Andhra High Court
The State Of Andhra Pradesh vs Sri Ganesh Bhavan Hotel on 25 November, 1982
Equivalent citations: 1983 53 STC 169 AP
Author: J Reddy
Bench: B J Reddy, Punnayya
JUDGMENT Jeevan Reddy, J.

1. In this tax revision case, the only question for consideration is one of limitation. The assessment year relevant is 1964-65. A best judgment assessment was made for this assessment year, under sub-section (1) of section 14 of the A.P. General Sales Tax Act, and thereafter the first assessing authority levied penalty by its order dated 3rd October, 1966. Against that order, the assessee preferred an appeal, which was allowed on 16th June, 1967. But this appellate order was set aside by the Deputy Commissioner, in exercise of his revisory jurisdiction under section 20(2) of the Act, by his order dated 2nd May, 1968. Against the order of the Deputy Commissioner, the assessee filed an appeal to the Sales Tax Appellate Tribunal, which allowed the appeal on 19th July, 1972, and remanded the matter to the first assessing authority. Thereafter the first assessing authority passed orders on 7th November, 1975, imposing the penalty. Against this order, the assessee filed an appeal to the Appellate Assistant Commissioner, which was dismissed. On further appeal to the Sales Tax Appellate Tribunal, however, the appeal was allowed. The Tribunal held that, even if the period between 3rd October, 1966, and 19th July, 1972, is excluded, even then the order levying penalty has been passed beyond four years from the expiry of the relevant assessment year. The last date of the relevant assessment year is 31st March, 1965, and the period of four years prescribed by sub-section (1), which was held to be applicable in the case of sub-section (2) as well, expired on 31st March, 1969. The Tribunal held that the period between 1st April, 1965, and 3rd October, 1966, and the period between 19th July, 1972, and 7th November, 1975, added together, would exceed the period of four years. On this reasoning, it allowed the appeal.

2. In this tax revision case, it is contended by the learned Government Pleader that sub-section (2) under which the penalty has now been levied, does not provide for any period of limitation whatsoever and hat, the period of limitation for making an assessment, prescribed in sub-section (1), cannot be imported into sub-section (2). We, however, find that this argument runs directly counter to the principle of the decision of a Bench of this Court in W.P. No. 338 of 1965 dated 18th August, 1969 [M. Sayanna and Garikapati Narasimhulu v. State [1974] 33 STC 144 (App)], reported as an appendix to the decision in Eastern Ore Corporation v. Commercial Tax Officer [1974] 33 STC 129 (FB). In W.P. No. 338 of 1965 [M. Sayanna and Garikapati Narasimhulu v. State [1974] 33 STC 144 (App)], a Bench of this Court was concerned with sub-section (4) of section 14, as it then stood. Sub-section (4) provided for assessment of escaped or under-assessed turnover. It prescribed two periods of limitation, viz., six years and four years, applicable in two different situations. Sub-section (4) further provided for levying of penalty by the assessing authority in addition to the tax assessed. The section did not expressly provide for any period of limitation for levying penalty. It was, therefore, argued that there is no period of limitation for levying penalty and that, such a penalty can be levied even beyond the periods prescribed in the said sub-section. This argument was negatived by the Bench, which held that the penalty proceedings are not independent proceedings, but are dependent upon a finding by the assessing authority that the whole or any part of the

turnover of the business of a dealer has escaped assessment, and that only on arriving at that finding are the penalty proceedings taken up as a deterrence. It was further observed that, while the penalty proceedings are distinct from the assessment proceedings, they are not wholly independent of the assessment proceedings, and further that the power to levy penalty is ancillary to the power to levy the tax. Accordingly, it was held that, when the assessment itself is barred, the levy of penalty would be equally barred. The same principle applies with equal force to sub-sections (1) and (2). Following the principle of the said decision, it must be held that the Tribunal was right in holding that the order dated 7th November, 1975, imposing penalty, is barred by limitation.

3. We may note that the aforesaid Bench decision has been approved by a Full Bench of this Court in Eastern Ore Corporation v. Commercial Tax Officer [1974] 33 STC 129 (FB).

4. Mr. J. V. Suryanarayana, the learned Government Pleader, sought to contend further that the principle of the aforesaid Bench decision must be deemed to be no longer good law, in view of the decision of the Supreme Court in Indian Aluminium Cables Ltd. v. Excise and Taxation Officer . That was a case arising under the Punjab General Sales Tax Act. Sub-section (1) of section 11 of the Punjab Act provides for making of an assessment accepting the return filed. Sub-section (2) provides for the issuance of a notice to the assessee. In case the notice under sub-section (2) is not complied with, the Assessing Authority has a power to make a best judgment assessment under sub-sections (4), (5) and (6); but that is to be done within a period of five years from the last date of the relevant quarter. No express period of limitation is prescribed for issuance of the notice under sub-section (2). The argument, however, was that the period of limitation prescribed in sub-sections (4), (5) and (6) must equally apply to a notice under section 11(2). This argument was repelled by the Supreme Court holding that a period of limitation cannot be inferred by analogy. We are unable to see how the principle of the said decision can be said to nullify the principle of the Bench decision of this Court. The above Bench decision is based upon the principle that the penalty proceedings being ancillary to the assessment proceedings, cannot stand on a higher footing and that, the period of limitation prescribed for making the assessment equally applies to the levying of penalty. We are, therefore, unable to agree with Mr. J. V. Suryanarayana that the authority of the Bench decision of this Court has in any manner been shaken by the aforesaid decision of the Supreme Court.

5. In this view of the matter, it is not necessary for us to go into the question whether the period between 3rd October, 1966, and 19th July, 1972, could have been validly excluded by the Tribunal, and whether there is any provision warranting such exclusion.

6. The tax revision case, accordingly, fails and is dismissed. No costs. Advocate's fee Rs. 250.