

PETITIONER:
THE STATE OF ANDHRA PRADESH

Vs.

RESPONDENT:
NAV SWADESHI OIL MILLS

DATE OF JUDGMENT 03/11/1987

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
RANGNATHAN, S.

CITATION:
1988 AIR 97 1988 SCR (1) 736
1987 SCC Supl. 388 JT 1987 (4) 234
1987 SCALE (2) 920

ACT:

Andhra Pradesh General Sales Tax Act, 1957: ss. 13 & 14(1) & 14(3)/Central Sales Tax Act, 1956: s. 9(2)-Applicability of>Returns not filed within the prescribed period-Assessments made after expiry of four years from assessment year-Held, cases fall under s. 14(3) and assessment can be made within six years from expiry of the assessment year.

HEADNOTE:

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Sub-section (2) of s. 9 of the Central Sales Tax Act, 1956 makes the assessment procedure prescribed under the general sales tax law of the appropriate State applicable to the assessment to be made under the Central Act. Section 13 of the Andhra Pradesh General Sales Tax Act, 1957 requires the dealer to submit returns in such manner, within such period and to such authority as may be prescribed. Sub-section (1) of s. 14 permits the assessing authority to assess the amount of tax due on the returns submitted under s. 13 only within a period of four years from the expiry of the year to which the assessment relates. Sub-section (3) permits the assessing authority to make best judgment assessment where a dealer (i) fails to submit return before the date prescribed; (ii) produces the accounts registers and other documents after inspection and (iii) submits a return subsequent to the date of inspection, within a period of six years from the expiry of the year to which the assessment relates.

In the main appeal before this Court the assessee-respondent filed its return relating to the quarter ending 31st March, 1969 on 7th August, 1969 under the Central Sales Tax Act. The last date prescribed by law was 24th May, 1969. The Commercial Tax officer passed the assessment order on 3rd August, 1973, beyond four years from 31st March, 1969, the last day of the assessment year 1968-69. The assessee's appeals against that order were dismissed by the Assistant Commissioner and the Sales Tax Appellate Tribunal. The High Court in revision, however, held that the assessment made after four years from the last day of the assessment year was not a valid assessment.

737

In the connected appeal the respondent who was the assessee filed the annual return in respect of the assessment year 1968-69 under the A provisions of the Central Act on 19th August, 1969 after the expiry of the prescribed date. The order of assessment was passed on 2nd August, 1973 beyond four years from the last day of the assessment year 1968-69. An appeal against that order was dismissed by the Assistant Commissioner. The Sales Tax Appellate Tribunal, however, allowed the appeal holding that the assessment had been passed beyond four years from the last day of the assessment year. The revision petition preferred by the State was dismissed in limine by the High Court.

In the appeals by special leave filed by the State, it was contended for the respondent that since the returns in the cases had been accepted, even though they had been filed beyond the prescribed date, the assessments made thereon could not be considered as best judgment assessments and, therefore, sub-section (3) of s. 14 of the Act under which it is permissible to make best judgment assessments would be inapplicable.

Allowing the appeals. D

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HELD: 1.1 on a true construction of sub-s. (1) and sub-s. (3) of s. 14 of the Andhra Pradesh General Sales Tax Act, 1957 it is apparent that where a return is not filed by a dealer before the date prescribed in that behalf under the Act the assessing authority has jurisdiction to complete the assessment within a period of six years from the expiry of the year to which the assessment relates. [744C]

1.2 The two types of cases which fall under sub-s. (1) and sub-s. (3) of s. 14 of the Act respectively are mutually exclusive. The return on the basis of which an assessment is to be made under s. 14(1) is a return filed within the prescribed period and in such a case the assessment has to be completed within a period of four years from the expiry of the period to which the assessment relates. The Act confers a distinct advantage on such a dealer who is prompt in filing his return inasmuch as he acquires immunity against assessment on the expiry of the said period of four years. All cases where the return is submitted beyond the prescribed date fall under sub-s. (3) of s. 14 of the Act. Assessment in such cases may be completed within six years from the expiry of the year to which the assessment relates. When once it is established in a case that a return has not been filed within the prescribed period such case falls outside s. 14(1) of the Act and therefore the period of four years prescribed therein becomes automatically inapplicable. It clearly falls under cl. (i) of sub-s. (3) of s. 14 of the Act and assessment can be H

738

made in such a case within the expiry of the period of six years. In the instant cases the returns were not filed within the prescribed dates. The assessments have, therefore, been rightly made within six years from the expiry of the year to which the assessments relate. [742G-H; 743A-B; 744C]

2. Whether the assessment made is the best judgment or not has no bearing at all on the period within which an assessment can be made under the Act. It depends upon the other conditions mentioned in sub-s. (1) and (3) of s. 14. Best judgment assessment can be made even in a case falling under sub-s. (1), as is evident from the latter part of that sub-section which reads: "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, to assess to the best of his judgment, the amount of tax due from the dealer." Yet such best judgment assessment has to be completed within a period of four years from the expiry of the year to which the assessment relates. Therefore, in the instant case merely because the assessments are not best judgment assessments, it cannot be said that sub-s. (3) of s. 14 is inapplicable. Neither the High Court nor the Tribunal gave adequate attention to the words 'before the date prescribed in that behalf' in cl. (i) of sub-s. (3) of s. 14. They laid emphasis only on the words 'fails to submit return' in the said sub-clause to arrive at a wrong conclusion. [743C, H; 744A-B]

State of Andhra Pradesh v. Pyarelal Malhotra, (13 S.T.C. 946), and State of Madras v. S.G. Jayaraj Nadar & Sons, 28 S.T.C. 700, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4448 of 1985.

From the Judgment and order dated 26. 10. 1982 of the Andhra Pradesh High Court in Tax Revision Case No. 23 of 1978.

WITH

Civil Appeal No. 694 of 1986.

From the Judgment and order dated 31.7.1985 of the Andhra Pradesh High Court in Tax Revision Case No. 205 of 1985.

T.V.S.N. Chari for the Appellant.

739

R. Ramachandran for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The question of law which arises in these two appeals by special leave being a common, they are disposed of by this common judgment. The said question relates to the time within which an assessment can be made under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as 'the Act') where the return is not filed by the dealer within the time prescribed in that behalf.

The assessee in Civil Appeal No. 4448 of 1985 is M/s. Nav Swadeshi oil Mills, Jadcharla, Mahboobnagar district. For assessment year 1968-69 the assessee filed its return relating to the quarter ending 31.3. ,969 on 7.8.1969 before the Commercial Tax Officer of Mahboobnagar under the Central Sales Tax Act, 1956 even though the last date for submission of return prescribed by law was 24.5. 1969. The return filed by the assessee showing a taxable turnover of Rs. 18,25,410.72 was accepted and it was called upon to pay sales tax of Rs.45,424.48 under the Act. The assessment order was passed on 3.8.1973 beyond four years from 31.3.1969 which was the last day of the assessment year 1968-69. Aggrieved by the assessment order which had been passed beyond the period of four years from the last day of the assessment year the assessee filed an appeal before the Assistant Commissioner (CT) Appeals, Warangal in Appeal No. 5 75-76 and that appeal was dismissed on 14.9.1976. Against the order of the Assistant Commissioner (CT) Appeals. Warangal the assessee filed an appeal before the Sales Tax Appellate Tribunal, Andhra Pradesh at Hyderabad in Tribunal

Appeal No. 183 of 1977. That appeal also was dismissed. The assessee thereafter filed a revision petition in Tax Revision Case No. 23 of 1978 before the High Court of Andhra Pradesh. The High Court by its order dated October 26, 1982 set aside the order of the Tribunal and also the assessment on the ground that the assessment which had been passed after four years from the last day of the assessment year was not a valid assessment. Aggrieved by the decision of the High Court the State of Andhra Pradesh has filed this appeal by special leave.

The assessee in Civil Appeal No. 694 of 1986 is M s. Nav Swadeshi oil Mills and Refinery at Jadcharla. In respect of the assessment year 1968-69 the assessee filed an annual return under the provisions of the Central Sales Tax Act, 1956 on 19.8. 1969 after the expiry

740

Of the prescribed period. The order of assessment was passed on 2.8.1973 beyond four years from the last day of the assessment year 1968-69. Aggrieved by the assessment order which had been passed by the assessing authority the assessee filed an appeal before the Assistant Commissioner (CT) Appeals, Warangal on the ground that the assessment order passed beyond four years from the last day of the assessment year was barred by time. That appeal was dismissed. Against the order passed in that appeal the assessee filed an appeal before the Sales Tax Appellate Tribunal, Andhra Pradesh in Tribunal Appeal No. 206 of 1977. The Tribunal allowed the appeal and set aside the assessment holding that the assessment had been passed beyond time. Aggrieved by the decision of the Tribunal the State of Andhra Pradesh filed a Revision Petition in Tax Revision Case No. 205 of 1985 on the file of the High Court of Andhra Pradesh. That Revision Petition was dismissed in limine by the High Court. Aggrieved by the decision of the High Court the State of Andhra Pradesh has filed this appeal by special leave.

The only question which arises for consideration in these appeals is whether the orders of assessment in the above two cases which had admittedly been passed beyond four years from the last day of the assessment year but within the period of six years from that date had been validly passed. By virtue of section 9 of the Central Sales Tax Act, 1956 the procedure prescribed for making an assessment under the Act is applicable to the assessments to be made under the Central Sales Tax Act, 1956. Section 13 of the Act prescribes that every dealer who is liable to get himself registered under section 12 or section 12-A as the case may be under the Act shall submit such return or returns relating to his turnover in such manner within such period and to such authority as may be prescribed. The material part of section 14 which is relevant for purposes of these cases reads thus:

"14. Assessment of tax: (I) 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

741

year to which the assessment relates.

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(3) Where any dealer liable to tax under this Act-
(i) fails to submit return before the date prescribed in that behalf, or
(ii) produces the accounts, registered and other documents after inspection, or
(iii) submits a return subsequent to the date of inspection, the assessing authority may, at any time within a period of six years from the expiry of the year to which assessment relates, after issuing a notice to the dealer and after such enquiry 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 penalty as specified in subsection (8)."

It is necessary to analyse sub-section (1) and sub-section (3) of section 14 of the Act for purposes of determining the issue involved in these cases. Sub-section (1) of section 14 of the Act provides that 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 the assessing authority to be incorrect or incomplete he shall after giving the dealer reasonable opportunity of proving the correctness and completeness of the return submitted and making such inquiry as he deems necessary, assess to the best of his judgment, the amount of tax due from the dealer. In both these cases the return contemplated is one which has been filed in accordance with section 13 of the Act within the time prescribed for that purpose. Such an assessment under sub-section (1) of section 14 of the Act can be made within a period of four years from the expiry of the period to which the assessment relates. Sub-section (3) of section 14 of the Act authorises the assessing authority to make an assessment to the best of his judgment in three cases: (i) where a dealer under the Act fails to submit return before the date prescribed in that behalf, (ii) where a dealer produces the accounts, registers and other documents after inspection and (iii) where a dealer submits a return subsequent to the date of inspection. In these three cases the

742

assessing authority is empowered to make an assessment to the best of his judgment at any time within a period of six years from the expiry of the year to which the assessment relates after issuing a notice to the dealer and after such inquiry which he considers necessary to make the assessment.

The crucial question which arises for consideration in these cases is whether in a case where the assessee submits a true and complete return after the prescribed date the assessment should be completed within a period of four years prescribed by sub-section (1) of section 14 of the Act or within a period of six years permitted under sub-section (3) of section 14 of the Act. Sub-section (1) of section 14 of the Act relates to an assessment which may be made on the basis of a return submitted under section 13 of the Act. Section 13 of the Act as stated above provides that every dealer shall submit such return or returns relating to his turnover in such manner within such period and to such authority as may be prescribed. The return on the basis of

which an assessment is to be made under section 14(1) of the Act is, therefore, a return filed within the prescribed period and in such a case the assessment has to be completed within a period of four years from the expiry of the year to which the assessment relates. The return referred to in sub-section (1) of section 14 of the Act cannot be a return filed beyond the prescribed date is emphasised by clause (i) of sub-section (3) of section 14 of the Act which refers to a case where a dealer liable to pay tax fails to submit return before the date prescribed in that behalf. All cases where the return is submitted beyond the prescribed date fall under sub-section (3) of section 14 of the Act.

The scheme of the Act regarding the period within which assessments can be made is very simple. Assessments in cases falling under sub-section (1) of section 14 of the Act have to be completed within four years from the expiry of the year to which the assessment relates and assessments in cases falling under sub-section (3) of section 14 of the Act may be completed within six years from the expiry of the year to which the assessment relates. The two types of cases which fall under sub-section (1) and sub-section (3) of section 14 of the Act respectively are mutually exclusive. When once it is established in case that a return has not been filed within the prescribed period such case falls outside section 14 (1) of the Act and therefore the period of four years prescribed therein becomes automatically inapplicable. It clearly falls under clause (i) of sub-section (3) of section 14 of the Act and assessment can be made in such a case within the expiry of the period of six years. While a dealer who files a return within the prescribed

743

period acquires immunity against assessment on the expiry of four years from the last day of the assessment year, a dealer who fails to file a return within the prescribed period has to wait for six years to be over to acquire such immunity. Thus the Act confers a distinct advantage on a dealer who is prompt in filing his return.

We are not impressed by the argument that since the returns in the cases before us had been accepted even though they had been filed beyond the prescribed date the assessments made thereon cannot be considered as best judgment assessment and therefore sub-section (3) of section 14 of the Act under which it is permissible to make best judgment assessments would be inapplicable. The period within which assessments can be made under the Act does not depend upon the answer to the question whether the assessment in question is a best judgment assessment or it is an assessment made treating the return as correct and complete but it depends upon the other conditions mentioned in sub-section (1) and in sub-section (3) of section 14 of the Act. We may here point out that even in a case falling under subsection (1) of section 14 of the Act it is possible for the assessing authority to make a best judgment assessment as can be seen from the latter part of the said sub-section which reads: "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." Yet such best judgment assessment has to be completed within a period of four years from the expiry of the year to which the assessment relates. Hence it cannot be held that merely because the assessments in question are not best judgment

assessments sub-section (3) of section 14 of the Act is inapplicable for best judgment assessments can be made both under sub-section (1) and subsection (3) of section 14 of the Act. That the assessment is a best judgment assessment is not, therefore, decisive of the question involved in these appeals.

The decision of the Andhra Pradesh High Court in the State of Andhra Pradesh v. Pyarelal Malhotra 13 S.T.C. 946 and the decision of this Court in the State of Madras v. S.G. Jayaraj Nadar & Sons 28 S.T.C. 700 which dealt with the question as to when a best judgment assessment could be made are not relevant for purposes of deciding the question which has arisen before us. As we have already pointed out the question whether the assessment made is the best judgment assessment or not has no bearing at all on the period within which an assess-

744

ment can be made under the Act. Neither in the judgment of the High Court against which Civil Appeal No. 4448 of 1985 is filed nor in the judgment of the Tribunal out of which Civil Appeal No. 694 of 1986 arises adequate attention is given to the words 'before the date prescribed in that behalf in clause (i) of sub-section (3) of section 14 of the Act. The High Court and the Tribunal laid emphasis only on the words "fails to submit return" in the said sub-clause and it is on this account they arrived at a wrong conclusion.

On a true construction of sub-section (I) and sub-section (3) of section 14 of the Act we are of opinion that where a return is not filed by a dealer before the date prescribed in that behalf under the Act, the assessing authority has got jurisdiction to complete the assessment within a period of six years from the expiry of the year to which the assessment relates. Admittedly, in these cases the returns were not filed within the prescribed date and the assessments have been made within six years from the expiry of the year to which the assessments relate. The orders of the High Court against which these appeals have been filed are therefore liable to be set aside. In Civil Appeal No. 4448 or 1985 the judgment of the High Court is set aside and the judgment of the Tribunal is restored. In Civil Appeal No. 694 of 1986 the order of the High Court and the judgment of the tribunal are set aside and judgment of the Assistant Commissioner (CT) Appeals, Warangal is restored. The respondent shall pay the costs of the Appellant in both the appeals.

P.S.S.

745

Appeals allowed.