HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No. 4529 of 2019

ORDER: *(per V. Ramasubramanian, J)*

1) Challenging a notice issued in Form No.I under Section 8 of the Andhra Pradesh Revenue Recovery Act, 1864 (for short "the Act, 1864"), a dealer under the Telangana Value Added Tax Act, 2005, has come up with the above Writ Petition.

2) Heard Mr.P.Rama Sharana Sharma, learned counsel appearing for the petitioner and Mr.J.Anil Kumar, learned Special Standing Counsel for the respondent.

3) According to the petitioner, they established 190 super specialty eye hospitals across 19 States with a strength of 7000 paramedical and non-clinical staff and 700 Opthalmologists. According to the petitioner they have treated millions of patients across the Country.

4) It is claimed by the petitioner in their writ petition that they faced acute financial crunch in the year 2016 and that therefore they became due to pay a sum of Rs.46,77,802/- towards Value Added Tax. According to the petitioner they sought the facility of payment by instalment, but there was no response from the department.

5) The petitioner was first served with a notice of arrears dated 29.01.2019, indicating the amount payable by them towards VAT dues as Rs.69,11,684/-. Before the petitioners could recover from the shock of such a demand, a notice under Section 8 of the Act, 1864 in Form-I was slapped on them indicating the arrears payable as Rs.1,38,28,350/-. This was under Section 8 of the Act, 1864. Therefore, the petitioner has come up with the above writ petition challenging the Form-I notice.

6) According to Mr.Ram Sharan Sharma, learned counsel for the petitioner, the series of steps prescribed in Section 8 of the Act, 1864 has not been followed by the respondents and that the notice issued in Form-I contains lot of blanks. Even the amount indicated in the impugned notice is double the amount indicated in the arrear notice issued just one month earlier on 29.01.2019. Therefore, the learned counsel contended that the procedure prescribed by Section 8 of the Act, 1864 has not been followed.

7) The learned Special Standing Counsel for the department produced a bunch of documents. These bunch of documents show that a notice proposing to levy tax for the period from August, 2015 to January, 2017 was issued on 31.10.2017 provisionally determining the tax payable as Rs.65,46,663/-. This notice issued under Rule 25 (5) in Form VAT 305-A was served on the petitioner, as seen from the postal acknowledgment card.

8) Thereafter, an order of assessment was passed in Form VAT 305 on 27.12.2017 confirming the proposal to the tune of

Rs.65,46,663/-. This order has been dispatched on 28.12.2017 by registered post to the address of the petitioner.

9) Thereafter a proposal to levy penalty in an equivalent amount, was issued in Form VAT 203-A on 27.12.2017. This notice was also served on the petitioner as seen from the postal acknowledgment card. This was followed by an order of penalty in Form VAT 203 dated 31.01.2018 fixing the penalty at Rs.65,46,663/. This order was also sent by registered post as seen from the postal receipt.

10) The files further disclose that there was an amount of Rs.13,03,848/- which became due as tax for the period from February, 2017 to June, 2017.

11) On the basis of the above documents, it was contended by Mr.J.Anil Kumar, learned Special Standing Counsel that all the three amounts namely the tax of Rs.65,46,663/-, the penalty of Rs.65,46,663/- and the tax of Rs.13,03,848/- for the period from February, 2017 to June, 2017 totaled to more than the amount indicated in Form-I. In other words his contention is that what is stipulated in Form-I notice is actually less than what was already determined as payable by the petitioner to the knowledge of the petitioner.

12) Keeping in mind the contention of the learned Special Standing Counsel, if we have a look at Section 8 of the Act, 1864, it is seen that a three-step procedure is prescribed in Section 8 of the Act, 1864, for the seizure and sale of movable property for the

arrears of the revenue. The first step is a demand to be served in writing, upon the defaulter. The second step is the service of a notice that distrained property will be brought to sale. The third step is the manner of service when the defaulter was absent.

13) Section 8 of the Act, 1864, reads as follows:

> "8. Rules for seizure and sale of movable property:- In the seizure and sale of movable property for arrears of revenue, the following rules shall be observed...
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> First: Demand in writing:- The Collector, or other officer empowered by the Collector in that behalf, shall furnish to the person employed to distrain the property of a defaulter; a demand in writing and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrears fell due. The persons employed to distrain shall produce the writing which, if the arrear together with the batta due to him, under Section 53, be not at once paid, shall be his authority for making the distress, and on the day on which the property may be distrained, shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained, and the name of the place where it may be lodged or kept.
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> Second: Writing to state that the distrained property will be sold:- The writing shall further set forth that the distrained property will be immediately brought to public sale, unless the amount, with interest, batta, and all the expenses of the distress be previously discharged.
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> Third: Service when defaulter is absent: When a defaulter may be absent, a copy of the writing, with the endorsement, shall be fixed or left at his usual place of residence or on the

premises where the property may have been distrained, before the expiration of the third day, calculating from the day of the distress."

14) A careful look at Form-I notice which is challenged in this writ petition would show that it is a mere demand made in writing under Section 8 of the Act, 1864. The amount payable by the petitioner is indicated in the impugned notice as Rs.1,38,28,350/-. The tax period for which the amount is claimed is also indicated as March, 2015 to June, 2017.

15) We must always keep a distinction in mind. When arrears of taxes are sought to be recovered as arrears of land revenue, the determination of the liability precedes invocation of the provisions of the Act, 1864. Where a mere land revenue is sought to be recovered, a person may be in the dark as to the determination of the amount but where arrears of taxes are sought to be recovered under this Act, if a determination has preceded the invocation of the provisions of the Act and if such determination has attained a finality, the assessee cannot feign ignorance of their liability. That all the columns in Form-I notice are not filled up can hardly be an excuse for an assessee under the relevant taxing statutes, once it is shown that taxes were assessed after following due process of law and once it is shown that such determination has also been served on the assessee concerned.

16) In this case the notices before passing orders of assessment and penalty were served on the petitioner. The orders of assessments and orders of penalty were sent by registered post. It

is not the case of the petitioner that they had no knowledge about the order of assessment or the order of penalty. Therefore, an attack a mere demand made in writing, which is the first step prescribed in Section 8 of the Act, 1864, cannot be sustained.

17) All the steps indicated in Section 8 of the Act, 1864, are intended to make a person, who is un-aware of things, become aware of what is due. They are not intended as a mere formality to reinforce what is already known to assessee as due. Therefore, we find no irregularities in the demand made in writing by the respondents. Hence, the Writ Petition is dismissed.

18) After the conclusion of the arguments, the learned counsel for the petitioner sought atleast two weeks time to make payment. Since the request is reasonable, the petitioner is granted two weeks time from the date of receipt of a copy of this order, for payment. Till such time, the respondents shall not take any coercive steps.

19) As a sequel, miscellaneous petitions, if any, pending in the Writ Petition stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

March 28, 2019
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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No. 4529 of 2019

Date: 28.03.2019

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