
(1971) 06 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 1829 of 1967

T.A. Kuppuswami Chettiar

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 21-06-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu General Sales Tax Act, 1959 — Section 24

Citation : (1971) 28 STC 570

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : P.R. Ranganathan, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—The petitioner, a partner of an oil-mill at Bhavani, has filed this writ petition for the issue of a writ of prohibition preventing the authorities from enforcing and proceeding with the notice of attachment dated 5th June, 1967, issued as against the petitioner on the foot that a sum of about Rs. 58,000 and odd was due by the petitioner towards tax under the Tamil Nadu General Sales Tax Act and the Central Sales Tax Act for the years 1964-65 and 1965-66. The gravamen of the charge is that in the order of assessment, which is the foundation for the issue of the notice challenged in this writ proceeding, which apparently emanated under the Madras Revenue Recovery Act, the provisions of which are also attracted in case default is made in the payment of determined tax, the original authorities finally assessed the petitioner to tax on grounds which are neither proper nor legal and my particular attention was drawn to the fact that under the Central Sales Tax Act, 1956, for non-production of the C forms before the original authority the petitioner was directed to pay the full tax, which he is not obliged to pay as per the decisions of this Court. The learned Counsel for the petitioner adds that even the rate of tax imposed while levying the sales tax is not correct. For these reasons, it is stated that a writ of

prohibition has to issue restraining the authorities from demanding the so-called arrears reckoned in the manner stated above by invoking the provisions of the Madras Revenue Recovery Act.

2. It is by now well settled that the provisions of the Madras Revenue Recovery Act are invoked only if the tax is determined and the assessment proceedings are over. No doubt the word "assessment" includes every process, which is popularly includible therein, which starts from the date when the revenue calls upon a recalcitrant dealer to submit returns in case he fails to do so, or on the submission of such returns voluntarily by the assessee during any assessment year in question; this process ends with the final order of assessment either made by the original authority, or the appellate authority on appeal, or by any other statutory or other Tribunal in the higher rung of the hierarchy. But once a finality is thus reached in so far as the order of assessment is concerned, then it is not open to challenge when the revenue seeks to recover the arrears so reckoned and found in a final order of assessment by resort to the Madras Revenue Recovery Act. The proceedings contemplated under the Madras Revenue Recovery Act, as the name itself indicates, connote a method of recovery and, just as in a civil court the executing court has no power to challenge or correct the order sought to be executed through it, since other forums are there open to the aggrieved party to obtain redress, so also, if proceedings are taken under the Revenue Recovery Act, then it is equitable to a proceeding in execution and the aggrieved person cannot question its normal process and furtherance by stating that the order is not executable or enforceable as such since there are errors in it, either mathematical or otherwise. The petitioner, in the instant case, says that in view of the supervening decisions of the Supreme Court and of this Court, the non-production of the C forms at the threshold of the enquiry, or in any event, before the original authority, would not preclude the assessee from claiming the relief in a higher forum and this not having been borne in mind by the authorities when they purported to issue the impugned order, there is an apparent error. There is a fallacy in this argument. No one can take advantage of his own laches. If the petitioner has not availed himself of the statutory remedy of appealing against the original order of assessment and thus correcting it in that forum or in a higher forum, the respondents cannot be blamed for it. The respondents have taken the order as final as it has become final in the eye of law and have invoked the provisions of the Madras Revenue Recovery Act u/s 24 of the Tamil Nadu General Sales Tax Act, 1959. There is therefore no error of jurisdiction when the respondents have issued the impugned order. The petitioner if he had a remedy at all, had it before the forum other than the respondents. If he had not availed of such remedies, he cannot seek for such a relief under Article 226 either, for this would be by-passing the provisions of accredited statutes. The petitioner has allowed the original assessment to become final and it is this final order which is sought to be enforced by the respondents no doubt through the channel of the provisions of the Madras Revenue Recovery Act. There is no public duty enjoined upon the respondents to correct an order of assessment which has become final

because they have no jurisdiction to do so and indeed it would be improper to undertake any such correction. The respondents therefore not having erred in their public duty and having exercised jurisdiction under the provisions of the Tamil Nadu General Sales Tax Act, 1959, it cannot be said that the order challenged has to be injuncted by the issue of a rule of prohibition.

3. The rule nisi is discharged and the writ petition is dismissed. There will be no order as to costs.