(1997) 08 MAD CK 0120

In the Madras High Court

Case No : Writ Petition No. 2150 of 1984, W.A. No. 1147 of 1992 and C.M.P. No. 12188 of 1992

K.L.N. Krishnan APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 13-08-1997

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 26

Citation : (2003) 133 STC 402

Hon'ble Judges : Shivaraj Patil, J;R.R. Jain, J

Bench : Division Bench

Advocate : K.J. Chandran, for the Appellant; R. Mohadevan, Government Advocate (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

Shivaraj Patil, J.—Heard learned counsel for the parties. The appellant filed W.P. No. 14999 of 1990 seeking a writ of certiorari to call for and quash the proceedings in R.O.C. No. 3177/83-A2 dated August 20, 1990. The learned single Judge of this Court by an order dated July 3, 1992 dismissed the writ petition. This writ appeal is directed against the said order of the learned single Judge.

2. The learned counsel for the appellant urged as follows :

(1) On an earlier occasion when a writ petition was filed challenging the recovery of the amount due from the appellant, in W.P. No. 2150 of 1984 the learned Government Pleader stated that the notice issued on January 27, 1984 in form No. 1 was withdrawn. Recording the said submission, the writ petition was dismissed. Hence it was not open to the respondent again to issue a notice for recovery, on the very basis, when no liberty was reserved for the respondent to take proceedings again for recovery of the amount due towards tax.

(2) In the order of assessment originally passed, the assessing authority had specifically stated that the question of waiver would be separately considered.

But without considering the question of waiver, the recovery proceedings are initiated under the impugned notice in the writ petition which is bad according to the learned counsel for the appellant.

(3) The order passed refusing to waive certain amounts on June 25, 1983 relating to assessment years 1970-71 to 1978-79, without notice and without hearing the appellant, is in violation of principles of natural justice.

3. Per contra, the learned Government Advocate argued in support and in justification of the order passed by the learned single Judge. He pointed out that, as can be seen from paragraph 4 of the order passed by the learned single Judge which is under appeal, liberty is reserved to the appellant to raise the contentions that are available to vindicate his rights. This being the position, the order of the learned single Judge may not be interfered with.

4. We have considered the submissions made by the learned counsel for the parties. It is true that on an earlier occasion, the writ petition filed by the appellant in W.P. No. 2150 of 1984 was dismissed placing the submission of the learned Government Pleader on record that the notice which was challenged in the writ petition, was withdrawn. But we are unable to agree with the contentions of the learned counsel for the appellant that no second notice could be issued for recovery of the amount due towards tax. For the simple reason that there is no legal principle that once notice given for recovery of tax arrears cannot be issued again, unless that there is express provision of law that second notice for recovery of amount cannot be issued or such a notice could not be issued beyond the particular period of limitation. Hence we reject the first contention of the learned counsel for the appellant.

5. So far as the contentions 2 and 3 are concerned, in our view, they can be dealt with together. It is not the case of the appellant that the representation made for waiver based on G.O. Ms. No. 4 and G.O. Ms. No. 103 were not considered. As can be seen from the orders dated June 25, 1983 relating to assessment years 1970-71 to 1978-79 found on pages 6 to 16 in the typed set of papers filed by the appellant, each one of the orders dated June 25, 1983 shows the tax due from the appellant and the tax eligible for waiver and also the balance. These orders though related to various assessment years 1970-71 to 1978-79, they were passed on June 25, 1983. If the appellant was aggrieved by the rejection of the claim for waiver either in entirety or in part, nothing prevented the appellant from challenging the same before the competent authority/court. If there was no provision either to file an appeal or revision before the authority concerned, it was open to the appellant to approach this Court challenging the same. In the earlier writ petition No. 2150 of 1984 the proceedings in R.O.C. No. 3177/83-A3 dated August 16, 1983 were questioned and sought for quashing of the notice in Form No. 4 therein dated January 27, 1984.

6. The learned single Judge in the order under appeal has clearly stated that the

action is proposed u/s 26 of the Act to attach the bank account of the appellant to realise the arrears. In paragraph 4 of the said order, the learned Judge has reserved liberty to the appellant to urge all the contentions that are available as and when the department actually initiated the proceedings for recovery u/s 26 of the Tamil Nadu General Sales Tax Act. This being the position whatever grievance the appellant has, he can urge the same when the proceedings are actually initiated. At this stage we must mention the other submission of the learned counsel for the appellant that there is nothing on record to issue notice once again action is taken u/s 26 to attach bank account.

7. In the light of the order of the learned single Judge, it is clear that it is open to the appellant to make all submissions as and when notice is issued u/s 26 of the Act. The appellant gets support in this regard from the very order of the learned single Judge. In the event such representations are made, the appropriate authorities will consider the same on merits and in accordance with law. In this view, we do not find any merit in the writ appeal. Hence it is dismissed. No costs. Consequently, C.M.P. No. 12188 of 1992 is also dismissed.

8. The dismissal of the writ appeal does not come in the way of the appellant urging the contentions that are available to him in response to the action that may be taken u/s 26 of the Act.