Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 30/08/2026

(2001) 09 MAD CK 0103

In the Madras High Court

Case No : Writ Petition No''s. 20771 of 1999 and W.M.P. No. 30491 of 1999

P. Abimanyu and Another APPELLANT

Vs

T.K. Suriya Prakash and Others RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 51
Tamil Nadu General Sales Tax Rules, 1959 — Rule 42

Citation : (2003) 130 STC 85

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : Santharam and Natarajan, for the Appellant; T. Ayyasami, Special Government Pleader, for the Respondent

Judgement

1.The petitioners were partners in a partnership firm which they claim was dissolved under a deed dated December 31, 1991, with effect from an

anterior date. Notice of that dissolution was not given to the assessing authority. At the time of dissolution, there were three partners. It is the case

of the petitioners that the first respondent Suriya Prakash, who was the other partner, despite the dissolution deed, carried on business in the name

of the firm in association with one Pandurangan with whom he had already entered into a partnership on January 18, 1991 and had filed monthly

returns with the department, till the end of the assessment year 1992-93.

2. In the assessment for the assessment year 1992-93 which was completed on October 15, 1993, a demand was raised by the authorities against

the petitioners for the payment of the tax arrears of the firm. At that point, the petitioners rushed to the Civil Court and sought a declaration that the

firm had already been dissolved and that such dissolution had been effected on and from October 24, 1990. The assessing authority was made a

party to that suit. The court ultimately declined to restrain the assessing officer from proceeding with the statutory functions under the Act, but held

that the dissolution of partnership was acceptable to the court, but in view of Section 51 of the Act, the declaration given by it would not come in

the way of the statutory authorities exercising their functions under the Act.

3. After the judgment of the court of the Additional District Munsif, Srivilliputhur on August 28, 1997, a fresh demand was raised against the

petitioners.

4. The petitioners'' challenge before the Special Tribunal having failed, the Tribunal''s order is assailed before us.

5. Section 19 of the Act deals with the liability of firms. Sub-section (1) thereof provides that where any firm is liable to pay any tax or other

amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

6. Section 19-A of the Act deals with the liability to tax of partitioned Hindu family, dissolved firm, etc., and provides, inter alia, that where a firm

is dissolved, the tax payable under the Act for the period up to the date of dissolution shall be assessed as if no such dissolution had taken place. It

further provides that every person who was a partner of such firm as also his legal representatives in case of death of any partner shall,

notwithstanding the dissolution of the firm, be liable for the payment of the tax and other amounts payable under the Act.

7. Rule 40 of the Rules framed under the Act requires a firm seeking registration, to furnish a declaration in form No. IX, signed by all the partners

stating the names and addresses of all the partners and their respective shares in the business. Rule 42 provides that if a partnership is dissolved,

every person who was a partner at the time of dissolution shall send within 30 days of such dissolution, a report of the dissolution to the registering

authority and to the assessing authority.

8. There is no specific provision in the Act providing for deeming a dissolved firm to continue to exist even after the date of the dissolution, in case

the form required to be filed under Rule 42 is not filed.

9. The limit of the power which the authorities can exercise under the statute is that which is spelt out in the substantive enactment. That power

cannot be stretched and enlarged by any rule made under the Act. All rules must aid the carrying out of the purpose of the Act and must operate

within the limit demarcated by the provisions of the Act.

10. Rule 42 therefore, cannot be read as having the effect of deeming a dissolved firm to continue to exist even after dissolution, solely on the

ground that report of the dissolution was not sent to the registering authority or to the assessing authority.

11. The Tribunal did not go into the question as to whether the dissolution is genuine and as to whether, as claimed by the assessee, a new firm had

come into existence with Suriya Prakash and Pandurangan and that that firm carried on trade in the name of the firm of which the petitioners had

been partners. The assessing authority has also had no occasion to examine the claim of the assessees. The fact that the authority was a party to

the suit filed by the petitioners cannot be regarded as the occasion where the assessing authority was required to decide for itself as to whether the

dissolution in fact had taken place.

12. Having regard to the nature of the case pleaded by the assessees we direct the assessing authority to examine all the documents on which the

assessees rely in support of their claim that the firm had been dissolved on December 31, 1991. If he is satisfied that those documents are in fact

genuine, an exercise which he shall carry out keeping in mind the adjudication that has already been made by the Civil Court, then the liability of the

assessees shall be limited to the date of that dissolution, ignoring the provision therein that it shall be deemed to have taken effect from an earlier

date. Such determination by the authority will not in any manner disentitle the authority to proceed against the firm of which Suriya Prakash and

Pandurangan were partners and recover the tax due from them to the extent it remains outstanding.

13. From the records it is seen that Suriya Prakash had applied for being declared as insolvent. The further proceedings if any in that regard is also

a matter which the assessing authority should ascertain in order to lodge his claim against the estate of the said Suriya Prakash. It is open to the

assessing authority to proceed against Pandurangan, who is said to be the other partner after the authority is satisfied that the said Pandurangan had

in fact been inducted as a partner in the year 1991.

14. The assessee shall, within four months from today, furnish a statement to the authority showing the amounts payable towards tax up to

December 31, 1991 and shall also make payment. The authority shall proceed with the determination of the facts which he is directed to

determine, expeditiously, and proceed against those concerned for the recovery of tax for the period subsequent to December 31, 1991. The writ

petition is disposed of accordingly. W.M.P. is closed.

Petition disposed of accordingly.

