**(1973) 02 MAD CK 0044**

**In the Madras High Court**

**Case No :** Civil Revision Petition No. 2764 of 1972

K.S. Velayutha Nadar APPELLANT

Vs

South India Tobacco Company RESPONDENT

**Date of Decision :** 02-02-1973

**Acts Referred:**
Income Tax Act, 1961 — Section 54

**Citation :** (1973) 86 LW 704 : (1973) 32 STC 202

**Hon'ble Judges :** Kailasam, J

**Bench :** Single Bench

**Advocate :** K. Venkataswami, First Assistant Government Pleader, R. Arunagirinathan, of Raj and Raj, for the Appellant; R. Thyagarajan, for the Respondent

## Judgement

Kailasam, J.—The defendant is the petitioner. This petition is filed against the order of the court below directing reception of certain documents that have been produced by the sales tax department in evidence. The documents that were summoned and directed to be received in evidence are documents Nos. 1 to 6 described in the application, I. A. No. 469 of 1972 filed by the plaintiff. The plea taken by the defendant is that these documents are privileged documents u/s 57of the Madras General Sales Tax Act, 1959 and, therefore, they cannot be marked in evidence. Section 57(1) of the Madras General Sales Tax Act runs thus :

57. (1) All particulars contained in any statement made, return furnished or accounts, registers, records or documents produced under the provisions of this Act or in any evidence given or affidavit or deposition made, in the course of any proceeding under this Act or in any record of any proceeding relating to the recovery of a demand, prepared for the purposes of this Act shall be treated as confidential and shall not be disclosed.

2. Sub-section (2) of Section 57 provides that nothing contained in Sub-section (1) shall apply to the disclosure of any such particulars for purposes mentioned

therein. Clause (iv) of Sub-section (2) is to the effect that the prohibition in Sub-section (1) will not apply to the disclosure of any such particulars to a civil court in any suit to which the Government are party and which relates to any matter arising out of any proceeding under this Act. A reading of Section 57(1) along with Sub-section (2), Clause (iv) thereof, shows that the officer to whom disclosures are made u/s 57(1) shall treat such disclosures as confidential and shall not disclose them except in a civil suit to which Government are party and which relates to any matter arising out of any proceeding under this Act. The effect of this section is that the documents that ate prohibited u/s 57(1) should be treated as confidential and should not. be disclosed. It was sought to be contended that this prohibition is only against disclosure by the officer and it would not restrict the powers Of the court to direct the officer to produce the documents that, may be covered u/s 57(1). This plea cannot be accepted, for Section 57 clearly prohibits the officer from disclosing the material that falls u/s 57(1) and the officer cannot disclose it, when he is prohibited u/s 57(1). The court will also be not in order in directing the officer to produce the documents which he is statutorily prohibited from producing u/s 57. The prohibition against the disclosure is relaxed only in a suit in which the Government is a party and which relates to any matter arising out of any proceeding under this Act. The prohibition against disclosure in respect of civil suits not falling under Clause (iv) of Sub-section (2) of Section 57 would continue. The contention that there is prohibition only against disclosure by the officer and there is no such restriction on the court and, therefore, the court can summon and in obedience of the summons the officer can disclose the documents cannot be accepted.

3. In support of his contention, a decision of this court in Parvathi Ammal v. Mari Reddiar [1966] 17 S.T.C. 243 , is relied on. The learned Judge on a comparison of Section 57(1) of the Madras General Sales Tax Act with Section 54(1) of the Indian Income Tax Act came to the conclusion that as there was no clause in the Madras General Sales Tax Act analogous to Section 54(1) of the Indian Income Tax Act prohibiting the court from requiring any public servant to produce before it any of the prohibited documents, the power of the court to summon the documents could not be denied. The learned Judge, while observing that as there is no prohibition in Sub-section (1) of Section 57 of the Madras General Sales Tax Act against courts calling for records of the type mentioned in that sub-section, there should be no objection to marking in evidence such documents, has not taken note of the statutory prohibition against the officer from disclosing the document. Section 57(1) specifically prohibits an officer from disclosing any of the documents mentioned therein. Apart from Section 57(1) of the Madras General Sales Tax Act, it is significant to note that Section 54(1) of the Indian Income Tax Act, while stating that the documents shall be treated as confidential, does not contain the prohibition that the officer shall not disclose. In my view, therefore, neither the officer can disclose nor the court can summon and admit in evidence any of the documents that are prohibited by Section 57 of the Act.

 

4. So far as the present case is concerned, there can be no objection to the court admitting in evidence items 1 to 5 which do not fall u/s 57(1) of the Act. So far as item 6 is concerned, namely, assessment files relating to the assessment of K. S. Velayutha Nadar for the years 1952-53 up to 1971-72, it may contain documents that are referred to in Section 57(1) of the Act and, therefore, it cannot be permitted. If the respondent wants any particular document to be summoned and admitted in evidence, the court will consider whether such document is prohibited u/s 57(1) of the Act and decide whether it should be admitted or not.

5. In the result, the petition is allowed so far as item 6 of the documents mentioned in I. A. No. 469 of 1972 is concerned and dismissed as regards the rest. There will be no order as to costs.