

(1993) 10 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No. 15955 of 1993 and W.M.P. No. 24682 of 1993

Khan Plastics

APPELLANT

Vs

State of Tamil Nadu and another

RESPONDENT

Date of Decision : 28-10-1993

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 13, 13(2), 16, 24

Citation : (1994) WritLR 402

Hon'ble Judges : M.S. Janarthanam, J

Bench : Single Bench

Advocate : Mrs. Nalini Chidambaram and N. V. Balasubramanian, Junior, S.V. Subramanian, for S. Sivanandam, V. Ramachandran and C. Natarajan, R.L. Ramani and K.M. Vijayan, for the Appellant; M.C. Govindan, Government Advocate (Taxes), for the Respondent

Judgement

Janarthanam, J.—M/s. Khan Plastics, Coimbatore (petitioner), a registered dealer under the Tamil Nadu General Sales Tax Act, 1959 (for short "the TNGST Act") has been assessed by the Commercial Tax Officer, Perur Circle, Coimbatore-18 (second respondent) for the assessment years 1988-89, 1990-91 and 1991-92 and the tax effect for those years was to the tune of Rs. 12,67,726. Aggrieved by the said assessment orders, the petitioner, it is said, filed three appeals before the Additional Appellate Assistant Commissioner (CT), Coimbatore and they are stated to be pending. Pending such appellate proceedings, the second respondent issued distraint order in form No. I in Va. Vi. No. 211972/88-89, 90-91 and 91-92 dated August 18, 1993 demanding payment of arrears of tax due for the assessment years as aforesaid forthwith, or otherwise, the property attached would be brought for sale and the amount of arrears realised.

2. Questioning such action of the second respondent, the petitioner resorted to the present action impleading also the State of Tamil Nadu (first respondent) praying for issue of a writ of certiorari to quash the same contending that the revenue recovery proceedings pending disposal of the appeals are not legally

permissible.

3. The petitioner also filed W.M.P. No. 24682 of 1993 praying for stay of all further proceedings by enforcement of the distraint order, pending disposal of the writ petition.

4. When the writ petition, along with W.M.P. came up for admission on August 25, 1993, this Court directed Mr. T. Ayyasamy, learned Government Advocate (Taxes) to take notice and accordingly he did so.

5. Mr. S. Sivanandam, learned counsel appearing for the petitioner then submitted with all vehemence that resortment to recovery of tax, by initiation of revenue recovery proceedings under the Revenue Recovery Act, pending appeals, is an extreme step and the property of the petitioner-assessee, if sold in such proceedings, being in the nature of distress sale, would fetch only a distress price, with bleak or no possibility of restoring the status quo ante, in case the petitioner-assessee succeeds in those appeals and therefore it is but proper for this Court to admit the writ petition and grant stay of recovery of tax, pending disposal of the writ petition.

6. The fervent appealing argument so made, of course, apparently touches one's heart and evokes sympathy to invoke the extraordinary equitable jurisdiction under article 226 of the Constitution of India, in rather a bid to avoid injustice being counsel to the petitioner-assessee and that perhaps was the reason for a Division Bench of this Court by way of obiter, without any reference to the various provisions of the TNGST Act, expressed such a view in a different context in the case of *Estee Hubs & Drives (P) Ltd. v. Assistant Commissioner (CT)* [1988] 70 STC 345 on which, implicit reliance is placed upon and I, on my part, feeling that such an argument, if analysed, in the light of the specific provisions adumbrated under the TNGST Act will not hold water and also entertaining an opinion that since such a question of signal importance of day-to-day application in courts of law in tax matters should be discussed threadbare and a solution to be found out, gave notice to the Members of the Bar, inviting them to place their points of view on such a vital question and the Bar, in fact responded nicely in making submissions therefore.

7. An array of notable learned Senior Counsel, namely, Mr. V. Ramachandran and Mr. C. Natarajan, learned Senior Standing Counsel for Income Tax, Mrs. Nalini Chidambaram, and other learned counsel, namely, Mr. N. V. Balasubramanian, learned Junior Standing Counsel for Income Tax, Mr. R. L. Ramani and Mr. K. M. Vijayan, besides Mr. M. C. Govindan, learned Government Advocate (Taxes) participated in a lively discussion by submissions of their arguments in a scintillating fashion, but for which, my task could have been more hazardous in solving the tangle posed.

8. The petitioner also availed the services of learned Senior Counsel Mr. S. V. Subramanian, who reiterated by projection of the earlier submission, made for and on behalf of the petitioner initially, when the matter came up first in point of

time for admission, with renowned vigour and force by drawing attention of this Court to the case of *C. Kuppuraj v. Deputy Commercial Tax Officer* (1992) 1 MTCR 330, in which a learned Judge of this Court implicitly followed the earlier Division Bench decision in the case of *Estee Hubs & Drives (P) Ltd. v. Assistant Commissioner (CT)* [1988] 70 STC 345. Learned Senior Counsel, in all fairness, also referred to the case of *Maligai Lotteries v. State of Tamil Nadu* (1993) 3 MTCR 327, in which another learned Judge of this Court, in distinguishing the Division Bench decision of this Court in *Estee Hubs & Drives (P) Ltd. v. Assistant Commissioner (CT)* [1988] 70 STC 345 as well as the decision of a learned Judge of this Court in the case of *C. Kuppuraj v. Deputy Commercial Tax Officer* (1992) 1 MTCR 330, took a view contrary to that taken in them. After referring to the case of *Maligai Lotteries v. State of Tamil Nadu* (1993) 3 MTCR 327, learned Senior Counsel would say that the distinguishing features brought about by the said learned single Judge to take a contrary view do not appear to be correct, inasmuch as the material provisions as relatable to the recovery of the tax or other amount due u/s 24 of the TNGST Act remained intact, notwithstanding the fact that the said section was substituted by the Tamil Nadu Act 78 of 1986, which came into force on January 1, 1987.

9. Two shades of opinions were focussed for consideration by learned Members of the Bar, who participated in the discussion; one supporting the view, as held by learned Senior Counsel Mr. S. V. Subramanian appearing for the petitioner and the other holding a contra view, bristling to this :

In a taxing statute like the TNGST Act, there is no question of any emotive appeal to equity, for application of general principles of law, in effecting recovery of tax or other amount due under the taxing statute, without reference to the specific provisions, adumbrated therein, which alone will govern the situation.

10. In a bid to solve the tangle posed in the case on hand, in the light of the emergence of rival submissions, let me now enter into the arena of discussion to have a glance or glimpse of the various provisions adumbrated under the TNGST Act.

11. A scheme under the TNGST Act had been devised for the tax to be assessed, levied and collected by the enactment of statutory provisions, in the shape of certain sections and the rules framed under the Tamil Nadu General Sales Tax Rules, 1959 (for short "the TNGST Rules") by

(1) creating charging provisions such as sections 3, 4, 5, 6 and 7 :

(2) making provisions for procedure to be adopted for assessment and payment of tax therefore and revision of assessment such as sections 12, 13 and 16 of the TNGST Act and rules 15, 16 and 18 of the Tamil Nadu General Sales Tax Rules;

(3) devices or methods to be adopted for collection of the tax due or payable or other amounts due under the TNGST Act, by the creation of charge on the properties of the dealer-assessee, besides making interest to run, unless in the

absence of any direction for suspending or postponing payment of interest, pending appeal or revision, as the case may be and for recovery of such tax or other amounts as an arrear of land revenue or on application to any Magistrate, as if it were a fine imposed by him, in the sense of not resorting to both the modes simultaneously, but confining to anyone of them, at a time, without, however, prejudice to any other method of collection, as had been provided for under sections 24 and 26;

(4) making provisions for conferment of right of appeal and revision to various authorities under sections 31, 31-A, 33 and 35 to 38 to the parties affected, by reason of an order of assessment or revision of assessment or on any other contingency, as had been contemplated specifically empowering such authorities to give such directions, as they think fit in regard to the payment of tax before the disposal of the appeal or revision, as the case may be, although preference and pending of an appeal or revision is not a bar for collection of tax or other amounts due or payable;

(5) empowering u/s 29 of the TNGST Act the territorial Assistant Commissioner or an Assistant Commissioner (Assessment) to have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864 - for short "the RR Act") for the purpose of recovery of any amount due under the TNGST Act and also to have the powers of the Commissioner under the Madras Rent and Revenue Sales Act, 1839 (Central Act 7 of 1839), for the sale of the property distrained for any amount due under TNGST Act, of course, subject to the control and superintendence of the Deputy Commissioner and the Commissioner of Commercial Taxes.

12. A bird's eye view of the scheme for the collection of the tax or other amount due under the TNGST Act, as aforesaid, may further be elucidated, in order to drive home the point with reference to the relevant statutory provisions.

13. A survey of the provisions adumbrated under sections 12, 13, 16, 24, 26 and 29 and rules 15, 16 and 18 indicates, in unmistakable terms, that the assessment of a dealer shall be on the basis of the prescribed return relating to his turnover and such return must have to be filed, unless he has elected or is liable to be assessed by the method described in rule 18 on or before the first day of May of every year. A dealer electing to be assessed under rule 18 shall submit a return showing the total and taxable turnover for each month and the amount or amounts collected actually by him by way of tax or taxes during that month and along with the return, he shall also submit proof of payment for the full amount of tax or taxes for the month to which the return relates, of course, after deducting therefrom the amount, if any, claimed as refund due to him.

14. Sub-section (1) of section 24 prescribes that the tax assessed or has become payable under the TNGST Act from a dealer or person or any other amount due from him under this Act in such manner and in such instalments, if any, and within such time, as may be specified in the notice of assessment or demand, not

being less than twenty-one days from the date of service of the notice. It is noticeable that this sub-section starts with a saving clause expressed in the phraseology, namely, "Save as otherwise provided for in sub-section (2) of section 13" and further goes on to say in the latter half of the said sub-section that the tax under sub-section (2) of section 13 shall be paid without any notice of demand. It may be recapitulated here that the tax due under sub-section (2) of section 13, relating to the advance tax, is to be paid by the dealer during the year on the basis of his actual turnover for each month under rule 18, in lieu of tax provisionally determined in sub-section (1) thereof. To put it in a nutshell, assessment and notice of demand are necessary in respect of tax due under the TNGST Act, except in the case of advance tax to be paid pursuant to the provisions, adumbrated under sub-section (2) of section 13, coupled with rule 18. In default of such payments, the whole of the amounts outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or interest under the TNGST Act.

15. Worthy it is to note at this juncture that any penalty or interest payable under this Act shall be deemed to be tax under this Act for the purpose of collection and recovery, as had been provided u/s 25.

16. It may be emphasised here that the correctness or otherwise of the tax or the other amount due under this Act is not to be tested by way of appeal or revision, before ever recovery proceedings are initiated and to put it otherwise, the amount due never ceases to be due or eclipses even temporarily the moment an appeal or revision is filed and such tax due or other amount payable under the TNGST Act, apart from being a charge on the properties of the person or persons liable to pay tax, is also immediately recoverable through any one of the modes indicated, namely, as land revenue or on application to any Magistrate, as if it were a fine imposed by him under sub-section (2) of section 24.

17. In addition to anyone of the modes to be pressed into service, it is also permissible to resort to the recovery of the tax due or other amount payable by resorting to garnishee proceedings u/s 26.

18. It is of some signal significance to take note of here that interest at two per cent per month for the amount of tax due or payable for the entire period of default, as had been provided by sub-section (3) of section 24.

19. u/s 29, a territorial Assistant Commissioner or an Assistant Commissioner (Assessment) is specially invested with the powers of Collector under the RR Act for the purpose of recovery of any amount due under this Act. The phraseology,

"for the purposes of recovery of any amount due under this Act"

occurring therein, also gives an indication or clue that the tax due or other amount payable is immediately recoverable under the modes prescribed under the TNGST Act without waiting for ultimate determination of such tax or other

amount due either by way of appeal or revision or any other proceedings before a competent court.

20. No doubt true it is that a dealer-assessee, affected by an order of assessment or revision of assessment, is given a right of appeal or revision, depending upon the exigency of the situation. Sections 31, 31-A, 36 and 37 deal with appeals respectively to the Appellate Assistant Commissioner, Deputy Commissioner, Appellate Tribunal and Special Tribunal.

21. Likewise, sections 33, 35 and 38 deal with revisions respectively to Deputy Commissioner, Joint Commissioner and Special Tribunal. Excepting revision before the Special Tribunal u/s 38, appellate or revisional authorities under any of the sections, as catalogued above, has been invested with the discretionary power by enacting suitable provision in the respective sub-section itself, to give such directions as they think fit in regard to the payment of tax before the disposal of appeal or revision, as the case may be and if the assessee-dealer furnishes sufficient security to their satisfaction in such form and in such manner as may be prescribed.

22. Such a provision had been considered by superior courts of jurisdiction as "stay provision", although the word "stay" had not at all been specifically used therein. It is to be recapitulated at this juncture the sanguine provisions adumbrated under the proviso to sub-section (2) of section 24, which reads as under :

"Provided that no proceedings for such recovery shall be taken or continued as long as he has, in regard to the payment of such tax, other amount or fee, as the case may be, complied with an order by any of the authorities to whom the dealer or person has appealed or applied for revision, u/s 31, 31-A, 33, 35, 36, 37 or 38."

23. A cursory perusal of the appeal or revisional provisions also indicates in no uncertain terms that the preference of the appeal or revision is no bar for recovery of tax due or other amount payable in accordance with the order of assessment, unless by way of a specific direction, collection of tax due or other amount payable, sought to be recovered, is stayed, pending disposal of the appeal or revision, as the case may be.

24. Unlike such a provision, there is a salient provision, in the shape of proviso (2) to sub-section (3) of section 24 postponing payment of interest the moment the appeal or revision, as the case may be, had been preferred and the said proviso runs as under :

"Provided further that where a dealer or person has preferred an appeal or revision against any order of assessment under this Act, the interest payable under this sub-section, in respect of the amount in dispute in the appeal or revision, shall be postponed till the disposal of the appeal or revision, as the case may be, and shall be calculated on the amount that becomes due in accordance

with the final order passed on the appeal or revision as if such amount had been the subject-matter of the appeal or revision."

25. The legislative wisdom in postponing payment of interest, as referred to in the proviso extracted, had not been extended to, by the enactment of similar provision as to the postponement of payment of tax due or other amount payable under this Act the moment appeal or revision had been preferred. But, on the contrary, the Legislature, in its wisdom, made such amount of tax or other amount payable to be immediately recoverable by indicating the modes of recovery, besides creating a charge on the properties of the assessee and running of interest, as adverted to earlier, and also simultaneously enacting provisions under sub-section (4) of section 24 and rule 23-A for refund of excess tax collected, as found by the appellate, revisional, reviewing or other authority, as contemplated, with interest at a specific percentage per annum, under certain contingencies referred to therein.

26. No doubt true it is that the above cited decisions of this Court had not at all taken into consideration any of the provisions, as referred to above, in expressing an opinion as to the recovery or otherwise of the tax or other amount due or payable pending appeal or revision, as the case may be and such being the case, the opinions express therein, cannot be of any help or assistance in advancing the case of the petition to any extent whatever.

27. The interpretative approach to be adopted in respect of a taxing statute is getting revealed by the classic statement of Rowlatt, J., in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64 and the apex Court of this country had an occasion to refer to and extract such a classic statement in paragraph (8) of its decision in the case of *Commissioner of Income Tax v. Shahzada Nand and Sons* AIR 1966 1342 and it runs as under :

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." To this may be added a rider, in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. "The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just or expedient."

28. The Supreme Court, in the process of consideration of the duty of the court to interpretation of statute and dealing with the effect and importance of the maxim "ut res magis valeat quam pereat" in the case of *The Commissioner of Sales Tax, U.P. Vs. Mangal Sen Shyam Lal*, said thus :

"A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made

it". From that function, the court is not to resile. It has to abide by the maxim *ut res magis valeat quam pereat*, lest the intention of the Legislature may go in vain or be left to evaporate into thin air. Where that intent is clearly expressed in the language of the Act, there is little difficulty in giving effect to it. But where such intent is covert and couched in a language which is imperfect, imprecise and deficient, or is ambiguous or enigmatic and external aids to interpretation are few, scanty and indeterminate, the court may, despite application of all its experience, ingenuity and ratiocination, find itself in a position no better than that of a person solving a cross-word puzzle with a few given hints and hunches. In such a situation, a mere reference to the High Court of a question for opinion may not afford an adequate solution. Only legislative amendment may furnish an efficacious and speedy remedy."

29. With the rules of construction, as extracted above, in mind, the tangle posed in the instant case, if approached, is capable of being solved, with ease and grace, and without any difficulty whatever, in stating that the legislative intent had been clearly expressed without any doubt whatever, by incorporation of various and relevant provisions of the TNGST Act, which fell for consideration in the arena of discussion *supra*, that the interest payable on tax due under the TNGST Act alone gets postponed by the mere preference of appeal or revision, as the case may be, and the tax due or other amount payable, under the TNGST Act never ceases to be due or eclipsed even temporarily the moment appeal or revision, as the case may be, is filed, unless and until recovery of such tax due or other amount payable had been stayed by issuance of specific directions by the appellate or revisional authority, pending disposal of appeal or revision, as the case may be.

30. In the instant case, admittedly, no specific direction was made by the appellate authority suspending or postponing the collection of the tax due or other amount payable by the petitioner-dealer, though appeals are pending. That being the case, recovery proceedings initiated by the second respondent by the impugned distraint order cannot be stated to be not in accordance with law.

31. Before parting with the case, I will be failing in my duty, if I do not pen down my reflections as respects the assistance rendered by every learned counsel, who participated in the lively discussion relating to the tangle posed in this case and no exaggeration it is, to say, all of them excelled in their own inimitable style by making submissions - either for or against - *par excellence* and in all splendours - but for which, it could not have been that much easy, as to marshall ideas in a logical sequence to arrive at a conclusion, as had been done in this case. At the same time, I, however feel, I cannot remain a silent spectator without giving vent to an expression of a special mention as to the strenuous efforts made by Mr. C. Natarajan, learned Senior Counsel, in activating himself, heart and soul, by sparing time, amidst his multifarious career obligation, by projecting his arguments, with incisive precision and clarity to the core, associated with his usual fairness, daunted with the one and only laudable

motive of assisting the court in arriving at a just and reasonable conclusion in accordance with the mandates of law.

32. The discussion, as above, would lead one to the irresistible conclusion of dismissal of this writ petition even at the admission stage and as such, the same is dismissed accordingly. Consequently, W.M.P. is also dismissed. There shall, however, be no order as to costs, in the circumstances.

33. Petitions dismissed.