

(1960) 01 KL CK 0032
In the High Court Of Kerala
Case No : O.P. No. 519 of 1958

N.K. Dharmaraja Iyer

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 12-01-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 72

Citation : AIR 1960 Ker 287 : (1960) 11 STC 170

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : C.S. Ananthakrishna Iyer, for the Appellant; Govt. Pleader for Respondents 1, 3 and 4, V. Balakrishna Eradi, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

S. Velu Pillai, J.—The petitioner was assessed to sales-tax, for the year 1953-54 by the sales-tax Officer, IInd Circle, Trichur, erstwhile Travancore-Cochin State by order Ext. P-I. dated 27-1-1956, on a total net turnover of Rs. 89,443-11-3 on no return submitted by him, but on an examination of his books of account, repelling his contention, that turnover to the extent of Rs. 65,908-0-6 was on account of inter-state sales. He submitted a return of turnover on account of inter-state sales for a Period which covered also the year 1953-1954 to the second respondent, the Deputy Commercial Tax Officer. Special Circle, Madras, and although he had pleaded before him, that he had been taxed by the former Travancore-Cochin State on the same turnover, he was assessed to sales-tax, by order Ext. P-2 dated November 15, 1956.

Not being able to realise the tax, the second respondent requested the third respondent, the District Collector, Trichur, to initiate proceedings against the petitioner under the Revenue Recovery Act, who accordingly caused a memo Ext. P-4 dated May 20, 1958, to be issued to the petitioner, through the fourth

respondent, the Deputy Tahsil-dar of Mukundapuram, Trichur District. This petition is to auash Exts. P-2 and P-4. and to issue an appropriate writ, direction or order to the first respondent the State of Kerala either to adjust the amount of the claim with the second respondent or to refund the same to the petitioner.

2. A preliminary objection was taken, that no writ could issue to bring up Ext. P-2 for quashing it, as the second respondent is outside the territorial limits of the jurisdiction of this court, and as the petitioner had not exhausted the remedies under the Madras General Sales-tax Act, 1939 against Ext. P-2. if it was an improper assessment, and that therefore the petitioner can have no relief against respondents one three and four. A number of decided cases were relied on in support of these contentions, and the learned counsel for the petitioner had only one answer to them, failing which, the preliminary objection has to prevail.

He maintained, that where the order passed by the authority situated outside the State which is sought to be enforced against an authority within the State, is plainly illegal, as ex facie devoid of jurisdiction, the order of the former authority need not be quashed, but may be ignored and relief may be granted against the latter, on the principle, which has found acceptance in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, that there can be no agency in the matter of commission of a wrong. Granting that the principle has any application, it was admitted, that the petitioner can succeed on this contention only if it can be shown, that on the face of it Ext. P-2 is lacking in jurisdiction.

His learned counsel was only able to point out, that in Ext. P-2, there is no finding, that the delivery of the goods sold took place in the Madras State so as to constitute interstate sales; but in my view, the material finding in Ext. P-2 implies this, the finding being, "for the year 1953-54 their accounts disclosed a net turnover..... under interstate sales to buyers in Madras State." It is not possible to infer, that the second respondent was not aware of the ingredients of interstate sales in recording this finding in Ext. P-2, It may be mentioned, that it was in pursuance of a notice for submitting a return of interstate sales, that the petitioner made a return for the amount of the turnover in question. Ext. P-2 cannot therefore be assailed, as wanting in jurisdiction, on the face of it. In this view, the learned counsel for the petitioner had no further answer to the preliminary objection, which must therefore prevail.

3. It was next contended that the first respondent must be compelled to adjust the amount of the tax collected with the second respondent, or refund the same, and Section 72 of the Indian Contract Act which reads:

"A person to whom money has been paid or anything delivered, by mistake or under coercion, must repay or return it" was pressed into service, relying on *Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf*, In that case, the respondent was assessed to sales-tax, also on forward contracts in silver bullion for a particular year, but the levy of sales-tax on such contracts, was later held to be illegal.

The respondent thereupon moved the High Court under Article 226 for a writ of certiorari quashing the assessment order and for a writ of mandamus requiring the appellant the Sales-tax Officer, to refund the amount of the tax collected from him. The assessment orders were quashed by the High Court, but the Advocate-General raised the further contention, which was also negated, that the amount having been paid by the respondent under a mistake of law, could not be recovered by him.

When the matter came before the Supreme Court, an objection taken by the Additional Solicitor-General, that other remedies which were available under the U. P. Sales-tax Act not having been pursued, the respondent was not entitled to relief, was overruled, as it appeared that this objection had been abandoned by the Advocate General, in the High Court. The court then proceeded to hold, that u/s 72 of the Indian Contract Act, the respondent's claim for refund was well-founded. It will be observed, that the vital distinction in the present case is, that the assessment order Ext. P-2 stands, and cannot be quashed by me. There is therefore no scope for the application of Section 72 of the Indian Contract Act. The petitioner has therefore to be denied any remedy; but he had his remedies for improper assessment in both jurisdictions, of which he did not avail himself.

4. This petition is therefore dismissed, but in the circumstances without costs.