
(1963) 11 MAD CK 0038
In the Madras High Court
Case No : Writ Appeal No. 270 of 1962

M. Ct. Muthiah and Another	Vs	APPELLANT
Deputy Controller of Estate Duty, Southern Zone		RESPONDENT

Date of Decision : 13-11-1963

Acts Referred:

Estate Duty Act, 1953 — Section 73

Citation : AIR 1964 Mad 364 : (1963) 48 ITR 1 : (1964) 77 LW 61

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Ramakrishnan, J

Bench : Division Bench

Advocate : R.H. Seshadri and V. Thiyagarajan, for the Appellant; S. Ranganathan, for the Respondent

Final Decision : Allowed

Judgement

S. Ramachandra Iyer, C.J.—This appeal arises out of proceedings initiated under Article 226 of the Constitution with regard to a penalty

imposed on an accounting party under the provisions of the Estate Duty Act It is unnecessary to set out in detail the history of the levy of the duty

and of the payment made towards it. On the death of the father of the accounting party the estate was assessed to duty and a sum of Rs.

1,29,749.54 was found due after credit being given to a payment of a small sum. This the accounting party was directed to pay before 10-1-1959.

A substantial portion of the amount, viz., Rs. 1,10,965.31 was paid within the time permitted. The accounting party then approached the authority

for the grant of time for the payment of the balance. That authority granted time till 5-3-1959.

2. It will be apparent from the order granting time that the accounting party was entitled to pay the balance before the close of the day on 5-3-

1959, till which date the authority itself has given time. Curiously enough on the 5th itself the Deputy Controller made an order levying a penalty of

Rs. 11000 for non-payment of the balance of duty due. There can obviously be no failure to pay when the accounting party had still time till the end

of that day to pay the amount. Therefore the order levying the penalty cannot be regarded as valid.

3. Srinivasan, J. appears to have thought that by an earlier letter the accounting party was directed to pay immediately and the time given till 5-3-

1959 would not avail him. This view in our opinion is not supported By the terms of the letter of the Deputy Controller dated 24-2-1959, on which

reliance has been placed, and the relevant portion of which runs thus:

Please note that if the duty is not paid immediately, in any case on or before 5-3-1959 I shall be constrained to resort to the penal provisions of

the Act.

Far from supporting the case of the authorities, it is clear that the accounting party was given time till 5-3-1959 to deposit the balance duty

payable. It will therefore be incompetent for the Deputy Controller to pass the order levying the penalty in the case; such an order would be

tantamount to an anticipation of failure on the part of the accounting party to pay up the duty. Penalty can be levied only on failure to pay duty; not

in anticipation of it. The appellants are entitled to the issue of a writ in terms prayed for, and, the order levying penalty will be quashed. There will

be no order as to costs.