IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18-9-2015

Pronounced on : 5-10-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.4230 of 2010
M.P.No.1 of 2010

1. M/s.Vasanthi Agencies,
rep.by P.Vasanthi,
R.S.No.52/4, East Coast Road,
Mudaliarpet, Puducherry-605004

2. P.Vasanthi .. Petitioners

Vs.

Additional Deputy Commercial Tax Officer,
Intelligence Wing,
Commercial Taxes Department,
100 Feet Road, Puducherry .. Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records relating to the impugned complaint in C.C.No.9 of 2010 on the file of the learned Judicial Magistrate No.I, Pondicherry, and quash the same.

For Petitioners : Mr.N.Inbarajan,
for Mr.V.R.Shanmuganathan

For Respondent : Mr.M.R.Thangavel,
Additional Public Prosecutor
(Puducherry)

O R D E R

It is the case of the prosecution that M/s.Vasanthi Agencies (A-1), in which M.Saravanan (A-2) and P.Vasanthi (A-3) are partners, are into the business of re-sale of petrol, diesel, lubricant oil, etc., and are registered dealer under the Pondicherry General Sales Tax Act, 1967; Central Sales Tax Act, 1956; and Pondicherry Value Added Tax Act, 2007. The allegations against the petitioners have been set out in paragraph 3 of the complaint, which is as follows:

"During the financial year 2006-2007, all the accused had jointly and severally reported the following sales turnover in Form A2 under Rule 18 of the PGST Rules, 1967:

Sl. No	Period	Total Turnover	Exempted Turnover	Taxable Turnover
01.	April 2006	10230792.17	211237	10019555.17
02.	May 2006	11089949.42	213506	10876443.42
03.	June 2006	12050767.84	235520	11815247.84
04.	July 2006	13806417.15	258120	13548297.15
05.	August 2006	15054032.22	182076	14871956.22
06.	September 2006	14765649.54	179080	14586569.54
07.	October 2006	15202063.02	163080	15038983.02
08.	November 2006	12717655.89	150400	12567255.89
09.	December 2006	12763087.84	143200	12619887.84
10.	January 2007	10228118.24	157600	10070518.24
11.	February 2007	9312100.52	141100	9171000.52
12.	March 2007	9527569.43	162870	9364699.43
	Total	146748203.28	2197789	144550414.28

All the accused had jointly and severally paid a tax of Rs.1,67,45,534.00 on the taxable turnover declared in the returns. The returns filed by the accused are placed at page No.1 to 37 of the assessment file No.203562/2006-2007 which is shown as Document No.3."

2. The Assessing Authority issued a pre-assessment notice dated 30.6.2007, which was received by the accused, but they failed to respond. The Assessing Authority gave another opportunity to the accused by notice dated 4.10.2007, to which also there was no response from the accused. They were asked to appear before the authority on 16.7.2007 to contest the proposed assessment of tax, despite which they did not appear. Therefore, the Assessing Authority completed assessment as contemplated under Section 13(2) of the Pondicherry General Sales Tax Act, 1967 read with section 81 of the Pondicherry Value Added Tax Act, 2007, and the assessment order dated 28.7.2007 was passed assessing the tax at Rs.1,29,54,404/- and penalty of Rs.1,27,65,150/- was imposed. On the failure of the accused to pay the tax and the penalty, the present complaint in C.C.No.9 of 2010 was launched before the Judicial Magistrate No.I, Pondicherry, challenging which the accused are before this Court.

3. Mr.V.R.Shanmuganathan, learned Counsel appearing for the accused submitted that the accused being charged for the offence under Section 49 sub-section (2)(b) of the Pondicherry

General Sales Tax Act, 1967, which reads as follows:

> "49. Offences and Penalties.-
>
> (1) ....
>
> (2) Any person who-
>
> (a) wilfully submits an untrue return, or, not being already an Assessee under this Act, fails to submit a return as required by the provisions of this Act, or the Rules made thereunder, or
>
> (b) fraudulently evades the payment of any tax assessed on him or any fee or other amount due from him under this Act."

for maintaining complaint there should be material to show that there was fraudulent evasion of payment of tax, and that the complaint does not disclose that there was fraudulent evasion. He further contended that before prosecuting the accused under Section 49(2)(b), it is the duty of the authorities to take steps for recovery under Section 27 of the Act, without which the prosecution is not sustainable. In support of his contention learned Counsel relied upon S.R.Swamy In re (1967) 19 STC 261; Ashok Leyland Ltd v. State of Tamilnadu (134 STC 473 and Shrisht Dhawan v. M/s.Shaw Brothers (AIR 1992 SC 1555).

4. In S.R.Swamy's case, this Court was dealing with a revision after the accused were convicted in a full-fledged trial. In the considered opinion of this Court, the prosecution should be given an opportunity to prove the ingredients of the provisions of Section 49(2)(b) and the prosecution cannot be stifled at such an early stage under Section 482 Cr.P.C. The fact remains that the petitioners had evaded payment of huge amount of tax, and they were given sufficient notice to explain their stand, despite which they did not respond, which necessitated the authorities to pass the assessment order.

5. The learned counsel relied upon various passages in Shrisht Dhawan's case relating to what is fraud is ? In the same Judgment, the Hon'ble Supreme Court had stated that "But fraud in public law is not the same as fraud in private law". This case arose under the Delhi Rent Control Act, where the dispute was between the landlord and the tenant. Here, the dispute is with regard to suppression of sales resulting in huge loss to the exchequer. Thus, the proposition laid down in Shrisht Dhawan's case may not be of much assistance to the petitioners.

6. In Ashok Leyland's case, the interpretation of Section 6A of the Central Sales Tax Act, 1956 came up for consideration and the appeals arose against the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal. The facts in that case is totally different from the facts that obtains in the case in hand.

7. As regards the contention that the authorities should first resort to recovery proceedings and only thereafter they should launch prosecution under Section 49(2)(b) is an argument in vain, inasmuch as the very provision empowers the authorities to prosecute an offender if he has not paid the assessed tax. In fact, in the complaint filed by the department in the prayer portion they have also invoked the provision of Section 27(2)(b) of the Act to take steps for recovery of the tax due as fine.

8. In the result, this petition is devoid of merits and consequently the same is dismissed. Connected miscellaneous petition is also dismissed.

sd/-
ASSISTANT REGISTRAR(CO)

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

vr

To

1. The Additional Deputy Commercial Tax Officer,
Intelligence Wing, Commercial Taxes Department,
100 Feet Road, Puducherry

2. The Public Prosecutor (Puducherry), High Court, Madras.

+1 CC to Mr.T.Panchatsaram Advocate. SR.NO. 53856

Pre-Delivery Order in
Crl.O.P.No.4230 of 2010

CO-KJI
JD 19/10/2015