(2006) 02 MAD CK 0305

In the Madras High Court

Case No : Writ Appeal No''s. 1608 to 1610 of 2005 and W.A.M.P. No''s. 2988 to 2990 of 2005 and W.A. No. 898 of 2005 and W.A.M.P. No. 1665 of 2005

The State of Tamil Nadu — APPELLANT

Vs

The Vikas Academy Director's Compound
The Sub Registrar, Davidson Street, Sowcarpet, Chennai - 69 and The District Revenue Officer (Stamps) Madras Collectorate, 5th Floor, 32, Rajaji Salai, Madras-1 Vs P.S.M. Ubaidulla — RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 02 MAD CK 0305

Hon'ble Judges : A.P. Shah, C.J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : A.L. Somayaji, A.A.G. Assisted by Mr. V. Raghupathy, Govt. Pleader and Mr. D. Krishna Kumar, Special Government Pleader, for the Appellant; Menon for M/s. Menon and Goklaney in W.A. Nos. 1608 to 1610 of 2005 and Mr. V. Raghavachari in W.A. No. 898/05, for the Respondent

Judgement

A.P. Shah, C.J.—The interpretation and application of the Samadhan Scheme introduced by the Tamil Nadu Government in G.O.Ms. No. 193, Commercial Taxes Department dated 27.12.2004 falls for our consideration in these appeals arising out of the common judgment and order passed by the learned single Judge dated 29.04.2005 (reported in S.M.S.A.A. Farooq Ali Vs. The Sub-Registrar, The District Revenue Officer (Stamps) and The Inspector General of Registrations, whereby it was held that the said Scheme would apply to proceedings pending at the appellate stage also, and it is not restricted only to proceedings pending before the original authority. The brief facts necessary to decide these appeals are as under:-

By the aforesaid Government Order, the Tamil Nadu Government took into consideration the arrears of stamp duty payable on deeds of sale, exchange, gift, etc. and had thought it fit to introduce the Samadhan Scheme under the Government Order. The respondents in these appeals, though they have suffered orders against them by the original authority, have filed appeals, and the appeals were pending when the Samadhan Scheme was introduced. The Competent Authority denied the benefit of the Samadhan Scheme to the respondents on the ground that the Scheme will be applicable only to proceedings pending before the original authority. Hence the respondents filed writ petitions under Article 226 to direct the appellants to extend the scheme to them. The learned single Judge by the impugned order allowed the petitions holding that the respective petitioners are entitled to the benefit of the Scheme. Hence these appeals.

2. Mr. A.L. Somayaji learned Additional Advocate General appearing for the appellants submitted that the Scheme is a self contained code and the Government Order contemplates remission to be given only in respect of proceedings which are pending before the original authority, and the proceedings which have been concluded before the original authority cannot be brought under the provisions of the Samadhan Scheme.

In this connection, the learned Additional Advocate General pointed out that Para 4(i) of the G.O makes the Scheme applicable only to cases pending determination of the market value before the Special Deputy Collector (Stamps), and since in the present case the proceedings were finally determined by the Special Deputy Collector before the passing of G.O the respondents were not eligible to take the benefit of the Scheme. It was submitted that the Scheme is in the nature of an exemption provision and that the principle that in the event of obscurity in a provision in a fiscal statute, the construction favourable to the assessee should be adopted is not applicable to construction of Samadhan Scheme, as it would be for the registrant to show that he came within the purview of the notification. In this connection, he placed reliance on the decisions of the Supreme Court in Tata Iron and Steel Co. Ltd. Vs. State of Jharkhand and Others, and Rajasthan Spinning and Weaving Mills Limited, Bhilwara, Rajasthan Vs. Collector of Central Excise, Jaipur, Rajasthan,

3. Mr. V. Raghavachari and Mr. Menon Lamed counsel appearing for the respondents respectively in both the appeals, however, emphasized that a reading of clause 4(iii) of the G.O clearly shows that it is only the proceedings which have reached the final stage and are pending at the stage of recovery of arrears of revenue under the Revenue Recovery Act alone are sought to be excluded from the benefits of the Scheme. Learned counsel submitted that any appeal pending before the competent authority exercising appellate powers is also a proceeding under the provisions of the Indian Stamp Act. and therefore any proceeding pending before any of the hierarchy of authorities mentioned under the Indian Stamp Act. will be a proceeding which will be covered by the provisions of the Government Order. It was submitted that the proceedings under the Revenue Recovery Act could be contemplated only after the entire process of adjudication and appeals are over and there being no further relief available, the

question of invoking the Revenue Recovery Act would not arise in proceedings which are pending by way of an appeal or a revision before the statutory authorities. Learned counsel placed heavy reliance on the decision of the Supreme Court in Union of India (UOI) and Others Vs. Onkar S. Kanwar and Others, Relying upon the above judgment, learned counsel contended that even assuming that there was any ambiguity and two interpretations were possible on the G.O. the benefits should be given to the assessee.

4. A look at the relevant provisions of the Samadhan Scheme is necessary to appreciate the contentions urged. The G.O. reads as follows: -

COMMERCIAL TAXES DEPARTMENT

G.O.Ms. No. 193 Dated : 27.12.2004

Read:

1. G.O.Ms. No. 35. Commercial Taxes Department, dated 26.2.1999.

2. G.O.Ms. No. 117, Commercial Taxes Department. Dated 26.9.2002.

Read also:

3. From the Inspector General of Registration. Chennai. Letter No. 29709/C2/04, dated 15.6.2004

ORDER:

Stamp duty on deeds of sale, exchange gift etc. is collected with reference to the market value of the property. Guideline Value Registers are provided to all Sub-Registrar Offices indicating the values of the landed properties'' in each street and survey number. When a document is presented for registration, the Sub Registrar verifies whether the value set forth in the document is in accordance with the guideline value and the Public Works Department Schedule of Rates. If the value set forth in the document is in accordance with guide line value and the PWD Schedule of Rates, the document is registered and returned to the registrant. If the value of the property set forth in the document by the registrant is below the guideline value in respect of the lands or below the PWD Schedule of Rates in respect of buildings, he is asked to pay the difference amount of stamp duty. In case the executants refuses to pay the difference, the document is registered but is referred to the District Revenue Officer (Stamps)/ Special Duty Collector (Stamps) appointed under the Indian Stamp Act, 1899 for determination of market value. It was reported to the Government that the number of documents referred to the District Revenue Officer (Stamps)/ Special Duty Collector (Stamps) has been increasing every year. However, disposal of such documents by the District Revenue Officer (Stamps)/ Special Deputy Collector (Stamps) is not keeping pace with the receipt of the documents. Consequently, revenue due to the State running into crores of rupees are getting blocked. The public are also put into inconvenience, being unable to get the original documents. In order to obviate the situation, a Samadhan Scheme was implemented in the State in the years 1999 and 2002.

2. According to the Inspector General of Registration, 46208 documents are pending with the District Revenue Officer (Stamps)/ Special Deputy Collectors (Stamps) for determination of market value as on 30.11.2004. On account of this, revenue by way of stamp duty amounting to crores of rupees due to the Government remain uncollected. In view of the present financial difficulty, it is practically not possible to appoint additional staff to speed up the work of determinations of market value of properties. In the above circumstances, the Inspector General of Registration has proposed to implement a Samadhan Scheme suggesting a remission of 40% of the difference of stamp duty between what is chargeable on the value of the property as proposed by the registering officer and the duty already paid, in order to unlock the blocked revenue to the Government in his letter 3rd read above.

3. The Government after careful examination have decided to accept the proposal of the Inspector General of Registration. Accordingly, they direct that 40% (Forty percent) of the difference of stamp duty between the duty already paid and what is chargeable on the value of the properties (both for land and buildings including chargeable assets) as proposed by the registering officer on the basis of the Guideline Register in respect of land and the PWD Schedule of Rates in respect of buildings, be remitted.

4. The Government issue the following - instructions in this regard: -

(i) Documents referred to the District Revenue Officer (Stamps)/ Special Deputy Collector (Stamps) under Set lions 47-A(1). 47-A(3) and 19-B(4) of the Indian Stamp Act, 1899 and pending with them for determination of market value as on 30.11.2004 and the documents registered and pending with the registering officers on the above said date for referring to the District Revenue Officer (Stamps)/ Special Deputy Collector (Stamps) for determination of market value are eligible for availing the concession under the scheme.

(ii) The stamp duty and the registration fee payable under the scheme shall be collected in the registering office itself.

(iii) The scheme will not be applicable to cases pending for recovery of arrears under the Revenue Recovery Act.

(iv) The scheme shall be implemented for three months from the date of notification.

5. The Scheme of the G.O is to cut short the proceedings pertaining to stamp duty, which were frittering away the energy of the Department, and to encourage assesses to come forward to pay a reasonable amount of duty in accordance with the Scheme after declaration thereunder. It is seen from the preamble of the CO that revenue due to the State running into crores of rupees was getting blocked and the public were also put into inconvenience being unable to get the original documents. In these circumstances, it was proposed to implement the Samadhan

Scheme offering remission of 40% of the difference of stamp duty between what is chargeable on the value of the property as proposed by the registering officer and the duty already paid, in order to unlock the blocked revenue to the Government. The only contention of Mr. A.L. Somayaji is that in paragraph 4(i) of the G.O there is a reference only to proceedings pending before the registering officer and not before the other authorities, appellate or revisional. He also points out that that the notification itself which is appended to the G.O does not contain a provision similar to clause 4(iii) on which respondents have placed reliance.

6. We are unable to accept the contention urged on behalf of the Revenue on both counts. In the first place, the appendix to the G.O only enumerates the various clauses of instruments to which the Scheme would be applicable. It is well settled that a Scheme will have to be considered as a whole. Clause 4(iii) of the Scheme exempts only-proceedings pending for recovery of arrears under the Revenue Recovery Act. It is not disputed before us that the proceedings under the Revenue Recovery Act would be initiated only if the proceedings under the Act are over. The appeals before the Inspector General of Registration and the subsequent appeals before the High Court are provided under the Indian Stamp Act. It is settled law when an appeal is pending there is no finality to the proceedings. The proceedings are then deemed to be continuing. Any order to be passed in the appeal or revision will get merged with the order passed by the original authority. Undoubtedly, at one place the G.O seems does state that the proceedings should be pending adjudication before adjudicating authority. However, the order emphasizes that the Scheme will not apply to cases pending for recovery of arrears under the Revenue Recovery Act. The proceedings under the Revenue Recovery Act would commence only after all the proceedings are over including the appeal and revision. If the intention of the Government was to exclude proceedings in appeal, it could have been stated so explicitly that the benefits will extend only in cases where the original authority had not passed the order or that the scheme will not apply to proceedings under appeal instead of having stated that the scheme will not apply to cases pending for recovery of arrears under the Revenue Recovery Act. The exclusion thus incorporated in the Government Order is very specific and hence, it is not open to the Revenue to read into the provision by inference. The Order has to be read as a whole, if read as a whole, it is clear that the Scheme was intended to cover all the proceedings which were pending either before the first authority or before the appellate authority or revisional authority.

7. One more aspect needs to be looked into. The learned single Judge has noticed that in several cases the original authority passes an order within a short period immediately after the registration, while in some other cases, the proceedings are kept open before the original authority for more than five to six years. Therefore, it would be anomalous to hold that a proceeding which was quickly disposed of shall not have the benefit of the Samadhan Scheme, and that a proceeding which was kept pending on the file of the original authority for several years should alone receive the benefit of the Scheme. Therefore, the

correct test would be whether the proceedings had reached the finality stage or whether pending at some stage resulting in blocked revenue. Therefore, the interpretation sought to be placed by the revenue on the G.O cannot be sustained.

8. In Union of India v. Onkar S. Kanwar and Others (supra) the question was whether the expression "pending adjudication" would include pendency of the appeal and whether the benefit could be restricted only to cases where the show cause notice was pending adjudication. The Supreme Court after considering the scheme as a whole, held that to restrict the benefit of the scheme only to cases pending before the original authority would be contrary to the object of the scheme, unreasonable and discriminatory. Paragraphs 14 and 15 of the judgment, which are relevant for our purpose, read as follows: -

14. We have heard the parties. In our view, a reading of the Kar Vivad Samadhan Scheme (Removal of Difficulties) order shows that where a declaration had been made in respect of a tax arrear and where in respect of the same matter a show cause notice had also been issued to any other person, then the settlement in favour of the declarant has to be deemed to be full and final in respect of other persons on whom show cause notices had been issued. It is settled law that when an appeal is pending there is no finality to the proceedings. The proceedings are then deemed to be continuing. Undoubtedly, at one place the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order seems does state that the show cause notice should be pending adjudication. However, the same Order also talks of the shoe cause notice being in respect of the same matter on which the show cause notice has been issued to the main declarant. Then the Order provides that a settlement in favour of the declarant will be deemed to he full and final in respect of other persons also. This Order has to be read as a whole. If read as a whole, it is clear that a settlement by the main declarant is to operate as full and final settlement in respect of all other persons on whom show cause notice was issued in respect of the same matter. Thus read as a whole the words "pending adjudication" cannot be read to exclude cases where the proceedings are still pending in appeal. Even otherwise the Order has to be read along with the Kar Vivad Samadhan Scheme. Under the Kar Vivad Samadhan Scheme, a party can file a declaration so long as the proceedings are pending. Thus, even though the show cause notice may have been adjudicated upon and an appeal is pending, a party could still take the benefit of the Kar Vivad Samadhan Scheme and file a declaration. The object of Kar Vivad Samadhan Scheme (Removal of Difficulties) Order is to give benefit of a settlement by the main party (i.e. the Company in this case) to all other co-notices. This being the object, a classification, restricting the benefit only to cases where the show cause notice is pending adjudication would be unreasonable. If read in this manner the Order would be discriminatory. An interpretation which leads to discrimination must be avoided. An interpretation, as suggested by Mr. Ganesh, would also be against the object of the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order. It is therefore not possible to

accept the submissions of Mr. Ganesh. In our view, the reasoning given by the High Court of Kerala is correct and needs to be upheld.

15. In any event this would clearly be a case where two views are possible. It is settled law that if two views are possible then the one which is in favour of the assessee must be adopted. On this ground also the interpretation sought to be given by Mr. Ganesh cannot be accepted.

(emphasis supplied)

9. Thus, the Supreme Court has expressly held that while construing the scheme, if two views are possible, then the one which is in favour of the assessee must be adopted. The Samadhan Scheme is a tax recovery scheme framed with the object of recovery of tax arrears locked in litigation at a substantial discount. The scheme cannot be equated with an exemption scheme, and therefore the decisions cited by Mr. A.L. Somayaji in Tata Iron and Steel Company Ltd. v. State of Jharkhand and others (supra) and Rajasthan Spinning and Weaving Mills v CCE (supra) are clearly in applicable. In the above circumstances, we have no hesitation in holding that the Scheme also covers the matters which are pending before the appellate or revisional authority on the cut off dates fixed by the Scheme. The learned single Judge, in our opinion, has rightly held that the respondents are entitled to the benefit of the Scheme. The appeals are. therefore, dismissed. No costs. Consequently, W.A.M.Ps are also dismissed.

