

(1981) 12 MAD CK 0021

In the Madras High Court

Case No : Writ Petition No. 1393 of 1979

C. Tarachand

APPELLANT

Vs

The Tahsildar and Another

RESPONDENT

Date of Decision : 22-12-1981

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (1983) 52 STC 324

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : K. Ramagopal, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Nainar Sundaram, J.—The petitioner had registered himself as a non-resident dealer under the Bombay Sales Tax Act, 1959, hereinafter

referred to as the Act. In respect of sales effected during the calendar years 1973 and 1974, the petitioner filed his returns with the second

respondent and the turnover returned were fully accepted by the second respondent. Since the petitioner did not pay the taxes due on returns

within time, the second respondent levied penalties of Rs. 4,833 for the calendar year 1973 and Rs. 450 for the calendar year 1974 u/s 36(3) of

the Act. The petitioner filed appeals to the Assistant Commissioner of Sales Tax, Appeals, Bombay, against the aforesaid levies, contending inter

alia that the two levies could not be justified and section 36(3) of the Act was ultra vires the State Legislature of the State of Maharashtra. While

passing orders on appeal, the said Assistant Commissioner enhanced the levy for the year 1973 to Rs. 5,388.07 and confirmed the levy for the

year 1974. It is stated on behalf of the respondents and it is equally obvious that

since the penalties were not paid, certificates to that effect have been obtained from the Collector of Bombay and they have been forwarded to the Collector here at Madras and the process under the Revenue Recovery Act (Central Act 1 of 1890), hereinafter referred to as Central Act 1 of 1890, has been resorted to against the petitioner by the memo dated 24th February, 1979, issued by the first respondent. The petitioner seeks a writ of prohibition, prohibiting the first respondent from continuing the proceedings pursuant to the said memo.

2. Mr. K. Ramagopal, the learned counsel for the petitioner, would put forth two contentions in support of the prayer. The first one is that the first respondent has no jurisdiction to resort to the process under Central Act 1 of 1890 for the purpose of collecting the amounts due to the sales tax authorities in the State of Bombay. This submission omits to take note of the express provision of section 3 of Central Act 1 of 1890, which enables recovery of public demands by enforcement of process in other districts than those in which they became payable. A similar contention was raised before the High Court of Kerala in *Indo-Marine Agencies (Kerala) P. Ltd. v. Sales Tax Officer* [1980] 45 STC 163 and *Kochu Thommen, J.*, repelled the same holding that Central Act 1 of 1890 applies to the country as a whole and the Collector of a district means a Collector of district anywhere in the country. The learned Judge endorsed the view of a Division Bench of the High Court of Karnataka in *Burman v. Commercial Tax Officer* [1971] 28 STC 637. I have no reason to take a view different from that expressed in the above decisions. Hence, the first contention of the learned counsel for the petitioner is repelled.

3. Secondly, the learned counsel would submit that the very order of levy of penalty by the second respondent u/s 36(3) of the Act cannot be sustained because the said provision is confiscatory in nature and violative of article 19(1)(f) of the Constitution of India. The petitioner agitated the matter further by way of appeals to the Assistant Commissioner of Sales Tax, Appeals, Bombay, against the order of the second respondent. The appellant orders have gone against him. It is true that a Division Bench of this Court in *Veeri Chettiar v. Sales Tax Officer* [1970] 26 STC 579 has held that this Court has the power to exercise all the powers conferred on it under article 226(1-A) of the Constitution of India, as it stood then,

notwithstanding the fact that the authority against whom the ultimate rule has to be issued and whose act has created a cause of action as a whole or in part, is situated outside its territorial limits. But, there the petitioner approached this Court at a very initial stage questioning the legality of the assessment. Such is not the case here. It is quite probable that the petitioner was not confident on the facts of this case that he could successfully invoke the jurisdiction of this Court to set at naught the very orders passed by the Bombay sales tax authorities, on the basis of the principles recognised by the Division Bench of this Court. The petitioner, most likely, could not demonstrate that the orders passed by the Bombay sales tax authorities, by themselves, created a cause of action as a whole or in part, within the jurisdiction of this Court. The petitioner herein, as on date, has allowed the orders passed by the order Bombay sales tax authorities to go unchallenged, either by agitating the matter under the Act or by resorting to the process under article 226 of the Constitution of India before the courts at Bombay. Even granting that the petitioner could not challenge the vires of the statute before the authorities constituted by it, there is no explanation as to why he did not approach the courts at Bombay, impeaching the orders of the Bombay sales tax authorities on any tenable ground, if in fact, he had a real grievance over the same. The orders in appeals have been passed a long time back, in September, 1977. Having allowed them to go unchallenged at the appropriate time before the appropriate forum or forums, it will not be proper for the petitioner to approach this Court, when measures to realise the dues, practically by way of execution are taken and canvass the alleged illegality of the original orders. It will not be appropriate on the facts of this case, at this juncture, for this Court to take note of the present grievance of the petitioner against the original orders and issue the highly prerogative writ sought for, the issuance of which is at the discretion of this Court. The petitioner could as well give vent to his grievance in this behalf before the courts at Bombay and seek redress and relief, if there is time enough for him to do so. As the matter stands, the process under Central Act 1 of 1890 has been resorted to purely as a measure in execution and I do not feel called upon to go into the legality or otherwise of the very levy of penalties, in the present writ petition as coveted by the learned counsel for the petitioner. In this view, this writ petition is dismissed. But there will be no order

as to costs.