

(1971) 04 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No. 1622 of 1968

Southern Textiles Ltd.

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 15-04-1971

Acts Referred:

Income Tax Act, 1961 — Section 226(3)

Citation : (1972) 83 ITR 790

Hon'ble Judges : Ramaprasada Rao, J; Ramanujam, J

Bench : Division Bench

Advocate : V. Vedantachari and T. Raghavan, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

Ramaprasada Rao, J.—The petitioner is a limited company incorporated under the provisions of the Indian Companies Act and is having its

office at Coimbatore. It placed certain orders with Messrs. Textool Company Ltd., Coimbatore, for the supply of ring frames and machinery

according to certain noted specifications. The terms agreed upon between the petitioner on the one hand and Messrs, Textool Company Ltd. on

the other, inter alia, were that a sum of Rs. 35,000 should be paid as advance and the balance against the arrival of invoices; a stipulated time of

delivery was prescribed and that erection should be carried out by Messrs. Textool Company Ltd. free of cost. We are not extracting or referring

to the other terms of the contract as they are not relevant. It is common ground that Messrs. Textool Company Ltd. supplied certain machinery

which is characterised by the petitioner as five ring frames. The further case of the petitioner is that, thereafter, Messrs. Textool Company Ltd. did

not supply further machinery under the contract nor the spare parts annexed to

such a supply and did not erect the frames as contemplated under the contract. It should be remembered that the supply was in August, 1965, for which purpose Messrs. Textool Company raised an invoice against the petitioner in the sum of Rs. 2,90,913.41 under its invoice dated August 31, 1965. In the affidavit there is a categorical statement that the petitioner paid the amount to Messrs. Textools as per the invoice. But, it is followed up by the contention that, as the ring frames had been rejected, the petitioner is entitled to the said sum paid from Textool Company Ltd. Whilst this was the position, Messrs. Textools became liable to pay a large sum by way of Income Tax. The Income Tax Officer, City Circle 1(2), Coimbatore, gave notice to the petitioner u/s 226(3) of the Income Tax Act, 1961, stating that Messrs. Textools owed the sum of Rs. 3,45,000 on account of Income Tax instalments, advance tax and penalty and called upon the petitioner under the aforesaid statutory provision to pay the said amount forthwith which was held by the petitioner on account of Textools. The reply of the petitioner could be better appreciated by extracting the same:

We are in receipt of your above notice asking us to pay a sum of Rs. 3,45,000 standing to the credit of Messrs. Textool Company Ltd., in our books. It is true that the books show such a sum as due to that company, since they have supplied the frames to us. But the frames could not be commissioned due to some defective supply of some part or other defects. They have been reminded of these defects and we learn that they will shortly be sending their technicians to set right the matter so as to enable us to commission the frames. Until then, we are sorry that we may not be able to pay them anything. Till the defects are set right, they cannot demand any money for the supply. We shall certainly arrange to pay the amount to you on their account when the company becomes entitled to claim the same from us.

2. Here, the petitioner's case is that it is true that a large sum or at any rate the sum demanded was due to Messrs. Textools. But, they negatived their responsibility to pay the sum claimed by the revenue on the ground that though it was debited in praesenti it has to be solved in future due to certain defects in the supply and due to certain legal obligations not complied with by Messrs. Textools. Apparently, on receipt of information that

such a notice was sent by the revenue to the petitioner, Messrs. Textools in their letter dated August 23, 1967, made it clear that in any event a sum of Rs 2,64,401.41 was indisputably due by the petitioner to them and requested the petitioner to pay at least that amount in partial compliance of the demand raised by the Income Tax Officer. But, the petitioner did not pay any amount and, thereafter, raised a specific plea that the rings supplied were not in accordance with the specifications, that there were certain defects therein and that in consequence of the non-erection of the machinery as undertaken by Messrs. Textools, they have practically rejected the goods and, hence, they are not legally obliged to respect the amount said to be payable by them to Textools and in that behalf, disclaimed any responsibility to pay over such alleged dues to the revenue as demanded by the Income Tax Officer. But, as the Income Tax Officer was pursuing the statutory remedies available to him and even sent the tax recovery certificate to the second respondent for recovery of the said amount claimed by him earlier u/s 226 of the Income Tax Act, the petitioner has come up to this court for the issue of a writ of mandamus directing both the respondents to forbear from enforcing the recovery of the amount claimed pursuant to the provisions of the Income Tax Act, 1961.

3. This is a case in which the revenue has raised a demand against the petitioner who is undoubtedly in the position of a garnishee as popularly understood. But the petitioner's case is that as at present no amount due and payable by the petitioner to Messrs. Textools and as the liability is denied no process can be issued by the Income Tax Officer under the provisions of Section 226 of the Income Tax Act or under any other provision thereunder. Their case is that they have rejected the goods and, though the affidavit glibly says that the amount was payable by the petitioner to Messrs. Textools, yet, in reality, no such amount is payable either under the contract or otherwise. That is a matter which has to be investigated. We, exercising jurisdiction under Article 226 of the Constitution, in our discretion, are not inclined to enter into that portion of the controversy between the parties which is alien for the consideration of the real subject before us.

4. The bone of contention between the parties, as we appreciate from the material on record, is that the petitioner as garnishee says that the sum

demanded by the Income Tax Officer is not due to Messrs. Textools, the assessee, or, in any event, their case is that they do not hold any money for or on account of the assessee. The revenue, however, is insistent that the petitioner should be deemed to be a person legally responsible to pay the amount demanded by them to Messrs, Textools. But, as the petitioner has come up to this court even at the stage when the Income tax Officer did not fully go into the question so as to find whether the contention of the petitioner is bona fide, false or otherwise, the revenue did not have any opportunity to discover whether the statements made by the petitioner were false in any material particular. Section 226(3)(vi), read as a whole, lays, on the shoulders of the revenue, the responsibility to discover in cases like the one before us-whether the statements made by the garnishee are false in any material particular. That has not been undertaken so far by the revenue and it is not very clear from the record whether all the materials were placed by the petitioner and the assessee to enable the Income Tax Officer to discover the falsity or otherwise of such particulars made available before him. In those circumstances and as we are not inclined in our discretion to engage ourselves in such an enquiry for discovery, we refrain from making the rule absolute but would give a direction instead so that the matter may be readverted to by the Income Tax Officer in the correct perspective as required by law. We direct the Income Tax Officer to hear both the petitioner and the assessee and consider all the materials placed by the petitioner in particular and discover whether any or all of the statements made by the petitioner before the Income Tax Officer is or are false in any material particulars. If he discovers in the way indicated, then, he shall proceed u/s 226(3)(vi) and act accordingly. But, on the other hand, if he finds that the materials do not project any falsity in it or in them, then also he is bound to act under the first limb of Section 226(3)(vi). Till a final decision is rendered by the Income Tax Officer in exercise of the statutory powers, the recovery proceedings should be stayed and the tax recovery certificate issued by the first respondent to the second respondent may be recalled for the present. Even so, we make it clear that any amount already paid by the petitioner or recovered by the revenue shall not in any way be paid over to the petitioner until a final decision is arrived at.