

(2007) 03 MAD CK 0359

In the Madras High Court

Case No : Writ Petition No's. 2270 and 2271 of 2006

V.D.R. Impex

APPELLANT

Vs

Joint Commissioner of Commercial Taxes

RESPONDENT

Date of Decision : 08-03-2007

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 24(2), 24(3), 24A

Citation : (2009) 20 VST 398

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : S. Mohan, for the Appellant; Haja Nazirudeen, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—These writ petitions have been filed praying 1 for the issuance of a writ of certiorari calling for the records on the file of the respondent pursuant to his proceedings in R.P. No. JJ 1/172/2002 dated July 31, 2003 and set aside the same as being invalid and illegal.

2. The case of the petitioner is that whether the levy and demand of inter-est for belated payment of sales tax for the assessment year 1991-92 against the petitioner is correct. The petitioner purchased the disputed property from the Tamil Nadu Industrial Investment Corporation (hereinafter referred to as, "the TIIC") in April, 2001 in an auction sale conducted by the TIIC. In addition to the sale consideration, the petitioner was also directed to pay a sum of Rs. 3 lakhs as statutory sales tax due, which amount also the petitioner had paid to the respondent on April 17, 2001. Thereupon, there was a total silence on the part of the respondent and thereafter in the year 2002, a notice was issued to the petitioner requiring the petitioner to pay a sum of Rs. 1,68,649 towards interest for belated payment of tax for the assessment year ranging from May, 1991 to April, 1992. The correctness of the said order was challenged before the Deputy Commissioner. The Deputy Commissioner confirmed the demand and the same

was also further confirmed by the Joint Commissioner. The correctness of the said order is now canvassed by filing original petition and subsequently converted to this writ petition on being transferred to the file of this Court.

3. The learned Counsel appearing for the petitioner submits that he is not an assessee and he is only an auction purchaser of the property from the TIIC. He is a bona fide purchaser for valuable consideration. In order to purchase the same, the petitioner paid the sales tax due, which according to the petitioner he is not liable to pay that too in a sum of Rs. 3 lakhs and Rs. 3 lakhs has been quantified by the TIIC as sales tax due from the amount that was directly paid to the department and the department has accepted the amount. From the time of acceptance, there is no due and the charge created over the property is automatically ceased and thereupon the respondent has no power or authority under any other provisions of the Act to demand any amount from the petitioner. Section 24A of the Tamil Nadu General Sales Tax Act, 1959 provides that "during the pendency of any proceedings under this Act or after the completion thereof, any dealer creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceedings or otherwise". There was no proceedings pending. The proceedings was already completed. The demand of interest, after the completion of the proceedings, from the petitioner cannot be legally sustainable.

4. I heard the learned Counsel for both parties and perused the materials available on record.

5. I am not able to countenance the argument of the learned Counsel for the petitioner because Section 24(2) of the said Act specifically provides that on the tax becoming payable, an automatic charge has been created over the property owned by the dealer. Admittedly, in this case, there was a sales tax arrears and in view of the arrears of sales tax, the automatic statutory charge has been created over the property, which has been sold by the TIIC in favour of the petitioner. Precisely, that might be the reason for the petitioner to pay the sales tax as quantified by the TIIC to the respondent. When the tax due has been accepted and paid, for the belated payment of tax, which is also a statutory due as per Section 24(3) of the said Act, the petitioner will have to pay the interest. The contention that as per Section 24A of the said Act, the payment of tax was demanded by the TIIC for the property for which charge has been created in the department cannot be accepted until or otherwise the tax due along with the interest under the provisions of the Act is completely discharged.

6. Hence, the argument of the learned Counsel deserves to be rejected and as such I do not find any illegality or irregularity in the order of the authorities to interfere in the writ petition. Accordingly, the writ petitions are dismissed. No costs.