(1987) 08 MAD CK 0019

In the Madras High Court

Case No : Writ Appeal No. 1172 of 1987 and Writ Petition No. 3349 of 1985

Estee Hubs and Drives (P.) Ltd. APPELLANT

Vs

Assistant Commissioner (CT), Zone VII, Madras and Another RESPONDENT

Date of Decision : 11-08-1987

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 32

Citation : (1988) 70 STC 345

Hon'ble Judges : M.N. Chandurkar, C.J;Srinivasan, J

Bench : Division Bench

Advocate : P. Abboy, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader (Taxes), for the Respondent

Judgement

M.N. Chandurkar, C.J.—Appeal admitted with the consent of the learned Additional Government Pleader (Taxes) and the petitioner-

appellant.

2. It is possible to dispose of the writ petition itself at this stage. The writ petition is directed against a notice u/s 22 of the Revenue Recovery Act

(hereinafter referred to as the ""Act"") whereby certain properties belonging to the petitioner-appellant were advertised for auction sale in revenue

recovery proceedings. The contention of the petitioner-appellant was that the liability in respect of which revenue recovery proceedings have been

started is itself the subject-matter of a proceeding which has not yet been disposed of by the Deputy Commissioner. It appears that at the instance

of the petitioner-appellant, the Deputy Commissioner has been directed to take up the revision petition filed by the petitioner-appellant and to

dispose it of in accordance with law by the order of the Tribunal dated 7th February, 1985. However, when the petitioner-appellant approached the Deputy Commissioner, he took the view that the tax cases filed by the State and the writ petitions filed by the dealers challenging the scope and

extent of the applicability of the amended provisions of section 32 of the Tamil Nadu General Sales Tax Act were pending in the Madras High

Court and that the Tribunal''s remand order will give effect to after the decision of the Madras High Court is known.

3. It is obvious that a revision petition filed by the petitioner-appellant is still pending and it is difficult to appreciate the stand taken by the Deputy

Commissioner that he will dispose of the revision petition only after the tax cases pending in the High Court at the instance of the Revenue are

decided. To say the least, such a view is not called for, especially when the Tribunal has expressly directed the Deputy Commissioner to dispose of

the revision filed by the petitioner-appellant. The Deputy Commissioner is bound by the direction given by the Tribunal and it was, therefore,

wholly improper for the Deputy Commissioner to decline to hear the revision petition in spite of a specific direction given to that effect by the

Tribunal. With his usual fairness, the learned Additional Government Pleader does not support the view taken by the Deputy Commissioner. It is,

therefore clear that the revision petition is pending and it was not, therefore, proper for the department to initiate revenue recovery proceedings in

respect of the liability which is the subject-matter of the revision petition. The notice issued u/s 22 of the Revenue Recover Act as well as the

proceedings initiated under that Act are quashed. The Deputy Commissioner is directed to decide the revision petition filed by the petitioner-

appellant.

4. It is also expected that the Deputy Commissioner will not repeat this stand in such of the revision petitions that are pending before him after

remand because the orders of the Tribunal are binding on him.

5. The appeal is accordingly allowed. The order of the learned Judge is set aside. The writ petition is also allowed. In the circumstances, there will

be no order as to costs.

6. Writ appeal and writ petition allowed.

