THE HON'BLE SRI JUSTICE K.C. BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Special Appeal No.19 of 2000

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JUDGMENT:(per Hon'ble Sri Justice M. Seetharama Murti)

This special appeal by the appellant/assessee under Section 23(1) of the Andhra Pradesh General Sales Tax Act, 1957 read with Rule 41 of the Rules under the said Act is directed against the orders dated 29.02.2000 of the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad passed in CCT's.Ref.No.L.III(2)/1965/97.

2. We have heard the submissions of the learned counsel for the appellant and the learned Special Government Pleader for Taxes. We have perused the material record.

3. The facts, in brief, are as follows: - 'The appellant, who is the registered dealer, was engaged in the manufacture of re-rolled products of iron and steel. During the course of the trade, the appellant had purchased various raw materials and consumables for the purpose of manufacture of the said finished goods. The appellant was assessed by the Commercial Tax Officer ('the CTO' for short) for the assessment year 1992-93 under the APGST Act *vide* order dated 24.03.1994. According to the appellant, they being the steel re-rollers, are eligible for set off of tax paid on raw materials from the tax payable on the finished product as per the terms of the GOMs.No.763 Revenue (CT-II) Department, dated 21.08.1990. The Deputy Commissioner, who had examined the assessment record of the CTO was of the view that the assessing authority had acted in a manner prejudicial to the interests of the Revenue of the State and had, therefore, proposed to restrict the set off of tax by withdrawing the excess set off of Rs.4,73,946/-. Accordingly, a show cause notice was issued by the Deputy Commissioner; and, finally the Deputy Commissioner by his order dated 07.03.1996 had allowed a set off of Rs.58,92,050/- as against the set off of Rs.61,39,374/- granted by the CTO. The Commissioner having examined the said revision order of the Deputy Commissioner with reference to the records had found that the order of the Deputy Commissioner is incorrect and is prejudicial to the interests of the revenue of the State and had, therefore, issued a show cause notice proposing to revise the order of the Deputy Commissioner. However, when it was brought to the notice of the Commissioner that the order of the Deputy Commissioner was assailed in appeal in TA.No.794 of 1997 before the Sales Tax Appellate Tribunal and that the said appeal is pending, that part of the revision proposed, was dropped by the Commissioner. However, the Commissioner proposed to bring to tax under Section 6A of the Act certain turnovers in the show cause notice namely turnover of Rs.1,85,845/- relating to purchase of fuel; turnover of Rs.16,46,574/- relating to purchase of coal; and, turnover of Rs.13,33,578/- relating to purchase value of miscellaneous goods. The appellant had contended *inter alia* that the Commissioner cannot raise a fresh issue while revising the order of the lower authority and that the same would amount to revising the assessment order dated 24.03.1994 of the CTO and therefore, the revision insofar as it related to this fresh issue is bad in law and is also barred by law of limitation. The proposed revision related to turnovers which were proposed to tax under Section 6A of the Act was also contested on merits stating that the proposed turnovers are not assessable to tax as the purchases were made from registered dealers within the State and that the relevant purchase bills were placed before the CTO and the same also would be placed before the Deputy Commissioner if need be. The Commissioner thus having dropped the part of the proposed revision insofar as it related to the first issue aforementioned had brought the turnovers of fuel, coal and miscellaneous goods to tax and had subjected the same to tax at the applicable rates under Section 6A of the Act for the year 1992-93. Therefore, the aggrieved appellant/assessee is before this Court.'

4. In view of the facts delineated, now the issue of set off is not the subject matter of consideration before this Court. The revisional order of the respondent is under challenge only in regard to the matter of levy of tax under Section 6A of the Act in respect of purchase turnovers of fuel, coal and miscellaneous goods.

5. The learned counsel for the appellant would contend as follows:

The order of the Commissioner revising the revisional order of the Deputy Commissioner is not legally correct and the revisional order of the Commissioner revising the assessment order for a second time is not justifiable and valid. The Commissioner was not within his powers in revising the order of the Deputy Commissioner in respect of an issue which has not been decided and dealt with by the Deputy Commissioner. Therefore, the Commissioner is not justified in levying tax under Section 6A of the Act. In any view of the matter, the levy of tax under Section 6A of the Act is not justified and correct as the appellant has purchased the goods from registered dealers within the State. In the present case, the order of the CTO is dated 24.03.1994 and the order of the Deputy Commissioner in the first revision is dated 07.03.1996 and that admittedly the respondent had issued the show cause notice proposing revision under sub section 1 of Section 20 on 03.05.1999 i.e., after about five years from the date of order of assessment and that therefore, the initiation of proposal for revision by the respondent and the impugned order passed by the respondent are clearly barred by law of limitation prescribed in sub section 3 of Section 20 of the Act.

6. On the other hand, the learned Special Government Pleader would contend as follows: - 'The Commissioner had revised the orders of the Deputy Commissioner and not the orders of the CTO. In view of the fact that the appellant had preferred an appeal before the STAT assailing the restriction of the set off by the Deputy Commissioner in the revisional order, the Commissioner had rightly dropped the revisional proceedings on that issue. The Commissioner having proposed to bring to tax under Section 6A of the Act certain turnovers as mentioned in the show cause notice had given adequate opportunity to the appellant to show cause and had on merits considered all the aspects, which were relevant for consideration, and, in due exercise of powers vested in him under Section 20(1) of the Act had set aside the order of the Deputy Commissioner insofar as it related to dropping of the proposed levy of tax on purchase turnover of fuel, coal and miscellaneous goods and had rightly brought the turnovers of the said goods to tax at the applicable rates under Section 6A of the Act for the year 1992-93 and gave necessary directions to the CTO for giving effect to the orders in that regard. The orders impugned are not barred by law of limitation as the revisional power was exercised in accordance with the provisions of law. The revision is devoid of merit and is liable to be dismissed.'

7. We have thus taken note of the material facts and the respective contentions of the parties. In this backdrop, the important questions which arise for determination are –

(i) Whether the respondent had merely revised the orders dated 07.03.1996 of the Deputy Commissioner or in-fact he had revised the order dated 24.03.1994 of the CTO?

(ii) Whether the order of the respondent, which is impugned, is one made without jurisdiction and is barred by law of limitation?

(iii) Whether the order impugned is unsustainable under facts and in law?

8. <u>POINTS 1 and 2:</u>

8.1 The introductory facts and the facts leading to the present stage of the matter are already stated supra, in detail. The CTO passed the assessment order for the year 1992-93 on 24.03.1994. The Deputy Commissioner's revisional order was passed on 07.03.1996. The Commissioner who was of the view that the order of the Deputy Commissioner was prejudicial to the interests of the revenue of the State had decided to revise the said order of the Deputy Commissioner and, therefore, had issued a show-cause notice dated 03.05.1999 proposing certain turnovers to be taxed under Section 6A of the Act. Indubitably, the Commissioner had issued a show cause notice on 03.05.1999 proposing to revise the orders of the Deputy Commissioner. The impugned orders were passed by the Commissioner on 29.02.2000 revising the revisional order passed by the Deputy Commissioner on 07.03.1996.

8.2 The first aspect to be considered is - whether the respondent had merely revised the orders of the Deputy Commissioner or in-fact he had revised the orders of the CTO under the guise of revising the orders of the Deputy Commissioner? The contention of the learned counsel for the appellant is that the order of the Deputy Commissioner insofar as the proposal to levy tax under Section 6-A is silent and that, therefore, there was no adjudication on this issue by the Deputy Commissioner and that therefore, the proposal to revise the order of the Deputy Commissioner on an issue which was not adjudicated is impermissible and that such an exercise of revision power by the Commissioner would amount to revising the order of the CTO dated 24.03.1994 and that therefore, the exercise of revision power by the Commissioner beyond the prescribed period of limitation of four years is bad in law. The learned Special Government Pleader would contend that the Deputy Commissioner having taken up the issue in his proposed revision did not advert to the said issue and his order is silent on the aspect concerning the said issue and that, therefore, the Commissioner had rightly exercised the powers of revision as the Deputy Commissioner had dropped from consideration the said issue. He would further contend that Section 20(1) of the APGST Act enables the Commissioner of Commercial Taxes to *suo motu* call for and examine the order passed by any officer subordinate to him and, if such an order is prejudicial to the interests of revenue of the State, to initiate proceedings to revise, modify or set aside such order and that the powers of revision can be invoked in respect of subject matter not adjudicated by the officers subordinate to the Commissioner provided the condition precedent for exercise of the revisional jurisdiction namely prejudice to the interests of revenue exists. He had also submitted that when the circumstances of the case justify and when the Commissioner considers that the order passed by the Deputy Commissioner without adjudicating an issue is erroneous and that the said order is prejudicial to the interests of the revenue of the State, the Commissioner has ample jurisdiction to exercise the powers of revision which are vested in him.

8.3 Be it noted that the Deputy Commissioner who had initiated *suo motu* revision proceedings under Section 20(2) of the Act against the orders of the CTO had also proposed to bring to tax under Section 6A of the Act, the turnovers related to fuel, coal and miscellaneous goods and had issued a show cause notice on this subject also. This aspect was also adverted to in the orders of the Deputy Commissioner dated 07.03.1996. However, finally the order of the Deputy Commissioner was silent on this issue. Therefore, the Commissioner was of the view that it amounted to dropping of the proposed revision on this aspect of the assessment order. Thus, in the order of the Deputy Commissioner an issue has been raised but the order was silent on that issue and, therefore, it is to be held that the said issue was not adjudicated or the proceedings on the said issue were dropped after considering the facts and contentions, which were relevant. In the said circumstances, the Commissioner who was of the view that the order of the Deputy Commissioner is prejudicial to the interests of the revenue of the State had entertained a revision *suo motu* by exercising powers vested in him under Section 20(1) of the Act. The powers of revision, in our well considered view, can be invoked in respect of a subject matter which is not adjudicated by the Deputy Commissioner. Therefore, it cannot be said that the Commissioner had in-fact revised the orders of the CTO under the guise of revising the orders of the Deputy Commissioner. Therefore, it follows that the Commissioner had only revised the orders of the Deputy Commissioner.

8.4 The next contention which falls for consideration is that the revision entertained by the Commissioner is a second revision of the same assessment order and that, therefore, the same is bad in law. The substance of the contention is that since the Deputy Commissioner did not adjudicate the present issue and as the order of the Deputy Commissioner is silent on this issue it shall be deemed that the Commissioner was in essence revising the orders of the CTO under the guise of revising the orders of the Deputy Commissioner and that therefore, the order impugned of the Commissioner is liable to be set aside. A perusal of the material record would show that an assessment order was duly passed by the CTO. The Deputy Commissioner had taken up *suo motu* revision on two issues viz., set off and Section 6-A i.e.,levy of tax on turnovers related to purchase of certain goods like fuel etcetera. While disposing of the revision, on the issue of ‘set off’ the Deputy Commissioner had held against the appellant and the appellant had preferred an appeal and therefore, the Commissioner did not deal with the said aspect in the order impugned and hence, the said issue is now not a subject matter of the present appeal. However, the Deputy Commissioner did not advert to the issue concerning Section 6-A and therefore, his order is silent on the said issue. Hence, as already noted supra, the Commissioner having found that the revisional order insofar as the non adjudication of the issue concerning Section 6-A is prejudicial to the interests of the revenue of the State had taken up the *suo motu* revision on this particular issue which was not considered and adjudicated by the Deputy Commissioner and had sought to revise the orders of the Deputy Commissioner on the said subject/issue and had passed the revisional orders confirming the proposal in the show cause notice in regard to Section 6-A turnovers and brought the said turnovers to tax. Therefore, the contention that the Commissioner had revised the assessment order a second time cannot be countenanced as the facts lay bare that the Commissioner had revised the orders of the Deputy Commissioner. The law is well settled that a second revision of the same order by the same authority on the same facts and issues is impermissible. But, in the case on hand, the Commissioner had sought to revise and had in-fact revised the orders of the Deputy Commissioner as already held supra and, therefore, the contention that the Commissioner had revised the orders of the CTO a second time is a contention without any merit. The said contention, therefore, stands rejected.

8.5 In this factual milieu and the findings recorded supra, now the issue of bar of limitation falls for determination. The contention of the learned counsel for the appellant on this aspect is as follows: - "In the present case, the order of the CTO is dated 24.03.1994 and the order of the Deputy Commissioner in the first revision is dated 07.03.1996 and that admittedly the Commissioner had issued the show cause notice proposing revision under sub section (1) of Section 20 on 03.05.1999 i.e., after about five years from the date of order of assessment and that therefore, the initiation of proposal for revision by the respondent and the impugned order passed by the respondent are clearly barred by law of limitation prescribed in sub section (3) of Section 20 of the Act. Section 20(3) of the Act reads as under:

> "**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.**"

8.6 Keeping in view the facts of the instant case and also the provision of law, it is necessary to refer to the ratios in the precedents cited before us.

(i) In **State of Andhra Pradesh v. Thoshiba Anand Batteries Ltd.,** the effect of sub section 3 of Section 20 of the APGST Act was considered. The facts and ratio of the cited case are as follows: 'After the assessment order was passed by the CTO, the revising authority issued a notice dated

25.09.1981 to the assessee proposing to initiate revisional proceedings on the ground that dry batteries fell under entry 137 and deserved to be taxed at 12% and not at 8% as electrical goods under entry 38 of Schedule I of the APGST Act. When it was brought to the notice of the revisional authority that certain appeals were pending regarding the earlier assessment years in respect of the same issue, the proceedings of the revision were deferred. Later fresh notices were issued to the assessee on 20.12.1984 and the Deputy Commissioner passed an order confirming the proposal in the show cause notice. In the appeal before the STAT preferred by the assessee, the STAT had held that the assessee has no case on merits but had allowed the appeal on the ground that the exercise of powers by the Deputy Commissioner was barred by limitation as the Deputy Commissioner has passed order after expiry of four years from the date of order of the assessment by the assessing authority. Therefore, the State filed Tax Revision Cases before this Court. This Court considered the question as to whether Section 20(3) of the APGST Act was not applicable to the case and had finally held that the view taken by the STAT is in consonance with the consistent view taken by this Court. Thus, it was held in the cited case that where the notice proposing revision was issued within the period prescribed by section 20(3) but the final order was passed beyond the period prescribed, the revision would be barred by limitation.' IN this cited case, the facts show that the revising authority had first issued a notice dated 25.09.1981 to the assessee asking them as to why the revision proceedings should not be initiated. However, on the request of the assessee, the revising authority by orders dated 07.11.1981 had deferred the proceedings of the revision till the disposal of certain appeals. Thus, the cited case is a case where the Deputy Commissioner who had sought to revise the orders of the CTO had again issued fresh notices to the assessee on 20.12.1984 and had later passed an order on 15.04.1985 confirming the proposal in the show cause notice. Therefore, the Tribunal had held that the exercise of powers by the Deputy Commissioner was barred by limitation as the Deputy Commissioner has passed the order after expiry of four years from the date of order of the assessment by the assessing authority. The said orders were confirmed by this Court.

(ii) In **Hyderabad Wire and allied products v. Commissioner of**

Commercial Taxes, A.P., Hyderabad (and other cases) a batch of appeals were preferred by the assessee assailing the orders dated 31.07.1998 passed by the Commissioner in exercise of power of revision vested in him under Section 20(1) of the APGST Act. The facts of the case are as follows: - 'The Commissioner by his orders dated 31.07.1998 had set aside the orders of the Appellate Deputy Commissioner (D.T) and had restored the orders of the assessing authority. The Commissioner had thus passed the order of revision on 31.07.1998, which admittedly went beyond the period of four years from the date of service of appellate order. To get over the said difficulty the learned Government Pleader argued that the period of four years is the outer limit prescribed to initiate the legal proceedings and it is not necessary that the final order of revision shall be passed before the expiry of four years from the date of service of the order or proceeding to be revised. This Court noted that the very same contention advanced on behalf of the State was negatived by a Division Bench of this Court in **Thoshiba Anand Batteries** Limited case (1 supra) on a review of all the authorities. This Court had also noted that the **Mysore High Courts' view in Subba Rao v. Commissioner of Commercial Taxes [1967 (19) STC 257]** was dissented from by the Division Bench of this Court in the decision first cited.' Finally this Court had held as follows: - 'Having regard to the fact that the language of sections 20(1) and 20(3) is susceptible of interpretation that the period of limitation of four years could as well apply to the actual passing of the final order of revision and in view of the consistent view taken by this Court, we are not inclined to reconsider the decision in Thoshiba Anand's case and unsettle the legal position declared by this Court, more especially when it is likely to give a handle to the revisional authority to unduly prolong the revision proceedings by inaction or otherwise.' Thus, in this reported case, though the Commissioner had initiated the revision proceedings within a period of four years from the orders of the Appellate Deputy Commissioner, the Commissioner had however passed the order of revision beyond the period of four years from the date of the service of the order of the Appellate Deputy Commissioner. From the ratio in this cited decision, the principle laid down appears to be is that the whole exercise i.e., the initiation of the revision proceedings including the passing of the order of the revision shall be completed within a period of four years from the date of the service of the order or proceeding sought to be revised.

(iii) In the decision in **M/s.Agarwal Industries Limited v. the Commissioner of Commercial Taxes, A.P., Hyderabad** the facts and ratio are as follows: - 'The Commissioner having exercised revisional jurisdiction under Section 20(1) of the Act and having issued a show cause notice dated 11.05.2009 had passed orders dated 13.07.2010. The CTO had passed provisional assessment order dated 23.02.2001 disallowing the claim for exemption on entire turnover pertaining to a three months' period in respect of transactions claimed by the appellant as 'consignment sales'. The appellant/assessee's appeal was disposed of by the Appellate Deputy Commissioner by an order dated 14.06.2001. Thereupon, the Deputy Commissioner (CT), Abids, took up the assessment of the appellant under CST Act for the year 2000-01 and passed orders dated 15.03.2003. The Addl. Commissioner (CT) vide notice dated 28.10.2006 had proposed to revise the order dated 15.03.2003 of the Deputy Commissioner (CT) Abids Division in exercise of powers under Section 20(3) of the Act read with Section 9(2) of the CST Act. The said Additional Commissioner passed orders dated 28.02.2007. The Commissioner/respondent had passed final revision orders on 13.07.2010. A question whether the respondent is merely revising the order dated 28.02.2007 passed by the Additional Commissioner (CT) Legal or he is in fact revising the order dated 15.03.2003 of Deputy Commissioner (C.T), Abids fell for consideration.' Having regard to the facts of the case, this Court held as follows: - 'In our view, it would have been a valid exercise of revisional power by the respondent if he had undertaken to revise the order dated 28.02.2007 of the Addl. Commissioner (CT) Legal on the ground that (a) the two decisions relied upon by the latter were wrong in law or (b) that he did not agree with the said decisions or (c) that the said decisions, on a proper consideration would be inapplicable to the case of the appellant. But, instead of doing so, he undertook the revisional exercise on the basis of fresh enquiries got done by him in 2007-08 and 2008-09 to verify the correctness of the "F" Forms submitted by the appellant/assessee obtained by it from dealers in other states in support of its claim for exemption of consignment sales under Section 6-A of the CST Act. It is therefore clear that he is actually doing re-assessment i.e. deciding the correctness of the order of the Deputy Commissioner (CT), Abids dated 15.03.2003 and not a mere revision of the order of the Additional Commissioner of Commercial Taxes (CT) Legal dated 28.02.2007.' Therefore, this case was decided on the facts peculiar to the case and a finding was recorded that the respondent therein had in-fact revised the order of the Deputy Commissioner (CT), Abids dated 15.03.2003 and not the order of the Additional Commissioner of Commercial Taxes (CT) Legal dated 28.02.2007 and that, therefore, he was re-assessing the correctness of the order of the Deputy Commissioner. It is also held in the cited decision that it would have been a valid exercise of revisional power by the respondent if he had undertaken to revise the order dated 28.02.2007 of the Addl. Commissioner (CT) Legal.

8.7 Therefore, all the three decisions are not helpful to advance the case of the appellant herein. As already noted, sub section (3) of Section 20 of APGST Act provides that revision of an order of assessment can be done either under sub sections (1) or (2) of the said Section only within a period of four years on which the order was served on the dealer. Therefore, in our well considered view, an order of the CTO can be revised exercising the powers under sub sections (1) or (2) of Section 20 of the APGST Act by the authority concerned within four years from the date of service of the order of the CTO on the dealer. However, the initiation of proposal for revision as well as the passing of the revisional order shall be completed within the prescribed period of limitation of four years commencing from the date of such service of the CTO's order. Similarly, when the Commissioner is exercising the powers of revision vested in him under Section 20(1) of the Act and is revising any order passed or proceeding recorded by any authority, officer or person subordinate to him, under the provisions of the APGST Act, including sub section (2) of Section 20, the Commissioner may initiate proceedings and pass revisional orders within the prescribed period of limitation of four years from the date of service of the order of the subordinate, under revision, on the dealer.

8.8 This being the legal position, in the case on hand, the facts show that the Commissioner had initiated the revision proceedings by a show cause notice dated 03.05.1999 proposing to revise the order dated 07.03.1996 of the Deputy Commissioner (CT) Panjagutta division. Further, the Commissioner had passed revisional orders admittedly on 29.02.2000 i.e. within the period of four years from the date of the orders of the Deputy Commissioner (CT) i.e., 07.03.1996. In view of the said facts and our finding supra that the Commissioner had revised the orders dated 07.03.1996 of the Deputy Commissioner and not the order dated 24.03.1994 of the CTO and in the light of the further fact that the impugned orders were passed within four years from the date of the orders of the Deputy Commissioner, the contention of the appellant that the impugned order is passed beyond period of limitation is devoid of merit.

8.9 Coming to the contentions of the appellant/dealer on the merits of the matter in regard to levy of tax under Section 6-A of the APGST Act, one of the contentions of the appellant is that adequate opportunity was not given for obtaining and producing before the Commissioner the necessary and relevant information regarding the details of purchases of goods. It is further urged that there is a change of management of the appellant's unit and that the relevant records remained lying with the old management and that for want of sufficient time the appellant was unable to produce necessary records immediately in regard to the assessment year 1993 before the Commissioner and that therefore, the appellant could not show the fact that the appellant has purchased the goods from registered dealers in the State of Andhra Pradesh and that therefore, the Commissioner is not justified in passing the orders subjecting the turnovers relating to purchase of fuel, coal and miscellaneous goods to tax under Section 6-A of the Act and in directing the assessing authority to give effect to the said orders. The fact remains that the Commissioner had exercised the powers of revision vested in him on an issue raised but, not adjudicated by the Deputy Commissioner and therefore, as rightly contended by the learned counsel for the appellant, the appellant can be given an opportunity to produce their records in support of their contentions that the said turnovers brought to tax are not assessable to tax and for fresh consideration of the subject issue by the concerned. Accordingly, we hold that the order impugned of the Commissioner subjecting the turnovers to tax at the applicable rates under Section 6-A for the year 1992-93 needs to be set aside and the matter deserves to be remitted to the respondent for fresh consideration of the said issue on merits after affording an opportunity to the appellant/dealer to produce necessary and relevant records.

9. Viewed thus, we find that the matter needs to be remitted to the respondent/Commissioner for fresh consideration on merits in regard to the subjection of the turnovers to tax at applicable rates under Section 6-A after affording an opportunity to the appellant/dealer to produce necessary and relevant records in support of the contention that the said turnovers are not exigible to tax.

10. In the result, the appeal is allowed and the order impugned insofar as it related to bringing the turnovers of fuel, coal and miscellaneous goods to tax at the applicable rates under Section 6-A of the APGST Act for the year 1992-93 is set aside and the matter is remitted to the Commissioner of Commercial Taxes concerned for fresh consideration of the said issue on merits after affording an opportunity to the appellant/dealer to produce necessary and relevant records and for passing appropriate orders in accordance with the procedure established by law. We direct that the Commissioner shall pass final orders in the matter as expeditiously as possible, preferably within a period of four months from the date of the receipt of a copy of this Judgment. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

30.04.2015

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