(1971) 02 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No. 1164 of 1967

T.S. Krishnan Namboodiri APPELLANT

Vs

The State of Madras and Others RESPONDENT

Date of Decision : 24-02-1971

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1971) 28 STC 661

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—The petitioner claims that he appointed one A. Balakrishnan as the manager of his hotel business, Sri Krishna Vilas Hotel, at No. 511, T. H. Road, Washermenpet, Madras. For the assessment year 1965-66 and in connection with the hoteliering business, he submitted a return in Form 1-A showing a taxable turnover of Rs. 35,009.95, but on 21st June, 1966, the officers of the Commercial Tax Department inspected the business premises which the petitioner characterises as a raid, and seized and removed the account books, note-books, etc. which were in the premises. On the basis of such matter which the department secured in the course of the inspection or raid, a proposal was made on 9th September, 1966, to reject the accounts submitted by the petitioner as incorrect and to assess him at Rs. 2,09,716.08 on the basis of the sales entered in the pocket-book discovered during the raid and also to levy a penalty. This notice was issued to the petitioner and he was asked to file his objections, if any, on or before 30th September, 1966. The record discloses that this notice was served by the process-server of the department on a person who has signed as "K. S. Murthy". The petitioner did not, however, file his objections to the said notice. On 30th September, 1966, the assessment was completed according to the department, in the presence of A. Balakrishnan, the accredited manager of the petitioner. It is against this final order of assessment dated 30th September, 1966, that the petitioner has come up to this Court for the issuance of a writ of certiorari to quash the same.

2. It is not in dispute that the petitioner has already filed an appeal under the Madras General Sales Tax Act, to the duly constituted appellate authority, canvassing the regularity and legality of the impugned order. The case of the petitioner is that it is not clear from the counter-affidavit filed and as set out in paragraphs 4 and 6 as to the name of the person on whom the notice of pre-assessment was served. In fact, according to the learned Counsel for the petitioner, the statements in the said paragraphs are misleading and gives the impression that the notice was served on the petitioner himself, when, in fact, it was not. Again, it is made out that the assessing authorities are proposing arbitrarily to assess him on a very huge amount based on some inchoate information contained in a pocket-book and, that too, without getting an explanation from the petitioner. It is on this ground that the petitioner is seeking a rule.

3. In the counter-affidavit the department states that the pre-assessment notice was served on 24th September, 1966, that the assessment was completed on 30th September, 1966, as no objections were filed to the proposals made in the, earlier notice and that the order of assessment itself disclosed that it was completed in the presence of the representative of the assessee.

4. The fact that the petitioner has filed an appeal before the Appellate Assistant Commissioner is, by itself, sufficient to negative any relief under Article 226 of the Constitution. But, in the peculiar circumstances of this case, I would like to give some directions to the appellate authority which has not yet disposed of the appeal. The petitioner''s case is that he was not served with the pre-assessment notice, though the records would show that the process-server served it on a person whose name as found in the records is K. S. Murthy. This is strongly relied upon by the revenue to prove service of the pre-assessment notice. The petitioner says that the said service is not effective service within the meaning of Rule 52 of the Madras General Sales Tax Rules, 1959, and that justice requires that he should be given an effective opportunity to disprove such service. In this behalf the Appellate Assistant Commissioner is directed to give an opportunity to the petitioner to establish that the pre-assessment notice dated 9th September, 1966, was not served on the petitioner and that the order of assessment is consequently illegal. If the petitioner desires to examine the process-server who effected the service, the department shall take all steps to produce the process-server for cross-examination by the petitioner before the Appellate Assistant Commissioner. If the service is proved, the appellate authority is at liberty to hear and dispose of the appeal on merits and in accordance with law.

5. With these observations the writ petition is dismissed. There will be no order as to costs.

