THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Writ Petition Nos.16678 & 16703 of 2005

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

In both these two writ petitions the petitioner, a partnership firm, has invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, questioning the action of the respondents in attaching the family properties of one of the partners of the petitioner-firm, and in putting it to sale for recovery of sales tax dues both under the A.P.General Sales Act, 1957 (for short "the APGST Act"), and under the Central Sales Tax Act, 1956 (for short "the CST Act"), as arbitrary and illegal.

By the impugned notice, the sons of one of the partners of the petitioner-firm, was informed that he had given his land as a surety when the APGST and CST registration certificates were obtained in the name of the firm; the firm had fallen in arrears of tax as detailed in the notice; as the partner had died, leaving behind him his two sons, they were his legal heirs; and, being the legal heirs of the deceased-partner, they were liable to pay arrears of tax.

The subject properties were attached pursuant to a Notice of attachment in Form No-5 issued under Section 27 of the A.P.Revenue Recovery Act, 1864 (for short "the R.R.Act") on 03.06.2005 by the Deputy Commercial Tax Officer. Notice of sale of land in Form No.7, under Section 36 of the R.R. Act, was issued by the Deputy Commercial Tax Officer (FAC), Chittoor on 03.06.2005, and notice in Form No.-7A for sale of land was issued by the Deputy Commercial Tax Officer on 03.06.2005.

In the legal notice, issued on behalf of the petitioner on 24.05.2005, it is stated that the firm was not properly functioning from 1990; the firm was not carrying on any active business, and the turnover was almost Nil from the year 1990 onwards; to the knowledge of Smt. B.Radhamma, wife of late B.Venkataswamy Naidu (partner of the firm), there was no business; to the best of her knowledge, there was no arrears of revenue; and the respondents had no right to attach the properties mentioned in the notice.

Before this Court Sri S.V.Muni Reddy, learned counsel for the petitioners, would question the impugned notice on the following grounds:

(i) after 1990, the partnership firm was not carrying on any business, and its registration certificate has itself been cancelled;

(ii) the Deputy Commercial Tax Officer, who issued the impugned notices, lacked jurisdiction to do so;

(iii) the surety given by a partner of the firm, at the time of obtaining registration under the APGST Act and CST Acts is valid only for a period of one year and not thereafter; and, consequently, even if the respondents are held entitled to recover tax, under the APGST Act and CST Acts it can do so only for one year and not beyond.

On the other hand Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would submit that the petitioners have not raised a specific plea that the Commercial Tax Officer/Deputy Commercial Tax Officer, who issued the impugned notices, lacked jurisdiction to do so under the R.R.Act; this was a question of fact and, at best, a mixed question of fact and law; in the absence of any plea in this regard, it is not open to the petitioners to raise such a contention; Section 17-C of the APGST Act confers power on the authorities to recover arrears of tax; it is not open to the petitioners to now contend that no tax is due, as notices were issued pursuant to assessment orders, none of which are under challenge in the present writ petitions; and, while Sri B.Venkataswamy Naidu had given surety at the time of registration under the APGST Act, he, as a partner, was also jointly and severally liable to repay the taxes due under the APGST Act.

Section 5 of the R.R.Act stipulates that, whenever revenue may be in arrears, it shall be lawful for the Collector, or any other officer empowered by the Collector in that behalf, to proceed to recover the arrears, together with interest and cost of process, by the sale of the defaulter's movable and immovable property, or by execution against the person of defaulter in the manner provided. Section 25 provides that before a Collector, or other officer empowered by the Collector in that behalf, proceeds to attach the land of the defaulter, he shall cause a written demand to be served upon the defaulter, specifying the amount due. Under Section 26, when the amount due has not been paid pursuant to the terms of the demand, the Collector is entitled to proceed to recover the arrears by the attachment and sale of the defaulter's land in the manner prescribed. Section 27 prescribes the mode of attachment and Section 36 the procedure to be followed in the sale of immovable property.

It is no doubt true that power under the
R.R.Act is conferred on the Collector, or on the person authorised by him in this behalf. Section 17C of the APGST Act stipulates the special powers of the Deputy Commissioner under the R.R.Act and, under Sub-section (1) thereof, the Deputy Commissioner shall have the power of the Collector for recovery of any amount due under the APGST Act.

Section 17C(1) of the APGST Act enables the Deputy Commissioner to exercise the power of Collector. As the provisions of the R.R.Act, in turn, enable the Collector to empower any other officer to exercise the powers conferred on him under the Act, consequently Section 17C(1) of the APGST Act, read with Section 5 of the R.R.Act, would enable the Deputy Commissioner to empower any other officer to exercise his powers, for recovery of arrears, under the R.R.Act. The question whether the Deputy Commissioner had so authorised the Deputy Commercial Tax Officer or Commercial Tax Officer is a question of fact. There is no specific plea that the Deputy Commercial had not authorised either the Commercial Tax Officer or the Deputy Commercial Tax Officer to exercise the powers of a Collector under the R.R.Act.

While S.V.Muni Reddy, learned counsel for the petitioners, would contend that this is a pure question of law, we must express our inability to agree. The question, whether the Deputy Commissioner had authorised the Commercial Tax Officer/ Deputy Commercial Tax Officer to discharge the functions of a Collector under the R.R.Act is a question of fact or, at best, a mixed question of fact and law, and not a pure question of law unrelated to the facts in issue.

It would also not be open for us to examine whether or not the petitioners are liable to pay tax as the proceedings, under challenge in these Writ Petitions is the notice of demand, and the action taken pursuant thereto to attach and put the landed property to sale in accordance with the provisions of the R.R.Act. None of the assessment orders, for the relevant years for which arrears of tax is due, have been subjected to challenge in these proceedings, nor has it even been contended, in the affidavits filed in support of the writ petitions, that no assessment orders were served on the petitioners or that they were unaware of any assessment orders being passed. This contention, that the petitioners were not liable to pay tax under the APGST Act and the CST Act, must therefore fail.

The only other contention, which necessitates examination, is whether Sri B.Venkataswamy Naidu, who had given his landed property as a surety when the partnership firm obtained registration under the APGST and CST Acts could be called upon to pay arrears of tax under the APGST and the CST Acts for several assessment years. Sri S.V.Muni Reddy, learned counsel for the petitioners, is justified in his submission that this Court had held that the liability of the surety, as furnished at the time of registration of the firm, is only for the first year of registration and not thereafter. In the present case, however, the liability of Sri B.Venkataswamy Naidu is not only as surety but also as a partner of the petitioner-firm which is registered as a dealer under the APGST and CST Acts. The liability of the partners, of the dealer partnership firm, is joint and several and, in addition to the proceeding instituted against a surety, the Deputy Commissioner, or the officer authorised by him, is entitled to proceed against him as the partner of the firm from whom arrears of tax is still due.

Viewed from any angle, the action of the respondents in seeking to recover arrears of tax, on the sale of the immovable properties of the deceased-partner, which devolved on his legal heirs, cannot be faulted.

Sri S.V.Muni Reddy, learned counsel for the petitioner, would request that atleast six months time be granted for the petitioners to clear the arrears of tax due under the Act, as the land which has been put to sale is their only source of livelihood. As these writ proceedings were pending on the file of this Court for the past more than a decade, we consider it appropriate to grant the petitioners three months time from today to pay the tax arrears of the petitioner-firm.

The writ petitions fail and are, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:21.03.2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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