passing the said order, show cause notice was given to the petitioner dealer to which also response was not filed. The penalty levied was 5 times of the tax due, on such transactions. The penalty order of CTO dated 02.12.1997 was set aside in Appeal No.170/97-98 (CTR) on 20.02.1998 by the Appellate Deputy Commissioner taking the view that, the penalty shall be leviable after completion of assessment if the dealer suppressed any turnover. It placed reliance in Section 14(2) of the Act, 1957 and observed that the initiation of the penalty proceedings itself was not according to law as the notice for penalty was issued along with the notice for assessment. The order of the Appellate Deputy Commissioner was, however, set aside by the Joint Commissioner (CT) Legal vide CC. Ts. Ref. No. LIII(3)/1370/98, dated 13.02.2002 restoring the order of penalty of the Assessing Authority (CT). The STAT partly allowed the appeal of the petitioner and dismissed it partly. It held that the penalty was liable to be levied, but it being a case

of first detection, penalty of 5 times of the tax due, was impermissible in law, which was reduced to 3 times of the tax due.

Submission of the learned counsel for the petitioner:-

8. Learned counsel for the petitioner submitted that the penalty under Section 7-A(2) cannot be levied for mere possession of the bills alleged to be false without production thereof before the Assessing Authority. He submitted that the recovery of purchase bills at the time of the inspection by the Regional Vigilance and Enforcement Officer, Kurnool would not attract Section 7-A(2). He submitted that the petitioner did not claim any exemption. He also submitted that the petitioner did not produce false bills for claiming any exemption.

9. Learned counsel for the petitioner placed reliance in ***M/s. Aparna Trading Company vs. State of Andhra Pradesh***¹, ***Eswara Oil Company vs. State of Andhra Pradesh***², ***Mahaveer Bangles vs. Commercail Tax Officer, Tarapet, Vijayawada***³, ***Konatham Bhaskar Rao vs. State of Andhra Pradesh***⁴, ***Dinesh***

¹ TRC. No. 72/1989, dated 16.01.1990

² (1983) 63 STC 340

³ (1993) 17 APSTJ 98

⁴ (1986) 63 STC 297 (AP)

Dal Mills vs. State of Andhra Pradesh⁵ & ***Vizovvolie Chakasang vs. The Commercial Tax Officer (INT), Vijayawada and others***⁶.

Submission of the learned Government Pleader:-

10. Sri Shreyas Reddy, learned Government Pleader submitted that the petitioner claimed exemption on the part of turnover, in his returns, as second sale. The petitioner was not entitled for such exemption. He submitted that the petitioner did not submit any explanation to the show cause notice either for the assessment or for the penalty, proceedings. He submitted that on detecting issue or production of the false bills, etc., other documents, the proceedings for penalty could be legally taken under Section 7-A(2). There was no illegality in such proceedings. He placed reliance in the case of ***South India Agencies vs. The State of Andhra Pradesh***⁷ in support of the said contention.

11. Sri Shreyas Reddy, further submitted that the submission of the petitioner's counsel that the petitioner did not claim exemption on the part of turnover in question, which was termed as second sale and also the submission that, the

⁵ (1994) 19 APSTJ 132

⁶ 2011 SCC Online AP 1152

⁷ (1988) 06 AP CK 0022

petitioner did not produce the false bills, is contrary to record. Besides, the same is a factual aspect and the revision does not lie on a question of fact, under Section 22 (1) of the AP GST Act. In support of the said contention he referred to the judgment in the case of ***Sales Tax Appellate Tribunal vs. Andhra Cements Limited***⁸.

Question of law:-

12. The submission of the learned counsel for the petitioner centres round the question of law No.(a) as framed in the memo of revision, which is as follows:-

“(a) Whether Penalty under Section 7-A(2) can be levied for mere possession of the bills alleged to be false though the Petitioner did not produce the same before the assessing authority in support of claim or exemption as second sale?”

Analysis:-

13. We have considered the submissions advanced and perused the material on record.

14. Section 7-A of Andhra Pradesh General Sales Tax Act, 1957 reads as under:-

⁸ (2023) SCC Online AP 897

“7-A. Burden of proof and liability of the dealer to pay tax and penalty:-

(1) In the case of an assessment made under sub-section (2) of Section 5, Section 6 or the notification issued under Section 9, the burden of proving that any sale or purchase effected by a dealer is not liable to any tax or is liable to be taxed at a reduced rate shall lie on the dealer.

(1-A) Notwithstanding anything contained in this Act, or in any other law, a dealer in any of the goods liable to tax in respect of the sale or the purchase in the State shall be deemed to be the seller or purchaser, as the case may be of such goods and shall be liable to pay tax accordingly on his turnover of sales or purchases relating to such goods, unless he proves to the satisfaction of the assessing authority that the goods sold or purchased as the case may be, have already suffered tax under this Act.

(2) Where a dealer issues or produces a false bill, voucher, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed or is liable to be taxed at reduced rate, the assessing authority shall on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty:---

- i. in the case of first such detection, three times the tax due in respect of such transaction; and
- ii. in the case of a second or subsequent detection, five times the tax due in respect of such transaction:

Provided that before issuing any direction for the payment of the penalty under this section, the assessing authority shall give to the dealer an opportunity of making representation against the levy of such penalty.”

15. Therefore provisions of sub-section (2) of Section 7-A gets attracted, where a dealer issues or produces a false bill, voucher, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or

purchase effected by him or any other dealer, is not liable to be taxed or is liable to be taxed at reduced rate.

16. The submission of the learned counsel for the petitioner is that the petitioner did not claim exemption and that he did not produce the invoices etc., so as to attract Section 7-A(2).

17. The aforesaid submission we find is contrary to the record as would be evident from the followings:-

(i) the penalty notice under Section 7-A(2) of AP GST Act, 1957 dated 12.09.1997, brought on record with memo dated 04.12.2023 filed by the learned counsel for the petitioner (page 10 thereof) mentions as under:-

“It is therefore, a clear evidence that M/s. Balaji Industries, Vayalpad **produced fraudulent bills to the department** in order to evade the legitimate tax due to the Government. It is a fit case to levy penalty under Section 7-A(2) of the AP GST Act.”

By the said notice the petitioner was required to file the objections within the specified time, failing which it was provided that, the proposed penalty will be confirmed. The petitioner did not file reply to the said show cause notice and thus never

disputed the fact, as mentioned in the notice that he 'produced fraudulent bills to the department'.

(ii) the assessment order dated 02.12.1997 (at Page No.8 of the paper book) clearly mentions as under:-

(a) "M/s. Balaji Industries **claimed exemption** on the ground that the vendors were a registered dealers but the departmental enquiries revealed that the sellers should not be a real and identifiable dealers within the state and the invoices issued by M/s. Sundar Plastics and Modi Plastic Industries, Hyderabad are not supported by the following documents."

At the same page, the order further mentions as under:-

(b) "In view of the above evidence, it is very clear that the **dealers produced false bills to the department** and indulged clandestine trade of transaction to evade the legitimate tax due to the Government."

(iii) Similarly the order of penalty dated 02.12.1997 (at page 11 of the paper book) also mentions as follows:-

"It is therefore clear evidence that M/s. Balaji Industries, Vayalpad **produced fraudulent bills in**

the department in order to evade the legitimate tax due to the Government.”

A perusal of the order of the Appellate Deputy Commissioner, (Page No.12 of the paper book) in which the grounds of appeal have been reproduced, does not show that the petitioner raised any such ground that he did not produce any bill etc., of the nature contemplated by sub-section (2) of Section 7-A.

18. In view of what we have noted above, from the record, we cannot accept the submission of the learned counsel for the petitioner that the petitioner did not produce any false bill, or did not claim exemption as second sale on some part of the turnover.

19. In any case, if the petitioner produced or not, the bills etc., as contemplated under sub-section (2) is a question of fact. The submission raises factual controversy.

20. Based on the aforesaid argument, we cannot also accept the submission of the petitioner’s counsel that Section 7-A(2) was not attracted.

21. In the exercise of the revision jurisdiction under Section 22 of the Act, it is settled that the revision does not lie on a question of fact.

22. Section 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 reads as under:--

“22. Revision by Special Appellate Tribunal:-

(1) Within ninety days from the date on which an order under sub-section (4) of section 21 was communicated to him, the dealer or the authority prescribed in this behalf may prefer a petition to the Special Appellate Tribunal against the order **on the ground that the Appellate Tribunal has either decided erroneously, or failed to decide, any question of law:**

Provided that the Special Appellate Tribunal may admit a petition preferred after the period of ninety days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period.”

23. It is evident from a bare reading of Section 22(1), that the revision lies to this Court against the order of the Appellate Tribunal on the ground either that a question of law has not been decided or a question of law has been erroneously decided.

24. In ***Sales Tax Appellate Tribunal (supra)***, it was held that as per Section 22(1) of the AP GST Act, the Tax Revision Case lies to the High Court only on the question of law.

25. In ***Vizovolie Chakasang (supra)*** a Co-ordinate Bench has held in Para 21 as follows:-

“21.we may point out that under Section 22(1) of the Act, the revision would lie to the High Court, “on the ground that the appellate Tribunal is either decided erroneously or failed to decide, any question of law”. Indisputably, the revision lies only when it is shown that the Tribunal decided a question of law erroneously or

failed to decide such question of law. **A revision would not lie on a question of fact. Hence, we are not inclined to interfere with the finding insofar** as the Tribunal holds that the consignor being cloves mahaldar of Nagaland transported the same from Dimapur to Vijayawada, the goods were consigned to consignees at New Delhi and Bombay; and they were stocked at Itchapuram and Vijayawada godowns belonging to BARL (transporter) allegedly for being transshipped to destinations.”

26. Recently in ***the State of A.P., rep. by the State Representative before S.T.A.T, Hyderabad vs. M/s. Jai Sree Enterprises, Vijayawada***⁹, this Court has held that the revision does not lie on a question of fact. It lies only if the question of law has either not been decided or has been erroneously decided. So there is no dispute on the proposition that under Section 22 of the AP GST Act, revision would not lie on a question of fact. Paras 57 to 59 of the ***the State of A.P., (supra)*** reads as under:-

“57. In view of clear language of Section 22(1) of APGST Act and the law as laid down in the aforesaid judgment, there cannot be any dispute on the proposition of law that the power of revision is open to be exercised by this court only when the Appellate Tribunal has either erroneously decided a Question of Law or has failed to decide any Question of Law.

58. ‘Erroneous’ has been defined in Black Law Dictionary as under:

“Incorrect; inconsistent with the law or the facts.”

‘Erroneous judgment’ is defined as under:

“A judgment issued by a court with jurisdiction to issue it, but containing an improper

⁹ T.R.C.Nos.210, 211 & 212 of 2002, decided on 08.05.2024

application of law. This type of judgment is not void, but can be corrected by a trial court while the court retains plenary jurisdiction, or in a direct appeal.”

59. It is clear that an order can be termed as erroneous if it is not in accordance with law. An order which suffers from an error of law or even on facts would be erroneous. The order which decides a question of law, not as per law or contrary to law, ignoring the legal provisions or wrongly interpreting the legal provisions would be an erroneous order. A revision under Section 22(1) would lie if the question of law has been decided erroneously. It may not be on erroneous question of fact. Present is a case of erroneously deciding a question of law. It cannot be said that the question of law has been decided according to law. The decision of the Appellate Tribunal on a question of law is erroneous. Such an order would be open to interference. It cannot be said that the order is not open for interference in the exercise of revisional jurisdiction under Section 22 of the APGST Act, 1957.”

27. In ***Eswara Oil Company (supra)***, the STAT Tribunal therein found that the petitioner therein had not actually produced the bill said to have been falsely obtained nor did he file any declaration in Form – E. In view thereof it was held that the penalty under Section 7-A(2) could not be imposed. The said case is of no help to petitioner as in the present case the petitioner produced false bills and claimed exemption on part of the turnover as second sale.

28. In ***South India Agencies (supra)***, it was held that action, under Section 7-A(2) of the Act, 1957 has to be taken by the Assessing Authority “on detecting such issue or production”.

The sub-section itself specifies the starting point for the action there under. It was observed that there could be no question of taking proceedings for levying penalty for issuing or producing a false bill, voucher, etc., unless it is first found that such thing had happened. It was also observed that the Analogy of Section 14 has no application at all. Levy of penalties under Section 14 of the Act and levy of penalty under Section 7-A of the Act are distinct proceedings based on distinct grounds. It was held as follows in Para 5:-

“5. A reading of sub-section (2) shows that action thereunder has to be taken by the assessing authority "on detecting such issue or production". In other words, the sub-section itself specifies the starting point for the action thereunder. It is indeed a case of stating the obvious. There can be no question of taking proceedings for levying penalty for issuing or producing a false bill, voucher, etc., unless it is first found that such a thing has happened. The context thus excludes the importation of any other theory of limitation by analogy, inference, or reference. While we agree that proceedings under the said sub-section should be taken soon after, or within a reasonable period of such detection - the proceedings under [section 7-A\(2\)](#) being penalty proceedings, it is but proper that they should be taken without unreasonable delay - we find no room, in view of the language employed in sub-section (2), to import the theory propounded by Mr. Srinivasa Murthy. The analogy of [section 14](#) has no application at all. [Section 14](#) provides a period of limitation for reopening an assessment and for levying penalties, but that is for its own purposes. As pointed out by this Court in [Eswara Oil Company v. State of A.P.](#) [1983] 63 STC 340, levy of penalties under [section 14](#) of the Act and the levy of penalty under [section 7-A](#) are distinct proceedings, based on distinct grounds. We see no warrant or justification for importing

the period of limitation prescribed in [section 14](#) into [section 7-A](#), more so when sub-section (2) of [section 7-A](#) clearly says that such proceedings shall be taken on detecting the issuance or production of a false bill/voucher, or the document, as the case may be.”

29. As is evident, ***Eswara Oil Company (supra)*** was also considered.

30. In ***South India Agencies (supra)***, the petitioner therein filed A2 returns disclosing the total turnover, within which he claimed a specified turnover to be exempted. This exempted turnover comprised second sale to certain extent. When a show cause notice was issued to the petitioner therein, under Section 7-A(2), he failed to submit an explanation. He made no effort to prove his bona fides either by submitting an explanation, or filing an affidavit or other material before the Commercial Tax Officer, that he had unknowingly claimed exemption. It was held that those facts were never stated before the appropriate authority. The said failure could not be rectified, nor the lacuna filled up by producing the documents at the stage of revision.

31. The detection in the present case is by the Regional Vigilance and Enforcement Officer, Kurnool on 05.11.1996 when the place of business was inspected by him and the purchase bills for the year 1995-96 were recovered. The recovery of the

purchase bills was the basis for initiation of the proceedings for assessment as also the penalty as the petitioner claimed certain turnovers to be of resale. The detection was at that time, and in view of the judgment in **South India Agencies (supra)**, the proceedings could be taken under Section 7-A(2).

32. The judgments in the case of **Dinesh Dall Mill (supra)**, in **Konatham Bhaskar Rao (supra)** are on Section 14 of the Act, 1957. The full bench judgment in the case of **Mahaveer Bangles (supra)** is also on Section 14(2) of the AP GST Act. The present controversy is under Section 7-A of the Act. The proposition of law is that both operate in different filed. The legality or otherwise of the order under challenge herein is to be considered on the anvil of Section 7-A and not Section 14. Consequently, the aforesaid judgments are not relevant nor applicable to the facts of the present case.

33. The revision has no force. The STAT has neither failed to decide a question of law nor has decided the question of law before it erroneously. No case for interference is made out.

34. The Tax Revision Case is dismissed.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

KIRANMAYEE MANDAVA, J

Date: 10.05.2024

Note:-

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B/o:- SCS

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SMT JUSTICE KIRANMAYEE MANDAVA**

TAX REVISION CASE No.216 OF 2008
(per Hon'ble Sri Justice Ravi Nath Tilhari)

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