(2008) 08 KL CK 0053

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22501 of 2006

Cochin Candiments Pvt. Ltd. APPELLANT

Vs

The District Collector and Others RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 26A, 65

Citation : (2008) 3 KLJ 748 : (2010) 33 VST 183

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Raju Joseph, for the Appellant; Tekchand, GP, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Petitioner is challenging recovery proceedings initiated against his property for recovery of arrears of sales tax due from 5th respondent for the assessment year 1993-94. Petitioner''s case is that petitioner purchased property from defaulter''s wife on 03/02/1998 and since the person from whom petitioner purchased the property is not in arrears of sales tax, the property purchased by petitioner cannot be proceeded against in recovery proceedings. However, the case of the respondent is that defaulter transferred the property on 20/01/1994 to his wife to avoid recovery of sales tax and the defaulter''s wife in turn sold the property to petitioner. Therefore, property can be attached and sold in recovery proceedings by virtue of Section 26A of the KGST Act is the case of the respondent.

2. Learned Counsel for the petitioner referred to decision of the Supreme Court in State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others, and contended that sales tax is not a charge on the property and so much so recovery can not be continued against the property. Learned Government Pleader has referred to decision of this Court in Hamsa v. Asst. Commissioner reported in 2008(3) KLT 180 and contended that property of a dealer can be proceeded against for recovery even if assessment and demand were not raised at the time of sale of property to others, and even after the sale, pr6perty can be proceeded

against recovery, if there is any proceedings pending under the Act. Section 26A of the KGST Act is quoted below:

26A. Certain transfers to be void: (1) Where, during the pendency of any proceedings under this Act or after the completion thereof, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any person, such charge of transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee under this Act.

It is clear from the above provision that arrears of tax can be recovered from the property of the defaulter, ignoring any charge created in respect of the property by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever, if such transactions were effected during pendency of any proceedings under this Act. The only question to be considered is whether sale of the property by the defaulter to his wife on 20/01/1994 was during pendency of the proceedings under the Act. The 5th respondent, who is the defaulter in this case, was admittedly a registered dealer under the KGST Act and his assessment was pending based on monthly returns filed during 1993-94 as on the date of effecting sale of the property by him to his wife on 20/01/1994. Therefore, obviously sale of the property effected by defaulter to his wife on 20/01 /1994 can be ignored and property can be attached and sold in recovery proceedings for recovery of arrears of sales tax due from the defaulter. Since the seller did not have a valid title by virtue of operation of Section 26A, sale of the property by defaulter''s wife to petitioner also does not confer valid title or in other words, title conferred is subject to tax liability in terms of Section 26A of the KGST Act. The decision cited by petitioner is pertaining to the provisions of Karnataka Sales Tax Act, which is not the same as Section 26A of the Kerala GST Act. It is very clear from Section 26A that any transfer of property by the defaulter during pendency of any proceedings will be subject to tax liability. In other words, tax can be recovered by attachment and sale of the property, unless the transferee clears the arrears. Therefore, this contention of the petitioner is rejected upholding the authority of the State to proceed against the property purchased by petitioner from defaulter''s wife for recovery of arrears of sales tax due from the original owner, namely 5th respondent. Learned Counsel for the petitioner contended that petitioner is bonafide purchaser for valid consideration.

3. However, it is strange that petitioner did not critically take note of the title of the person from whom he purchased the property i.e. the wife of the defaulter. The transaction of sale of property between husband and wife has to be always examined closely and critically because such transaction of sale normally does not take place. If petitioner was little careful, it would have come to his knowledge without any difficulty that the seller is a defaulter or a person who has statutory liability under the Sales Tax Act, and therefore, the title obtained by his wife through transfer of property by defaulter will always be defective. I am of the view that petitioner consciously or indifferently entered into the transaction

and he has no escape from the consequences.

4. The nest contention raised by learned Counsel for the petitioner is that petitioner is willing to pay the market value, which is reflected in the sale price of neighbouring property in recovery proceedings. Learned Counsel submitted that 1.66 acres was sold in recovery proceedings on 21/05/2002 for Rs. 1,26,500/-. I do not want to comment about the propriety or legality of this transaction because it is for the aggrieved person to challenge the sale or the higher authorities under RR Act to interfere, if required.

5. However, since petitioner has put up an industry and is running it there, I feel petitioner''s case calls for consideration. In the circumstances, and on equitable grounds, I direct the District Collector to inspect the property and estimate the present per cent value of the property excluding the value of building and machinery, which are put up for the industry, and if petitioner offers the market value, the same will be collected from petitioner and attachment will be lifted. It is for respondents 1 to 3 to proceed for recovery against 5th respondent for the balance liability by attachment and sale of balance property or any other property transferred by him in similar manner, after issuing notice to transferees. If the defaulter has concealed or benami wealth and recovery is consciously avoided, Section 65 proceedings also should be initiated against him.

The writ petition is disposed of as above.

