(1983) 08 KL CK 0016

In the High Court Of Kerala

Case No : O.P. No. 4227 of 1982G

Ramachandran APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 05-08-1983

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 23

Citation : (1984) 55 CompCas 590 : (1984) 55 STC 209

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : S. Vijayan Nair, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Paripoornan, J.—The petitioner is one of the directors of a private limited company, named "Ravathy Exports (Pvt.) Ltd." This original petition has been filed praying for the issue of a writ of prohibition to restrain the respondents from enforcing recovery of any money against the petitioner in pursuance to Ex.P-1 notice and also to quash Ex. P-1 notice. Ex- P-1 notice is one under the Revenue Recovery Act and is dated June 2, 1982, The movable property of the defaulter, named therein (the petitioner herein), is sought to be proceeded against for arrears of sales tax amounting to Rs. 65,201.80. The said amount of sales tax is due for the year 1976-77, as a result of an assessment order effected on the company. The petitioner''s case is that he is not the defaulter and for arrears of tax due from the company, he cannot be proceeded against. The recovery proceedings, evidenced by Ex. P-1 is attacked as illegal and unauthorised.

2. No counter-affidavit has been filed by the respondents in the original petition. It is the definite averment of the petitioner that he is not an assessee to sales tax and no amount of sales tax is due and payable by him. In the absence of a counter-affidavit, the averments contained in the original petition have to be prima facie accepted. The definite case of the petitioner in the original petition is

that he cannot be proceeded against for the amount of Rs. 65,201.80, being the arrears due from the company. Learned Government pleader, Mr. Hassan, who appeared at the time of hearing, was not able to convince me by reference to any provision of law which enables the Revenue to proceed against the petitioner who is only a director of the company, personally, for arrears of sales tax due from the company, which is a distinct and different legal entity. So, in the light of the uncontroverted averments in the original petition, I hold that Ex. P-1 notice, issued against the petitioner in his personal capacity is unauthorised and illegal. Ex. P-1 is quashed. The respondents are restrained by the issue of a writ of prohibition from proceeding with any recovery proceedings against the petitioner in his personal capacity.

3. I should make it clear that this will not prevent or disable the Revenue from proceeding against the company for recovery of the arrears or against the petitioner if it is shown or substantiated that he has got the properties of the company ; nor will this prevent the Revenue from taking recovery proceedings against the company and its assets in accordance with law. The original petition is allowed. There shall be no order as to costs.

