
(1984) 06 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 3110 of 1982-G

A.P. Aboobacker

APPELLANT

Vs

The Sales Tax Officer and Others

RESPONDENT

Date of Decision : 29-06-1984

Acts Referred:

Kerala Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1967
— Section 3(1)(b)(ii), 3(1)(b)(iii)

Citation : (1985) 59 STC 41

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : P.A. Mohammed T, A.B. Jaleel and K.K.M. Sheriff, for the Appellant;
Government Pleader, for the Respondent

Judgement

K.S. Paripoornan, J.—The petitioner is an assessee to sales tax. For the years 1974-75, 1975-76, 1976-77 and 1977-78 he was assessed to tax in varying figures. The appeals filed from the aforesaid assessments were dismissed. Besides the above, proceedings were taken against the petitioner for levy of penalty for the above years u/s 45-A of the Kerala General Sales Tax Act. In revision, the Deputy Commissioner of Sales Tax set aside the order for the year 1974-75 by exhibit P1 order dated 18th May, 1981. For the years 1975-76, 1976-77 and 1977-78 the penalties levied were reduced, by exhibits P2, P3 and P4 orders dated 16th July, 1981. Earlier, in pursuance to the original orders, recovery proceedings were started. The properties of the petitioner were attached on 31st January, 1981. The amount due then was Rs. 21,093.45. Even after the passing of the revisional orders, evidenced by exhibits P1 to P4, recovery proceedings were continued for recovering the same amount. In this original petition, exhibit P6 dated 18th March, 1982 a notice issued under the Revenue Recovery Act in form No. 16 regarding sale of immovable property, is assailed as illegal. The notice (exhibit P6) was in pursuance to the notice of attachment dated 31st January, 1981. The petitioner contends that since the various assessments in pursuance to which various notices of demand were

issued stood modified by exhibits P1 to P4 orders, after the final decision rendered in the revisions, a fresh notice of demand should have been issued before further proceedings under the Revenue Recovery Act are pursued. Though the revisional orders were passed on 18th May, 1981 and 16th July, 1981 long before the sale notice, evidenced by exhibit P6 dated 18th March, 1982 there was no fresh notice of demand after the revisional orders. As soon as the assessments were made and various notices of demand were issued, the attachment was made on 31st January, 1981. The proceedings in pursuance thereto cannot be pursued, after the disposal of the revisions, without service of a fresh notice of demand, for the exact arrears due, as per the revisional orders. At any rate, after the decision in the revisions, the 1st respondent was obliged at least to intimate the fact of reduction of the amounts payable by the assessee-petitioner and in case certificates were issued for recovery of the amount also to such officer or authority. The recovery can be pursued only for the exact amounts due. These things have not been duly complied with. So, exhibit P6 sale notice is invalid and infirm.

2. Senior Government Pleader, Mr. N. N. Divakaran Pillai, sought to sustain the recovery proceedings initiated and pursued. A detailed counter-affidavit dated 18th July, 1983 has been filed. The main contention of the petitioner is, that there should be a fresh notice of demand after the decision in the appeal or revision, either modifying or setting aside the original assessment order. According to counsel, the notice of demand issued originally will fade the moment the assessment order is set aside or modified. In this case, the assessment orders have been modified by the revisional orders, by exhibits P1 to P4. So, a fresh notice of demand should be issued before further recovery proceedings are pursued. Reliance is placed on the decision reported in Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty, . It is true, that ordinarily if an order of assessment is set aside or modified in appeal or in revision, the notice of demand issued in pursuance to the original assessment order will cease to have effect. A fresh notice of demand on the basis of the appellate or revisional order will be necessary. But, the above principle will not apply where there are statutory provisions to the contrary. That appears to be the case, here, because of Kerala Act 23, of 1967. In view of the provisions of the Kerala Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1967 (Act 23 of 1967) even in case where the original order of assessment is set aside or modified, a fresh notice of demand need not be issued. Section 3(1)(b)(i), (ii) and (iii) of Act 23 of 1967 may be Usefully quoted :

3. Continuation and validation of certain proceedings.--(1) Where any notice of demand in respect of any Government dues is served upon an assessee by a taxing authority under any scheduled Act, and any appeal or other proceeding is filed or taken in respect of such Government dues, then,--

(a)....

(b) where such Government dues are reduced in such appeal or proceeding, --

(i) it shall not to be necessary for the taxing authority to serve upon the assessee a fresh notice of demand ;

(ii) the taxing authority shall give intimation of the fact of such reduction to the assessee, and where a certificate has been issued or an application or requisition has been made to any officer or authority for the recovery of such Government dues, also to such officer or authority ;

(iii) any proceedings initiated on the basis of the notice or notices of demand served upon the assessee before the disposal of such appeal or proceeding may be continued in relation to the amount so reduced from the stage at which such proceeding stood immediately before such disposal;

3. A bare perusal of the above statutory provision makes the position clear. It shall not be necessary for the taxing authority to serve upon the assessee a fresh notice of demand after the decision rendered in appeal or in revision, whereby the assessment order is modified or set aside and the amount due is reduced. But u/s 3(1)(b)(ii) it is mandatory that the taxing authority shall give intimation of the fact of such reduction to the assessee, and in cases where a certificate has been issued to the revenue recovery authority also to such authority. Admittedly, in this case though in paragraphs 4 and 5 of the counter-affidavit it is stated that after the dismissal of the revisions the petitioner was asked to remit the amount, there is no material to substantiate the above submission. Government Pleader, Mr. Divakaran Pillai, fairly conceded that there is nothing in the files to show that after the modification effected by exhibits P1 to P4, the taxing authority gave intimation of the reduced amount to the assessee. In so far as, the 1st respondent has failed to comply with Section 3(1)(b)(ii) of Act 23 of 1967, it was incompetent for the respondents to pursue by way of sale of the properties, on the basis to an attachment effected on 31st January, 1981. After the said attachment, orders in revisions were passed on 18th May, 1981 and 16th July, 1981. Before the orders were passed in revisions, the amount due was Rs. 21,093.45. It was for that amount, the attachment was made on 31st January, 1981. After the revisions there has been some modification. That reduced amount was not intimated to the petitioner-assessee. Failure to do so is fatal. There is a failure to comply with Section 3(1)(b)(ii) of Act 23 of 1967. After the revisions, the recovery proceedings can be continued only for the amounts remaining due and not paid as per the revisional orders. On that short ground, exhibit P6 notice of sale dated 18th March, 1982 should be annulled. I hereby do so.

4. In view of Section 3(1)(b)(iii) of Act 23 of 1967 the recovery proceedings can be continued in relation to the amount that is found to be due, after the revisions, for which, the proceedings, as it stood on 31st January, 1981 can be continued. I make this position clear. So that, after intimation by the 1st respondent of the reduced amount u/s 3(1)(b)(ii) of Act 23 of 1967, if such reduced amount is not paid within a reasonable time, the recovery authorities can proceed u/s 3(1)(b)(iii) of Act 23 of 1967 from the stage of attachment. The

attachment of the properties dated 31st January, 1981 will be valid and effective for pursuing further, with recovery proceedings, if the amounts due as per revisional orders are not paid after intimation by the 1st respondent.

5. The original petition is disposed of as above. There shall be no order as to costs.

Order on C. M. P. No. 9072 of 1982 in O. P. No. 3110 of 1982-G.