(1984) 06 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 5574 of 1984

Dolton Printers Private Limited APPELLANT

Vs

The State of Tamil Nadu and Others RESPONDENT

Date of Decision : 29-06-1984

Acts Referred:

Citation : (1985) 58 STC 137

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : C. Venkataraman, for the Appellant; B. Lokapriya, for the Government Advocate (Commercial Taxes), for the Respondent

Judgement

Natarajan, J.—On the ground that the second respondent has passed a mechanical order on the stay petition filed by the petitioners in

respect of the tax amount which is disputed in the appeal pending before the second respondent, the petitioners have come forward with this

petition praying for the issue of a writ of certiorarified mandamus to quash the order passed by the second respondent and to further direct it to

dispose of the stay petition afresh.

2. Having regard to the nature of the prayer contained in the writ petition, the main writ petition itself is taken up for disposal to-day after notice to

the Government Advocate for Commercial Tax Cases and hearing his arguments.

3. Consequent on the third respondent passing an order of assessment, the petitioners have filed an appeal before the second respondent and

pending disposal of the appeal, they prayed for stay of collection of the disputed tax amount. By way of security for the disputed tax amount, the

petitioners have offered bank guarantee. The second respondent has passed orders on the stay application directing the petitioners to pay the

disputed tax in six equal monthly instalments, subject to the condition that if there is default in payment of any one instalment, the balance

outstanding will become payable in lump sum at once. The second respondent has further directed the petitioners to file a security bond offering

immovable property as security or bank guarantee by way of security. It is the correctness of this order which is challenged by the petitioners

herein.

4. The learned counsel for the petitioners states that though the power of stay conferred on appellate authorities is only of a discretionary nature,

yet the discretion must be exercised in a judicial manner and not in a mechanical or arbitrary manner. According to them, the second respondent

has not applied its mind to the relevant questions, such as prima facie merit of the case of the petitioners in the appeal, adequacy of the security

offered by the petitioners and whether the insistence on payment of tax pending disposal of the appeal is absolutely necessary in spite of the

petitioners offering adequate security, and therefore the power of discretion vested in the second respondent has not been exercised in a manner

acceptable under law. In support of his contention, he placed reliance on the following decisions : E. Krishnappa Naicker v. Deputy Commercial

Tax Officer, Tiruvannamalai [1963] STC 162, C. K. Palanivelu Chetty & Sons v. Deputy Commissioner of Commercial Taxes, Madras-7 [1963]

14 STC 656, Jugal Kishore Brij Mohan v. State of Punjab [1963] 14 STC 469, Commissioner of Sales Tax, Madhya Pradesh v. Mangilal

Rameshwar Dayal [1964] 15 STC 326, Shivnarayana Laduram v. Assistant Commissioner of Commercial Taxes, Hyderabad [1967] 19 STC 50,

Chesebrough Pond''s Inc. v. Appellate Assistant Commissioner (CT) III, Madras-I [1973] 32 STC 464, K. Venkatesh & Co. v. Commercial Tax

Officer, Arsikere (Hassan Dist.) [1981] 47 STC 115 and Laxmi Ginning and Oil Mills v. Deputy Excise and Taxation Commissioner (Appeals),

Patiala [1978] 41 STC 127. It has been held by this Court in C. K. Palanivelu Chetty and Sons v. Deputy Commissioner of Commercial Taxes,

Madras [1963] 14 STC 656 as follows :

No doubt, the exercise of power under the proviso is discretionary. But, where a statute entrusts a taxing authority with such discretionary power, the discretion must be exercised according to law and reason, and neither arbitrarily nor according to whims. The petitioner states that he furnished

security. But there is not a words in the impugned order of the Deputy Commissioner to show that he paid any attention to the security furnished

and on what grounds he declined to grant the prayer. If the security is furnished, and the Deputy Commissioner is satisfied about its sufficiency, he

is expected to grant stay in terms of the proviso.

To the same effect are the other decisions referred to above.

5. Going a step further the petitioners'' counsel would state that the Supreme Court in dealing with cases arising under the Income Tax Act and

Gift-tax Act has held that even if express power of stay are not conferred on appellate authorities, yet they are incidental and ancillary powers

available to the appellate authorities and therefore the appellate authorities have to apply their mind and pass orders where an application for stay

of collection of tax is made pending disposal of an appeal by an assessee. The learned counsel refers to the following decision of the Supreme

Court, viz., Income Tax Officer Vs. M.K. Mohammed Kunhi, , and First Gift-tax Officer Vs. A.A. Annamalai Nadar, , Income Tax Officer ''F''

Ward, District IV(2) and Others Vs. Murlidhar Sarda and Another, and Income Tax Officer Vs. S.B. Singar Singh and Sons and Another, , in

support of the above proposition.

6. As per the ratio laid down in the above cases, it is by now well-settled that while dealing with an application for stay by an assessee pending

disposal of the appeal preferred by him, the appellate authority has got to exercise its discretionary powers of stay in a judicial manner and it

cannot pass a mechanical or stereotyped order. Since the impugned order does not reflect the consideration of the relevant factors for refusing to

grant absolute stay to the petitioners and for not accepting the bank guarantee offered by them for the disputed tax amount till the disposal of the

appeal, the petitioners are entitled to have the same quashed. Accordingly the impugned order of the second respondent will stated quashed.

However, it is not possible to issue a writ to the second respondent to accept the security offered by the petitioners and grant an order of absolute

stay of collection of the disputed tax. Therefore the proper direction to be given is to direct the second respondent to dispose of the stay petition filed by the petitioners before it afresh in accordance with the ratio contained in the above decisions. The second respondent will dispose of the

said petition within three months from to-day (29-6-84) and till such disposal, the recovery of the disputed tax amount from the petitioners will be

kept in abeyance.

7. The will petition is accordingly allowed, as stated above, and there will be no order as to costs.

