Supreme Court of India
State Of A.P vs T.G. Lakshmainah Setty & Sons on 13 April, 1994
Equivalent citations: 1994 AIR 2377, 1994 SCC Supl. (2) 386
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
STATE OF A.P.

Vs.

RESPONDENT:
T.G. LAKSHMAINAH SETTY & SONS

DATE OF JUDGMENT13/04/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1994 AIR 2377 1994 SCC Supl. (2) 386
JT 1994 (3) 367 1994 SCALE (2)668

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. CA No. 2798 of 1983 is taken on board.

2. These two appeals relate to different assessments under the Andhra Pradesh General Sales Tax Act, 1957 (Act No. VI of 1957), for short, 'the Act'. The respondent-assessee is a registered dealer carrying on business in groundnut oil seeds and cotton seeds. The appeals relate to "cotton lint". The respondent was assessed under Section 5(1) for the assessment years 1967-68, 1970-71 and 1971-72, the last of which was on November 29, 1975 as "cotton" unclassified general goods at 3%. In similar circumstances, when the other assessees carried the matter in revision to the High Court in Alimchand Topandas Oil Mills v. State of A.P.I the High Court of A.P. held that cotton lint comes under 'cotton waste' in Entry 69 of Schedule I and becomes exigible to tax at 1 % at the relevant time. Relying upon the decision, the respondent-assessee made a representation in May 1976 under

Section 20(2) of the Act requesting the Dy. Commissioner to revise the assessments. Initially even without numbering the revisions the Dy. Commissioner had dismissed them. But, on appeal, the Sales Tax Appellate Tribunal (STAT) by its order dated November 18, 1977 remitted the cases to the Dy. Commissioner directing to number the cases and to dispose them of according to law. On receipt thereof, the Dy. Commissioner by his order dated October 14, 1980 again dismissed the revisions. The respondent assessee carried in revision to the STAT which by its order dated October 16, 1984, allowed the revisions applying the ratio in Alimchand case, and directed reassessment under Entry 69 of Schedule

1. On revision, the High Court by impugned order dated April 4, 1985, dismissed them in limine. Thus these appeals by special leave.

3.The primary question in these cases is whether a revision under Section 20(2) is maintainable at the instance of the assessee. Section 20 provides at the relevant time thus :

> "20. Revision by Commissioner of Commercial Taxes and other prescribed authorities.- (1) The Commissioner of Commercial Taxes 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* [and if such order or proceeding recorded is (prejudicial to the interests of revenue), may make such enquiry, or cause such enquiry to be made and subject to the provisions of this Act, may initiate proceedings to revise, modify or set 1 (1976) 37 STC 603 (AP) aside such order or proceeding] and may pass order in reference thereto as it thinks fit. *Substituted for the words 'for the purpose of satisfying itself as to the legality or propriety of such order as to the regularity of such proceeding' by Act 18 of 1985, w.e.f. 1-7-1985."

Sub-section (2) of Section 20 gives power similar to that in sub-section (1), to the Joint Commissioner, Dy. Commissioner and the Commercial Tax Officer in the case of orders passed or proceedings recorded by the authorities or officers or persons subordinate to them.

4.The question whether the assessee has a right to make an application for the exercise of suo motu power by the Commissioner calls for consideration in the light of the other provisions in the Act, expressly providing for a right of appeal to the assessee. Under Section 19 of the Act a right to appeal to the appellate authority against original orders or proceedings of certain authorities, has been given to the aggrieved dealer. Section 21 also gives a right of appeal, to the aggrieved dealer to the Appellate Tribunal postulating that any dealer objecting to an order passed or proceeding recorded by any prescribed authority on appeal under Section 19 or Section 14(4-C) or Section 20(2) may appeal to the Appellate Tribunal within 60 days from the date on which the order or proceeding was served on him. Thus the statute itself has given a right to the dealer to object to an order passed or proceeding recorded under the Act, which is prejudicial to him, by filing an appeal against such order, under Section 14 or 19 or Section 21 or a revision under Section 22 of the Act to the Appellate Tribunal (sic). As stated earlier, against the original order an appeal shall lie to the appellate authority within a period of 30 days from the date of the receipt of the notice served on the dealer

and a further appeal to the Appellate Tribunal. The order under Section 20(1) could also be appealable again to the STAT by the aggrieved dealer and a further revision under Section 23 to the High Court under the Act. Thus, the Act has given right and remedy of appeal or a revision to the dealer, wherever it was so intended. As seen, Section 20 is a suo motu revisional power exclusively given to the Commissioner or the Joint Commissioner or the Dy. Commissioner or the Commercial Tax Officer, as the case may be, to revise the orders or the proceedings of the officers subordinate to the respective officers. Whether suo motu power under Section 20 of the Act could have been invoked by an assessee is the question. The Judicial, Committee of the Privy Council in CIT v. Tribune Trust2 had considered similar question. It was a case where an income tax assessment order in respect of an assessment year had reached finally by reason of an order made by the Judicial Committee of the Privy Council dated June 13, 1939. On August 13, 1939, suo motu power of the Commissioner was, however, sought to be invoked by the assessee to revise the orders of assessments relating to previous years, which had become final. The High Court, following the decision of the Privy Council which was in favour of the assessee, directed the Commissioner to exercise the power of revision and revise the earlier orders of assessment. Section 33 of the Indian Income Tax Act, 1922 reads thus :

> "(1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority 2 AIR 1948 PC 102: 74 IA 306: (1948) 16 ITR subordinate to him or by himself when exercising the power of an Assistant Commissioner under sub-section (4) of Section 5.

(2)On receipt of the record the Commissioner may make such enquiry or causesuch enquiry to be made and, subject to the provisions of this Act, may passsuch orders thereon as he thinks fit :

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard."

When the matter was carried in appeal, the Judicial Committee which considered the scope and ambit of suo motu power of the Commissioner under Section 33 of the Income Tax Act held thus :

> "The fallacy implicit in this question has been made clear in the discussion of the first two questions. It assumes that Section 33 creates a right in the assessee. In their Lordships' opinion it creates no such right. On behalf of the respondent the well-known principle which was discussed in Julius v. Bishop of Oxford3 was invoked and it was urged that the section which opens with the words, '[t]he Commissioner may of his own motion' imposed upon him a duty which he was bound to perform upon the application of an assessee. It is possible that there might be a contest in which words so inapt for that purpose would create a duty. But in the present case there is no such context. On the contrary, Section 33 follows upon a number of sections which determine the rights of the assessee and is itself, as its language clearly indicates, intended to provide administrative machinery by which a higher executive officer may review the acts of his subordinates and take the necessary action upon such review. It appears that as a matter of convenience a practice has

grown up under which the Commissioner has been invited to act 'of his own motion' under the section and where this occurs a certain degree of formality has been adopted. But the language of the section does not support the contention, which lies at the root of the third question and is vital to the respondents' case, that it affords a claim to relief. As has been already pointed out, appropriate relief is specifically given by other sections; it is not possible to interpret Section 33 as conferring general relief.

It appears to them that an order made by the Commissioner under Section 33, can only be said to be prejudicial to the assessee when he is, as a result of it, in a different and worse position than that in which he was placed by the order under review. If the assessee has a complaint against any assessment or order made by a subordinate officer, he has the appropriate and specific remedy which the Act provides. The Commissioner may act under Section 33, with or without the invitation of the assessee; if he does so without invitation, it is clear that, if he does nothing to worsen the position of the assessee, the latter can acquire no right; the review may be a purely departmental matter of which the assessee knows nothing. If on the other hand the Commissioner acts at the invitation of the assessee and again does nothing to worsen his position, there is no justification for giving him a new right of appeal. He has a specific right of appeal against the assessment or order of the subordinate officer, which is subject to its own time limit.

3 (1880) 5 AC 214 That he cannot enlarge by taking a course which is on his part purely voluntary. This view of the section is confirmed by the exception."

5. The High Court of Andhra pradesh had occasion to consider the scope of Section 20 of the Act in two of its judgments. In Kalluri Bheemalingam, in re4 the assessee had sought to file an appeal to the High Court under Section 23 of the Act against the order of the Board of Revenue (at that time the revisional power was exercised by the Board of Revenue) revising the assessment under Section 20(1) of the Act, which the Board had rejected as being not maintainable. The High Court upheld the order of the Board of Revenue holding that Section 20(1) of the Act does not provide a right of revision at the instance of the assessee, but only provides suo motu power of revision to the Commissioner and under Section 23(1) [sic 22(1)] a revision does lie to the High Court against the order passed by the Board. Therefore, the appeals were held not maintainable. The same view was reiterated in Sree Ramachandra Ginning & Oil Mills v. State of A.P.5 It must therefore, be held that the validity of an assessment order must be tested in an appeal or revision filed by an assessee as provided for in the Act and in no other way. The assessee cannot invoke the suo motu power of the authorities under Section 20. Any order validly made does not become void or illegal by subsequent declaration of law. The suo motu power was conferred on higher authorities to correct errors of law or to correct improper or irregular procedure or illegality in the procedure, to safeguard the interest of the Revenue, as there was no express power given to the State, to file an appeal against order of assessment.

6.The Tribunal had placed reliance on the decision of another Division Bench reported in State of A.P. v. Lalitha Oil Mills'. In that case following the decision of this Court in Sri Venkateswara Rice,

Ginning and Groundnut Oil Mill Contractors Co. v. State of A.P.7 the Commissioner exercising suo motu power under Section 20(1) had revised the assessment made in accordance with the law laid down by this Court. It was not a case where the Commissioner had exercised the power at the instance of an assessee. The Tribunal had wrongly held that the Commissioner could exercise the revisional power at the instance of the assessee under Section 20(1) and (2) of the Act.

7.We have, therefore, no hesitation to hold that the High Court has committed an error in rejecting the revision by the State. Accordingly we hold that the aggrieved assessee has only to pursue the remedies provided in the Act and he has no right to make an application under Section 20 of the Act seeking revision of the orders of assessments made under the Act by original authorities. The appeals are accordingly allowed. The orders of the High Court and STAT are set aside and the orders of the Dy. Commissioner are recorded. But in the circumstances, there shall be no order as to costs.

4 (1967) 19 STC 116 (AP)
5 (1967) 19 STC 354 (AP)
6 (1978) 42 STC 169 (AP)
7 (1971) 2 SCC 650: (1971) 28 STC 599