(1985) 01 MAD CK 0043

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 7502 of 1983

Madras Medicals and General Suppliers — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 08-01-1985

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 24(2), 24(2)(b)

Citation : (1987) LW(Cri) 243

Hon'ble Judges : Singaravelu, J

Bench : Single Bench

Advocate : M. Ravindran, for the Appellant; Kannappa Rajendran, Govt. Advocate (Crl. side) on behalf of the State, for the Respondent

Judgement

Singaravelu, J.—This is an application under S 482 of the Criminal Procedure Code by the accused for quashing the proceedings in C.T.M.P. No. 179 of 1976 on the file of the XVI Metropolitan Magistrate, George Town, Madras.

2. A few facts may be stated for appreciating the point in controversy. The petitioner herein Saravanan and his brother were partners in a firm known as Madras Medicals and General Supplies. The other partner died and on his death, the partnership was dissolved. The respondent, viz., the Commercial Tax Officer issued demand notice and initiated proceedings under S. 24(2)(b) of the Tamil Nadu General Sales Tax Act against the petitioner. The learned Magistrate issued a distress warrant to attach the movables of the petitioner herein whereupon he filed Crl.M.P. No. 253 of 1977 on the file of this Court to quash the proceedings. Interim stay was ordered and when the quash petition came up for final hearing, the petitioner represented to the Court that he will pay his share of the admitted arrears due and that the proceedings against him may be dropped. Accordingly, the petitioner paid one-half of the amount being his share demanded by the Department and the Commercial Tax Officer has filed a petition before the trial court accepting the same and further added that no amount of arrears was due from the petitioner for that financial year. Consequently, the Commercial Tax

Officer prayed that C.T.M.P. No. 179 of 1976 may be treated as withdrawn so far as the present petitioner is concerned.

3. Thereupon, the petitioner herein withdrew his quash petition and the matter ended there. It is then stated that two year? thereafter the Department issued demand notice to the petitioner for recovery of the other half of the amount, and it had taken proceedings under S. 24(2) of the Act and also under the Revenue Recovery Act. The petitioner feels aggrieved by this and there fore, he has come forward with this application for quashing C.M.P. No. 179 of 1976.

4. I have heard Learned Counsel for both parties. There is no dispute regarding the facts of the case. In other words, it is not disputed that the petitioner has paid his half share of the tax due from the firm. It is also not disputed that under the present proceedings, the Department has resorted both under S. 24(2) of the Tamil Nadu General Sales tax Act and also under the provisions of the Revenue Recovery Act. Learned Counsel for the petitioner drew my attention to the decision reported magadeeswart Oil Trading Company v. Asst. Comml. Tax Officer (1983) S.T.C. 125 (Mad.), wherein a single Judge of this Court held that the authority cannot invoke both the provisions concurrently and simultaneously. I agree with the view of the learned Judge and, on this short ground, the proceedings before the Court are liable to be quashed.

5. That apart, as already referred to, the petitioner has paid his portion of the arrears of tax amounting to Rs. 22,182 and the Department accepted it and has clearly put in a memo to the effect that no amount of arrears is due from this partner for that year. Therefore, it is not open to the Department to proceed against the petitioner for recovery of the remaining half of the arrears due from the other partner who is now no more. However, it is open to the Department to recover the other half as tax payable for that year from the legal representatives of the other partner. Therefore, viewed in either way, the proceedings of the Department against the petitioner herein are not sustainable and they are liable to be quashed.

6. Accordingly, proceedings under S. 24(2) of the Tamil Nadu General Sales Tax Act against this petitioner in C.T.M.P. No. 179 of 1976 are quashed.

