(1953) 03 MAD CK 0030

In the Madras High Court

Case No : A.A.O. No. 583 of 1950

The State of Madras APPELLANT

Vs

A.M.N.A. Abdul Kader Tharaganar Firm RESPONDENT

Date of Decision : 17-03-1953

Acts Referred:

Limitation Act, 1908 — Article 16, 62
Madras General Sales Tax Act, 1939 — Section 18

Citation : AIR 1953 Mad 905 : (1953) 2 MLJ 181

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : Govt. Pleader, for the Appellant; T.R. Sangameswara Ayyar, for the Respondent

Final Decision : Dismissed

Judgement

Panchapakesa Ayyar, J.—I have perused the records and heard the learned counsel on both sides.

2. The only point for consideration is whether, in a suit like the one filed in this case, for recovery of Rs. 900, said to have been collected illegally from the plaintiff as sales-tax, by the defendant, the State of Madras, the suit would become barred by limitation in six months u/s 18, Madras General Sales-tax Act, or at least within a year under Article 16, Limitation Act, as contended by the defendant in the Courts below, or whether only Article 62, Limitation Act, giving three years, will apply, in which case, of course, there will be no question of limitation in this suit. The tax in this case was collected from the plaintiff on 27-5-1946, and the suit was filed only on 10-1-1948. So, if Section 18, Sales-tax Act applied, or Article 16, Limitation Act applied, the suit would be barred by limitation. The District Munsif, Tuti-corin, who tried the suit, (O. S. No. 38 of 1948) dismissed it as barred by limitation, on the ground that Article 16, Limitation Act and Section 18, Sales-tax Act would apply. The principal Subordinate Judge, Tuticorin, by his judgment in A. S. No. 109 of 1949, set aside

the order of dismissal and held that Article 62, Limitation Act alone would apply, and the suit would not be barred by limitation., and remanded the suit to the trial Court for fresh disposal after giving its findings on the other issues. This civil miscellaneous appeal has been filed by the State of Madras with a view to get an authoritative decision on the point of limitation in such cases.

3. I have absolutely no doubt that the learned Subordinate Judge was right in holding that Article 62, Limitation Act alone would apply, and that Section 18, Sales-tax Act and Article 16, Limitation Act would have no application in such cases. Section 18, Sales-tax Act runs as follows:

"No suit shall be instituted against the Crown, and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the Provincial Government in respect of any act done or purporting to be done under ihis Act, unless the suit, prosecution or proceeding is instituted within six months from the date of the Act complained of."

The very wording of that section will show that it is intended ''only to cover suits for compensation or damages against tortious or criminal acts committed by Government Officers or servants or by the Government itself'', and that it will not cover suits for refund of taxes illegally collected or alleged to be illegally collected, or even taxes collected in excess of sheer error. That stands to sense and common sense. Supposing, for instance, a clerk in writing out a demand order, put Rs. 9,000 for Rs. 900, and the person liable to pay the tax paid Rs. 9,000, and then filed a suit a year later for recovering the difference of Rs. 8,100, it will be sheer perversity to argue that Section 18 would apply and bar the suit as it was not filed within six months. It would be clearly a case falling within Article 62 giving three clear years, from the date of the excess payment, before limitation would operate. Fortunately, in this case, it is unnecessary to continue this discussion further, as there is a ruling of a Pull Bench of this Court in -- The Panchayat Board Vs. The Western India Matches Company by Agent Henrik Hybbidnettee, , which has held that Section 225, Madras Local Boards Act (14 of 1920), as amended by Act 11 of 1930, containing more or less the same provision and wording as Section 18 of the Sales-tax Act'', will be limited to suits for compensation or damages and will be inapplicable to suits against a local board for refund of the house-tax alleged to have been illegally collected. The principle of that ruling will apply to all cases" of taxes illegally collected, and not merely to house-tax due to local boards or all taxes due to local boards.

4. Nor can Article 16, Limitation Act have any application to a case like this, where the tax was merely recoverable as arrears of land revenue, and the claim was not made by the revenue authorities on account of arrears of revenue or on account of demand recoverable as such arrears, and where the tax also had been paid within the 15 days prescribed, and had not become a tax liable to be recovered as arrears of land revenue. So, the only article which can be applied properly to this case is Article 62, Limitation Act, which prescribes three years, from the date when the money was received by the defendant) as the period of

limitation. The jurisdiction of Civil Courts is of course, not ousted. See -- ''the Province o) The Province of Madras Vs. Chekka Satyanarayanamurthy, . So Article 62 will apply under the Full Bench ruling. The learned Subordinate Judge''s decision is correct. This appeal deserves to be and is hereby dismissed with costs.