(1971) 08 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No''s. 1971 and 1975 of 1969

L. Sundaresan APPELLANT

Vs

The Board of Revenue (C.T.) RESPONDENT

Date of Decision : 20-08-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu General Sales Tax Act, 1959 — Section 33, 45, 46

Citation : (1972) 29 STC 691

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : T.S. Viswanatha Rao, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—The petitioner is a dealer within the meaning of the Tamil Nadu General Sales Tax Act, 1959. On 1st October, 1969, the Deputy Commercial Tax Officer, Thanjavur II, finding that the petitioner was effecting sales of goods in his shop without issuing a bill, issued a notice u/s 46 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act"), and called upon the petitioner to pay the compounding fee of Rs. 100. This notice was based on the objective satisfaction of the officer that a contravention of Section 45(2)(d) read with Rule 26 of the Rules made under the Act had occurred. The petitioner did pay the compounding fee of Rs. 100 but he filed a revision petition to the Deputy Commissioner of Commercial Taxes u/s 33 of the Act questioning the propriety of the levy of the compounding fee. That was dismissed. A further revision to the Board of Revenue, Madras, was not successful. The petitioner has come up to this court under Article 226 of the Constitution stating that in cases where the statutory authorities decide to exercise their option to demand a composition fee instead of prosecuting the person for the offence with which he is charged, then it is imperative that before any such action is initiated, he should have been directed to do so by the Deputy Commissioner of Commercial

Taxes and the Board of Revenue under Rule 53 of the Tamil Nadu General Sales Tax Rules, 1959, and as no such action has been taken in the instant case, the action initiated by the assessing authority and later confirmed by the revisional authorities is illegal and has to be quashed by the issue of a writ of certiorari. Though other legal contentions about the vires or the legality of Section 45 have been raised, they are not pressed before me. The contention is repeated before me by the learned counsel for the petitioner that before any action is taken u/s 46, it should be preceded by a direction for the purpose by the Deputy Commissioner of Commercial Taxes and the Board of Revenue.

2. Section 46 gives an option to the prescribed authority to give to any person who has committed or is reasonably suspected of having committed an offence under the Act, an option to pay within a specified period by way of composition of such an offence, a sum of money as prescribed u/s 46(1)(a) or (b), or to face a prosecution. Offences under the Act are explained in Section 45 and it includes any contravention of any of the provisions of the Act.

3. In the instant case, the petitioner admittedly sold goods without issuing a bill. His explanation that the purchaser went away in a hurry without receiving a bill was accepted. Therefore, the prescribed authority when it caused the inspection of the petitioner''s business premises when the above event happened, reasonably suspected the petitioner as having committed an offence under the Act. He gave him the option to pay the compounding fee which was indeed paid by the petitioner. The petitioner''s case is that no demand for such a composition fee could be made unless so directed by the Deputy Commissioner of Commercial Taxes and the Board of Revenue. Reliance is placed upon Rule 53 of the Rules made under the Act. Rule 53 runs as follows:

The Assistant Commercial Tax Officer, the Deputy Commercial Tax Officer, the Joint Commercial Tax Officer and the Commercial Tax Officer may exercise the powers specified in Section 46 of the Act subject to the control and direction of the Deputy Commissioner of Commercial Taxes and the Board of Revenue.

4. The argument, therefore ; proceeds that unless and until the Deputy Commissioner of Commercial Taxes and the Board of Revenue in each case directs the other officials functioning under the statute to exercise their option, and levy a compounding fee, any such initiation of proceedings by the other officers u/s 46 is prima, facie illegal. I am unable to agree. Rule 53 is only a rule of prudence more for purposes of laying certain broad guidelines by the Deputy Commissioner of Commercial Taxes or the Board of Revenue for the other statutory functionaries who would generally be prompted to act, to be guided thereby. It is not as if every such direction issued by the Board or the Deputy Commissioner, as the case may be, is a binding one on the other officers, for if it has to be understood as such and so binding, then Section 46 would be violated. This is so because it is the prescribed authority which should exercise the option to call for a compounding fee in lieu of prosecution and it is not the case of the petitioner that the prescribed authority is the Deputy Commissioner of

Commercial Taxes or the Board of Revenue. If the contention of the learned counsel for the petitioner is accepted, the prescribed authority would have no choice at all in the matter, but on the other hand, he would be led by the directions of the Board of Revenue or the Deputy Commissioner of Commercial Taxes, as the case may be, and he will cease to exercise his independent judgment which he has to exercise by himself under the statute. As a matter of fact, the Board of Revenue has made this position very clear in its order when it said that the direction if at all which the Board of Revenue could give can only be a general direction about the nature and class of the offences that could be compounded, and the nature and class of offences that could not be compounded, but should be prosecuted in a criminal court, and generally the range of compounding fees in a particular class of offences. It is also made clear that such directions have been issued without interfering with the individual discretion and judgment of the officers concerned though such directions have been kept as confidential instructions. The position having thus been made clear by the Board of Revenue that such directions are purely general and mostly administrative in nature, the petitioner cannot complain that the condition precedent for the prescribed authority to exercise its jurisdiction u/s 46 is a presence of a direction, by the Board of Revenue to act in a particular way or manner. I have already stated that such a direction, even if given, would be ultra vires of the Board''s powers because they cannot substitute their discretion to that of the discretion of the prescribed authority who is the primary statutory authority to so exercise its option and call for the compounding fee.

5. Even otherwise, the petitioner cannot have a grievance. Under the scheme of the Act, the Deputy Commissioner is a revisional authority against any order passed by an officer in the lower rung and against which no appeal has been provided for under the Act. The imposition of a compounding fee u/s 46 is one such provision. The revision is to the Deputy Commissioner, and as against the order of the Deputy Commissioner there is a further revision to the Board of Revenue. These are the two authorities that are expressly mentioned in Rule 53 of the Rules and if the prescribed authority acting u/s 46 deliberately violates any administrative direction issued by the Deputy Commissioner of Commercial Taxes and the Board of Revenue, as the case may be, then whilst reviewing such orders in revision, either the Deputy Commissioner or the Board would naturally correct the prescribed authority. This result also flows from the prescribed procedure dealing with the subject under consideration. This being the position, the argument that a compounding fee can be levied only if the prescribed authority has been so directed by the Deputy Commissioner or the Board of Revenue is without substance.

6. The rule nisi is, therefore, discharged and the writ petition is dismissed. There will be no order as to costs.