(2005) 12 KL CK 0043

In the High Court Of Kerala

Case No : W.A. No. 2407 of 2005

Koyamu APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 15-12-2005

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

Citation : (2006) 1 ILR (Ker) 751 : (2006) 1 KLT 543 : (2007) 8 VST 65

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; Raju Joseph, Spl. Government Pleader for Taxes, N. Ratheesh and Suma Ratheesh, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Writ Petition was preferred by the appellant challenging the constitutional validity of Section 26A of the Kerala General Salestax Act, 1963 and also for a writ of certiorari to quash Ext. P6 order dated 13.07.2004 informing that the sale effected in favour of the petitioner is hit by Section 26A of the Act.

2. Revenue recovery proceedings were initiated against one Kuruniyan Kunhalankutty, assessee bearing R.C.No 3211 and 3086 for realisation of sales tax arrears amounting to Rs. 44,46,093.00 pertaining to the years 1990-91. Revenue recovery steps have been initiated against him from the year 1992 onwards and hence his properties are liable to be proceeded with for recovery of sales tax dues. Assessee. in order to defeat the claim under the Kerala General Salestax Act, had sold his property to the writ petitioner on 28.10.1993.

3. Assessee was engaged in the manufacture and sale of sandalwood oil, rosewood oil, ginger oil, pepper oil, cardamom oil etc. Assesses was conducting the business in the name of Delta Handicrafts during the year 1987-88 till 1990-91. While so, he was served with demand notice dated 7.11.1992

demanding Rs. 2,27,168/-. Assessee did not pay the amount and hence revenue recovery proceedings were initiated during the year 1992-1993. However, during the year 1992-1993 Intelligence Officer (I.B) Kozhikode had inspected the business place of the dealer at Anakkayam and found huge suppression of the business turnover amounting to Rs. 1,04,28,282.00. Revenue recovery proceedings were initiated to recover the said amount as well. When steps were taken to recover the amount from the assessee and also from his properties it was noticed that the assessee had already transferred the landed properties to the petitioner herein on 28.10.1993. Consequently District Collector, Malappuram directed the Tahsildar, Ernad to proceed with the revenue recovery proceedings treating the transfer void. Notice u/s 44 of the Revenue Recovery Act was issued to the petitioner as well. Petitioner then approached this Court by filing W.P.C.No 38947 of 2003 challenging the notice. This court disposed of the writ petition on 11.12.2003 directing the petitioner to make representation before the Tahsildar. Tahsildar considered the report and the same was rejected and the petitioner was served with another notice through the Village Officer on 29.11.2003. Petitioner then filed W.P.C. No 4473 of 2004 against the attachment of landed properties. That Writ Petition was disposed of by this Court directing the petitioner to file representation before the Tahsildar, Ernad and directing the Tahsildar to give an opportunity of being heard to the petitioner. Petitioner was served with a notice and he was heard and Ext. P6 order was passed. Same has been challenged in these proceedings raising identical grounds.

4. Constitutional validity of Section 26A has already been upheld by this Court in Jaya Vs. State of Kerala, . Counsel appearing for the writ petitioner however submitted that though this Court has directed proper consideration by the authorities, they have passed Ext. P6 order without taking into consideration the various contentions raised by the petitioner. Consequently counsel submitted that the matter be remanded back to the authority for fresh consideration. Counsel also submitted that the petitioner was not served with the details of amounts due from the petitioner in the event of which he could have saved the property by arranging payment through the assessee. Relevant details, according to the petitioner, have not been furnished in the Section 44 notice.

5. Counsel for the Revenue on the other hand contended that the assessee had executed the sale deed on 28.10.1993 so as to defeat the claim of the Sales Tax Department. Counsel submitted that an amount of Rs. 44,46,093.00 is due towards sales tax arrears and it is after initiating the steps for recovery the property was transferred, after the arrears fell due. Consequently counsel submitted there is no obligation on the part of the Department even to issue notice u/s 44 since Section 26A would attract the moment the property is transferred to defeat the claim under the Kerala General Salestax Act.

6. We find force in the contention of the counsel for the Revenue. Section 26A is reproduced below for easy reference.

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 or transfer shall be void as against any claim in respect of any tax or any-other sum payable by the assessee under this Act.

Section 26 A makes it clear that any transfer during the pendency of any proceeding under the Kerala General Salestax Act would make such transfer void as against any claim in respect of any tax or any other sum payable by the assessee under the Act. Section 26A contemplates no notice either to the transferor or to the transferee of the property, but makes the transaction void. There is no provision in the Kerala General Salestax Act casting an obligation on the revenue authorities or the sales tax officials to inform the transferee with regard to the amount due from the transferor. If the transferee wants to save the property, responsibility is on the transferee to discharge the liability either by himself or to take steps to see that the transferor pays the amount. Revenue recovery authorities are always free to proceed against the property for recovery of the amount since the transfer of the property effected by the defaulter is void.

7. In any view, notice u/s 44(2) of the Revenue Recovery Act has been served on the petitioner on 29.11.2003 and he has replied vide letter dated 2.12.2003 disowning his liability. In such circumstances, we find no infirmity in the proceedings initiated by the respondents to recover the amount. Appeal therefore lacks merits and the same would stand dismissed.

