
(1960) 10 MAD CK 0012

In the Madras High Court

Case No : City Civil Court App. No. 90 of 1957

K.S. Venkataraman and Co. Ltd.

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 10-10-1960

Acts Referred:

Contract Act, 1872 — Section 12B, 18A, 72

Citation : AIR 1961 Mad 322 : (1961) 1 MLJ 163 : (1961) 12 STC 138

Hon'ble Judges : Ramachandra Iyer, J;Rajagopalan, J

Bench : Division Bench

Advocate : T.T. Srinivasan and A.N. Rangaswami, for the Appellant; Govt. Pleader and N.S. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—The plaintiff-appellants were building contractors. For the assessment years 1948-49 to 1952-53 the appellants were

assessed to sales tax under the Madras General Sales Tax Act on the turnover of their works contracts computed in accordance with the rules

framed under that Act. Subsequently, in Cannon Dunkerley and Co., (Madras) Ltd. v. State of Madras, 1954 5 S.T.C. 216 : (AIR 1954 Mad

1130), this court held that the legislative provision in the Sales-tax Act for treating works contracts as involving taxable sales was ultra vires the

legislature and that there was therefore no valid legislative sanction for taxing the turnover "of such works contracts with reference to buildings.

That was confirmed by the Supreme Court in the The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., . After the declaration of

the law on the validity of the legislative provision to tax works contracts by this court, the plaintiffs instituted the suit, out of which this appeal arises,

for recovery of the amounts paid by them for the assessment years we have referred to above. That claim was resisted by the State.

2. The learned trial Judge upheld the pleas of the defendant-State. The learned Judge upheld the claim that Section 72 of the Indian Contract Act

did not authorise the plaintiff to recover the payments because these were payments made not under a mistake of fact but under a mistake of law.

The learned Judge further upheld the plea of the State, that Section 18-A of the General Sales-tax Act barred the jurisdiction of the civil court to

investigate the claim for refund of the tax paid by the plaintiffs, though it now transpires there was no legal basis for the levy or collection of those

taxes. The learned Judge also took the view, that the plaintiff's claim was governed by Article 62 of the Limitation Act.

3. The plaintiffs, whose suit was dismissed, appealed.

4. The first of the contentions of the State will have to be negated in view of the authoritative pronouncement of the Supreme Court in the Sales

Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf, , which explained the scope of Section 72 of the Contract Act. That covers

payments made under a mistake of law as well.

5. The second of the defences we have mentioned above is however well founded, and we are of the view, that the learned Judge was right in

applying the principle laid down by the Privy Council in Raleigh Investment and Co. Ltd. v. Governor-General in Council, AIR 1947 PC 78 : 1947

2 M.L.J. 16. The Madras General Sales-tax Act provided a complete, machinery, which included a revision to the High Court u/s 12-B of the

Act, in which the question of the legislative competence to enact the definition of works contracts could be considered and decided. As pointed

out by the Privy Council in AIR 1947 P.C. 78, though it might not be a conclusive factor it helped to considerable extent in defining the scope of

the ban imposed by a statutory provision like Section 67 of the Income Tax Act, or what we have to consider now, Section 18-A of the Madras

General Sales-tax Act.

6. Learned counsel for the appellants contended that in the absence of a valid legislative sanction for the levy of sales-tax on the turnover of works

contracts the assessments should be treated as nullities, and that Section 18-A of the Sales-tax Act did not cover such cases. It was precisely such

a contention that was negated by their Lordships of the Privy Council in AIR 1947 P.C. 78. They pointed out that it made no real difference in

principle whether the legislative provision under which a tax was levied or purported to be levied was intra vires or ultra vires the legislature. The assessment was made.

The commencement of the assessment or as their Lordships called it the provenance of assessment proceedings, was under the Act, which by one

of its express provisions, ousted the jurisdiction of the civil court to examine the validity of the assessment made after such a commencement. The

position is just the same u/s 18-A of the General Sales-tax Act. As we pointed out earlier the constitutional validity of the purported legislative

sanction for taxing the turnover of works contracts could have been decided under the provisions of the Act itself, in proceedings u/s 12-B of the

Act, by the High Court.

Therefore, Section 18-A of the Act came into play, and it barred the jurisdiction of the civil court from dealing with the question of refund, which

necessarily involved an assessment being set aside.

There can be no question of the refund being granted so long as the assessment stood and though no specific request was made for setting aside

the assessment, the suit necessarily involved the assessment being set aside before the relief claimed could be granted. Such an investigation

Section 18-A of the Act barred.

7. Learned counsel for the appellants referred to Bhailal Bhai v. State of Madhya Pradesh, 1900 11 S.T.C. 511 , and particularly to the

observations of the learned Judges at page 522. The learned Judges referred to AIR 1947 P.C. 78, as explained by the Supreme Court in The

State of Tripura Vs. The Province of East Bengal, . Their Lordships of the Supreme Court affirmed the correctness of the principle laid down in

AIR 1947 P.C. 78, but pointed out that that would not apply to a case, where preventive action was sought -by way of an injunction to levy

assessment under an illegal statutory provision. With all respect to the learned Judges of the Madhya Pradesh High Court we are unable to accept

as correct what they laid down :

It however seems to us that in principle no real distinction can be drawn between a suit for a declaration that any of the provisions relating to

assessment are ultra vires and for an injunction restraining the taxing authority from nuking assessment and suit for the same declaration seeking the relief of repayment of the tax already paid.

It should be noted the learned Judges of the Madhya Pradesh High Court dealt with the claim of refund under Article 226 of the Constitution and

these observations, that a suit for a refund would have been permissible, constituted only obiter dicta. Even as obiter dicta we are unable to accept

that the correct principle was laid down there. As we pointed out the Supreme Court certainly did not differ from the Privy Council, which

explained the position with reference to Section 67 of the Indian Income Tax Act in its decision already cited. The principle laid down in AIR 1947

P.C. 78 applies in enforcing the ban enacted by Section 18-A of the Madras General Sales-tax Act.

8. In view of what we have said above, that the plaintiffs' suit was barred by Section 18-A of the Act, it is not necessary for us to pronounce any

concluded opinion of ours on the question raised by learned counsel for the appellants, that it is not Article 62, but Article 96 of the Limitation Act

that should govern the plaintiffs' case.

9. The appeal fails and is dismissed with costs.