IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.01.2020	Pronounced on: 06.02.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.S.No.434 of 2008

K.Arumugham,
Prop. Seetha Industries,
Anthili Road,
Arakandanalur – 605 752,
Tirukoilur Taluk, Villupuram District. ... Plaintiff

/versus/

1. The Secretary to Government,
   Department of Commercial Taxes
   and Religious Endowments,
   Fort St.George,
   Chennai – 600 009.

2. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai – 600 005.

3. Mr.V.Duraiarasan,
   Deputy Commercial Tax Officer,
   Tirukoilur – 605 757.
   Villupuram District.

4. Sri.P.Ramasamy,
   Deputy. Commercial Tax Officer,
   Ice House Assessment Circle.
   No.46, Greeways Road,
   Chennai – 600 028.

5. Sri Krishnamurthy,
Commercial Tax Officer,
Ice House Assessment Circle,
No.46, Greenways Road,
Chennai – 600 028. ... Defendants

Prayer: Plaint is filed under Order VII Rule 1 of Original Side Rules read Order VII Rules 1 of Code of Civil Procedure.

a. To permit the plaintiff to file the suit as on indigent person.

b. Direct the defendants jointly or severally to pay a sum of Rs.5,00,000/- to the plaintiff towards general damages with the interest thereon at 6% per annum from the dates of decree till the date of realization.

c. To Direct the defendants jointly or severally to pay a sum of Rs.5,20,74,780/- towards special damages due and payable as on 31.02.2006 to the plaintiff with the interest thereon at 6% p.a from the date of decree till the date of realization.

d. To direct the defendants to pay the cost of this suit and

e. To grant such further and other reliefs.

For Plaintiff : Mr.K.V.Subramanian, Senior Counsel for Mr.K.Thiruvalluvan

For D1 & D2 : Mr.Sri Charan Rangarajan, Special Government Pleader (C.S)

For D4 : Mr.P.Haribabu,

For D3 & D5 : *set exparte*

JUDGMENT

The suit is for general damages for a sum of Rs.5,00,000/- and special damages for a sum of Rs.5,20,74,780/- totally to a tune of Rs.5,25,74,780/- (Rupees Five crores Twenty Five Lakhs Seventy Four Thousand Seven Hundred and Eighty only), for the alleged loss of business profit and special damages for the wrongful actions of the defendants.

2. The plaintiff has presented the plaint as *in forma pauperis* on 29.06.2004. After granting leave to sue as indigent person vide order dated 22.01.2008 in Application No.4268 of 2005, the suit has been numbered as C.S.No.434 of 2008.

3.Gist of the plaint averments:

The plaintiff is the proprietor of the concern M/s.SEETHA INDUSTRIES, having its factory at Arakandanallur, Thirukovilur Taluk, Villupuram District and Branch Office at Chennai and Pondicherry. The plaintiff is engaged in manufacturing ADV Tyre carts, Agricultural and Industrial Trailers drawn by Tractors and other Agricultural implements. The plaintiff is a registered trader under the Tamil Nadu General Sales Tax Act (hereinafter referred as "TNGST"), Pondicherry General Sales Tax (hereinafter referred as "PGST") and Central Sales Tax Act (hereinafter referred as "CST"). Some products manufactured at Arakandanallur factory used to be transferred to the branch at Pondicherry under the stock transfer system of business and sales were effected to the customers from Pondicherry. The plaintiff used to file returns in Form A2 every month, disclosing the turnover during that month. Final assessment used to be made at the end of the financial year (31st March) by the Deputy Commercial Tax Officers at Thirukoilur and Pondicherry, after verification of books and accounts.

4. On 29.09.1986, when the final assessment for the year 1984-1985, was made by the then DCTO Mr.X.E.Anthonysamy, he refused to accept the reported turnover of the plaintiff in the annual return and proposed to levy taxes and penalties at the best of his judgment. He included two sales totally Rs.2,39,700/- being the cost of two trailers (Rs.2,07,000/- + Rs.32,700/-) sold by the plaintiff through its Pondicherry Branch Office. This assessment was objected by the plaintiff on the ground that, this sale was already assessed by the Pondicherry Sales Tax department under the Stock Transfer System and taxed under PGST, if the sale is again assessed and taxed, it will amount to multiple taxation. Thiru.Anthonysamy (DCTO) refused to accept the explanation imposed Tax of Rs.35,955/- and penalty of Rs.46,575 totally a sum of Rs.82,530/- and also additional sales tax of Rs.2358/- on the increased and inflated turnover. Plaintiff could not file appeal in time and when he filed appeal against the said assessment, the same was dismissed on 15.05.1987 on the ground delay of 143 days in preferring appeal cannot be condoned in view of the amended provisions of TNGST Act. Against the dismissal order, the plaintiff preferred appeal before the Sales Tax Appellate Tribunal, Chennai. (T.A.Nos.1087 & 1088 of 1987). The Appellate Tribunal remanded the matter for fresh disposal according to law. The Department took up the matter for appeal before the High Court. This appeal was transferred to Tamil Nadu Taxation Special Tribunal on its constitution in the year 1997. The Special Tribunal allowed the appeal preferred by the Department. The plaintiff aggrieved by that, has filed further appeals before the High Court.

5. While so, the Assessing Officer/DCTO Mr.Anthonysamy assessed the accounts for the account year 1985-86 on 31.03.1987 proposed to impose tax on his best judgement assessment without verifying the books of account and instead of accepting the returns filed by the plaintiff. The plaintiff preferred appeal against the assessment of DCTO in time. The A.A.C (CT) Cuddalore remanded the matter back for fresh assessment. The fresh assessment was done by the third defendant, who refused to accept 3 stock transfer system sale made from Pondicherry branch. The sales of Rs.2,95,653/- which ought to have been exempted being taxed under PGST, was assessed to tax by the 3rd defendant and also inter state tax @ 10% was imposed in spite of protest. Hence, the plaintiff preferred appeal before the Tamil Nadu Sales Tax Appellate Tribunal, which allowed the appeals holding, "the transfer of the three trailers from the place of business to Pondicherry, is merely a branch stock transfer and not a sale."

6. Due to various wrongful actions taken on him by the bankers, police and the Sales Tax Department, the plaintiff alleges that his business got crippled and he started loosing orders. The semi finished products were left idle for want of working fund. While so, Anthonysamy on 20.11.1985 visited his unit and collected information regarding the 5 numbers of trailer chassis under fabrication and got statement from the plaintiff that they are approximately worth Rs.2,70,000/- as finished products. Later, Anthonysamy included the semi finished product as finished product and included it in the sales turnover on this inflated value. Also, alleging that the plaintiff has purchased 12 sets of tyres and tubes at concessional rate of sales tax using form XVII but sold 5 sets to other dealers for value of Rs.21,620/-, inflated the turn over and also imposed 5% sales tax being the differential rate. Thus, the tax burden on the plaintiff increased by Rs.1081/-

7. Two numbers of trailers value 2x54,590/- sold to the Tamil Nadu Agricultural Engineering Department at the concessional rate of 4% tax as per the Government Order were refused to be accepted by Anthonysamy and 15% tax was levied on the plaintiff contrary to rules. He also refused to accept the labour bills. This resulted in additional levy of tax Rs.12,010/-. The plaintiff preferred appeal before the A.A.C (CT) and got relief.

8. During this period, the plaintiff supplied one Jeep trailer to Vikram Sarabai Space Center for Rs.7,600/-. The transaction is covered under “Form D” and taxable @ 4%. But the Assessing Officer Anthonysamy imposed 10% tax giving irrelevant and incorrect reasons like, the 'D form' issued by Government of India, does not contain full particulars and also assessed it for an increase turnover of Rs.54,590/- though the actual cost of the trailer itself was only Rs.7,600/-. Against this malafide and wilful assessment, the plaintiff preferred appeal before A.A.C (CT) Cuddalore and got releif.

9. The best judgment assessment made by the DCTO Mr.Anthonysamy for the assessment year 1983-84 was appealed and pending. Despite pendency of the appeal and conditional order, Anthonsamy proceeded with recovery action under the Revenue Recovery Act and attached 20 ton capacity trailer under fabrication and brought it for auction. This trailer was under fabrication in the factory based on the order of Tamil Nadu Industrial Investment Corporation Ltd (TIIC) for their loanee one Chandrasekaran. With all malafide, Anthonsamy adviced the bankers to freeze the plaintiff's bank account and also Instructed TIIC not to release any money. Attached the product under fabrication and brought the plaintiff to a stage of inaction. The plaintiff reputation got completely shattered and order worth about Rs.25 lakhs by TIIC were cancelled due to the high handedness of the said Anthonsamy.

10. The proposed tax and penalty wilfully imposed on the plaintiff by the said Antonysamy between the assessment year 1982 to 1986 is tabulated by the plaintiff as under:-

Year	*Tax*	*Additional Tax*	*Penalty*	*Total*
1982-1983	9,650.00	-	5,035.00	14.685.00
1983-1984	-	-	28,209.20	28,209.00
1984-1985	36,585.00	2,358.00	46,903.00	85,846.00
1986-1986	67,453.00	2,361.00	-	69,814.00
Total	**1,13,688.00**	**4,719.00**	**80,147.20**	**1,98,554.20**

11. Mr.Antonysamy took recovery measures to collect the tax arrears from the plaintiff by attaching the factory building of the plaintiff at Arakandanallur and brought it for public action. With great difficulty, he got stay of the auction by the High Court. The payment of Rs.27,407.80, due to the plaintiff from Highways department was attached at the instance of Anthonysamy. For four consecutive assessment years, Anthonysamy refused to accept the turnover reported by the plaintiff. Made his own best judgment and imposed multiple tax, refused concession rate in spite of Government Order, indulged in wrong action and saw to that, the plaintiff is financially crippled. He made the plaintiff unit sick and remain closed since April 1986. The recovery measures initiated by Anthonsamy is continued by the defendants 4 and 5. The collection inspectors are frequently visiting the plaintiff residence at Triplicane and threatening the plaintiff to pay the tax arrears with the above said pleadings. The plaintiff has sought the following relief against defendants 1 to 5:-

> *a. To permit the plaintiff to file the suit as on indigent person.*
>
> *b. Direct the defendants jointly or severally to pay a sum of Rs.5,00,000/- to the plaintiff towards general damages with the interest thereon at 6% per annum from the dates of decree till the date of realization.*
>
> *c. To Direct the defendants jointly or severally to pay a sum of Rs.5,20,74,780/- towards special damages due and payable as on 31.02.2006 to the plaintiff with the interest thereon at 6% p.a from the date of decree till the date of realization.*

d. To direct the defendants to pay the cost of this suit and

e. To grant such further and other reliefs.

12. The 2nd defendant, in his written statement has submitted that the suit is not maintainable. The actions of the defendant 2 to 5 were done in good faith and protected under Section 49 of the TNGST Act. The cause of action are all outside the territorial jurisdiction of this Court. The assessment of tax, appeal against assessment and the recovery of arrears of tax all fall at Tirukovilur and Cuddalore, admittedly out side the jurisdiction of this Court. None of the cause of action has arisen within the jurisdiction of this Court.

13. The Assessing Officers, on verification of the accounts of the plaintiff during the assessment has found defects and for non-production of certain declaration forms tax and penalties were imposed. The Appellate Authorities before whom the assessment challenged have exercised their power and applied their mind and either confirmed reversed or remanded as per the merit. All these actions were done in good faith and in the course of discharge of the duty.

14. The Assessing Officers are empowered under Section 12 (2) of the Act, to assess the accounts on their best judgement. The plaintiff was assessed to tax for all these years and the plaintiff has exhausted all his remedial rights available under the statute. After exhausting all the remedial measures provided under the statute, he is in arrears of tax as below:-

Year	*Amount of arrears*
1982-1983	14,685.00
1983-1984	28,209.00
1984-1985	85,668.00
1985-1986	6,701.00
Total	**1,38,263.00**

15. The recovery action is taken as per the legal advice and not out of any malafide intention. Further, it is stated that, in the year 2006, the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2006, was introduced by the Government to provide opportunity for the defaulting dealers to clear their long pending arrears. The plaintiff made application on 26.02.2006 under the said act for relief under Section 5(1) of the said Act for settlement of arrears. On payment of the prescribed percentage of arrears, which work out to Rs.54,539.00, the remaining arrears of

Rs.80,724.00 has been waived under the provisions of Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2006 by the Deputy Commissioner (CT), Vellore Division, Vellore in proceedings R.C.C3/17500/2006 (1 to 4) dated 16.04.2008. As on date, the plaintiff is not in arrears of tax and penalty and the actions taken for the recovery of arrears were withdrawn.

16. After availing the concession provided under the settlement scheme, the suit has been filed contrary to the undertaking given. The suit is barred by limitation since for the alleged malafide in assessing the tax for the year 1982 to 1987, suit is filed in the year 2005. The Suit filed after 8 years of the assessment is hopelessly barred by the law of limitation.

17. The 4th defendant in his written statement has stated that:-

> *"16. This defendant states that he was not personally aware of the Assessment order passed by the Assessment Circle against the plaintiff/assessee and the modified Assessment order made by the Appellate Assistant Commissioner. This defendant at any point of time during his tenure in service, had acted with utmost good faith and he had no motive or*

ill feelings against any assesee. The suit itself is not maintainable and vexatious suit by making defamatory statement against the Commercial Tax Department Officials who performed their official duties in accordance with law, which is, untenable and unwarranted.

17. This defendant further states that the Assessment order pertaining to the respective assessment years were passed only in strict compliance of the statutory obligation by the CTO. Hence, in the present suit the plaintiff with an malafide intention has filed the present vexatious suit by impleading this defendant as unnecessary party who has retired from the service of the Commercial Tax Department and Commissioner of Commercial Tax and the state Government made as unnecessary party with ulterior motive.

18. This defendant further states that the suit is not maintainable in law under Section 49 of the TNGST Act, the suit of the present nature in specifically barred, wherein Section 49 reads as follows:-

"Section 49: Bar of certain proceedings: (1) No suit, prosecution or other proceedings shall lie against any officer or servant of the Government for any act done or purporting to be done under this Act, without the previous sanction of the Government.

Section 49(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceedings if the act was done in good, faith in the course of the execution of duties or the discharge of functions imposed by or under this Act"

18. The plaintiff has filed his reply to the written statement of the defendants as under:-

"The plaintiff was unable to get full remedy on these additions in spite of his appeals before the various appellate authorities due to the sudden changes in the TNGST Act by the Government Act 76/1985 was brought out by the Government of Tamil Nadu on 17.12.1986 and it was published only in the Government Gazette. This abrupt change in the sales tax rules were not intimated or circulated to the assesses individually by the sale tax department. All the assesses are not in the habit of reading the Government Gazette regularly. So it has well escaped the eyes of the plaintiff. Further during this period the plaintiff/assesses has faced severe financial problems, physical and mental torture due to the abrupt FREEZING OF ACCOUNTS by his bankers on the advice of the DCTO, under the umbrage of tax recovery so he

could not go and meet his STP at Cuddalore to file the appeals in time. As a result. Some of his appeals were not admitted by the AAC (CT) Cuddalore. So the plaintiff was left with the tax arrears of Rs.1,356,263.00 as stated herein. Hence, it is brought to the notice of this Hon'ble Court that the Tax arrears mentioned herein is not an admitted tax and was proposed wilfully by the DCTO against the rules of the Commercial Taxes Department. Accordingly recovery measures were taken upon the plaintiff under the Revenue Recovery Act to recover this tax due. So it is incorrect to say that after failing in his attempts, the plaintiff has commenced issuance of threatening suit notices to the assessing officers. He has only exercised his rights in the manner known to law. Further the opinion of the Government Advocate (taxes) referred as letter No.SI/751150/2003, dated 21.02.2006 was never intimated to the plaintiff and he was not aware of the same. Further there is no legal bar for this suit before this Hon'ble Court under Section 49(2) of the TNGST Act, 1959 as stated in the written statement.

The plaintiff has filed the suit for damages before this Hon'ble Court in as early as June 2004 itself and when the same was in process, the Tamil Nadu Sales Tax (settlement of arrears) Act was introduced by the Government in 2006. The plaintiff has availed the concessions under this Act in order to stop the recovery proceedings by the sale tax department *against the unit under the Revenue Recovery Act. At the time he was left with no other option except to accept this settlement proposal in order to prevent the auction sale proposal of the unit. Moreover under this proposal, the plaintiff has agreed only to withdraw the various appeals filed by him against the assessment orders passed by the department. He has not agreed to withdraw the civil suit is filed for damage against the defendants. Moreover this civil suit is outside the scope of the Tamil Nadu Sales Tax (settlement of arrears) Act, 2006 and it is not a bar for this damages case. Accordingly, he has withdraw the various appeals pending before the Hon'ble Court including an appeal filed against the auction sale plan of the Commercial taxes department under the RR Act (copy of the order is enclosed herewith). The settlement order was issued by the Deputy Commissioner (CT) Vellore division in proceedings RC.C3/17500/2000 (1 to 4) on 16.04.2008 only after verifying the above facts. Hence, it is false to say that the act of the plaintiff is malicious and intended to tarnish the image of the commercial taxes department."*

19. Based on the above pleadings, on 01.04.2011, this Court has framed the following issues:-

(i). Whether the suit is maintainable in view of the specific bar under Section 49 of TNGST Act?

(ii). Whether the plaintiff is entitled to claim interest as prayed for in the suit?

(iii). Whether this Court has got territorial jurisdiction to entertain the suit, so far it relates to assessment order passed as per TNGST Act by DCTO, Thirukovilur?

(iv). Whether the suit is bad for non-joinder of necessary parties?

(v). Whether the suit is bad for mis-joinder of parties, viz., 4th defendant, who discharged his official duties in consonance with the provisions of TNGST Act?

(vi). Whether the suit is maintainable as against the defendants 3, 4 and 5 when they have discharged their duties under the Official capacity?

(vii). Whether the suit is barred by law of Limitation?

(viii). Whether the suit is barred under Sections 48, 49 & 50 of TNGST?

(ix). Whether this Court has jurisdiction to try outside the territorial jurisdiction of this Court?

(x). Whether the assessment made by defendants 3 to 5 illegal and wrongful actions and whether the defendants are jointly and severally liable to pay a sum of Rs.5,20,74,780/- as special damages?

(xi). Whether the defendants are jointly and severally liable to pay Rs.5,00,000/- towards general damages?

(xii). Whether the defendants 1 and 2 are vicariously liable as principal employer of defendants 3 to 5 to pay the amount claimed in the suit?

(xiii). Whether the plaintiff is entitled to any other relief as prayed for?

20. To prove his case, the plaintiff examined as P.W-1, 49 documents were marked as Ex.P-1 to P-49. On behalf of the 1st and 2nd defendants, the Assistant Commissioner (CT) Mrs.Valli examined as D.W.1. The defendants 3 & 5 remind *exparte.*

21. The Learned Senior Counsel for the plaintiff submitted that, the Assessing Officers of the Sales Tax Department, more particularly Mr.Antonysamy, DCTO, acted contrary to law, misused his power to assess best of his judgment. He illegally rejected valid records and imposed excess tax and penalties. For instance, the sales took place at Pondicherry Branch under stock transfer system where not taken into account in spite of production of document regarding Sales tax paid to Pondicherry Government. When admittedly production of Form-F is not mandatory, higher rate of tax for want of production of Form-F is clear abuse of power. Likewise, when goods are purchased by the Government, concessional rate of tax is imposed. On receipt of the invoice, the buyer (The Government Agencies) will prepare Form-D and give it to the seller for availing tax concession. The seller has to produce the same to the Sales Tax Department and he can neither add or subtract information in Form-D. While so, for the sale of trailer to Vikram Space Centre, Trivandrum, Mr.Antonysamy with ulterior motive refused to accept Form-D given by the buyer alleging the declaration in Form-D is defective and had impose increased tax burden on the plaintiff. These misconduct done with ulterior motive does not fall within the scope of discharge of duty to get umbrage under Section 49(2) of the Act.

22. It is further contented by the learned counsel for the plaintiff that, the suit is within the period of limitation since the claim is based on continuous cause of action. The wilfully wrong assessment has been periodically challenged at all stages till the filing of the present suit for damages. Those cases were withdrawn later only after the samadhan scheme introduced by the Government in the year 2006. The withdrawal of the appeals against assessments does not prohibit the plaintiff from maintaining the present suit, which is based on the wilfully wrong assessment of tax by the defendants which was neither done in accordance to law nor in good faith.

23. Per contra, the Learned Additional Government Pleader representing the respondents would submit that, the suit is not maintainable in view of Section 49(2) of the TNGST Act and in the light of the judgments rendered in ***Firm of Illuri Subbayya Chetty and Sons –vs- State of Andhra Pradesh*** reported in ***(AIR 1964 SC 322)*** and ***K.O.Mohammed Sulaiman and Co Vs. State of Madras (1973 LW 693)***. The suit is also barred by limitation in the light of Section 50 of the TNGST Act, which specify the period of limitation to sue as 6 months from the date of cause of action. The allegation of malafide assessment is not a continuous cause of action as alleged by the plaintiff.

Each assessment if malafide should have been questioned with 6 months and not later. Above all none of the cause of action as narrated by the plaintiff falls within the territorial jurisdiction of this Court. When no cause of action arisen within the territorial jurisdiction of this Court. The 1st and 2nd defendant Office at Chennai will not give rise to any cause of action.

24. The plaintiff has accepted the assessment and has settled the arrears as below:-

Year	*Amount of arrears under TNGST Act*	*Amount paid by the plaintiff*	*Amount waived off*
1982-83	14,685	9,650	6,035
1983-84	28,209	2,821	25,288
1984-85	85,668	39,093	46,575
1985-86	6,701	2,975	3,726
Total	**Rs.1,35,263**	**Rs.54,539**	**Rs.80,724**

25. Having paid the tax, the plaintiff is estopped from questioning the assessment as malafide.

26. Section 49 of the TNGST Act, 1959 bars certain proceedings and no suit against the servant of the Government acting under this act can be filed without the prior sanction of the Government. Obviously, in this case the plaintiff has not obtained previous sanction of the Government before filing the suit.

Section 49 of the TNGST Act, 1959, reads as under:-

49. Bar of certain proceedings-

(1). *No suit, prosecution or other proceedings shall lie against any officer or servant of the Government for any act done or purporting to be done under this Act, without the previous sanction of the Government.*

(2). *No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.*

27. The constitutional validity of this Section came for test before this Court in ***K.O.Mohamed Sulaiman and Co Vs. State of Madras and others. (MANU/TN/0727/1972=1973 LW 693).*** This Court, while withholding the validity of this Section had observed that, *"From the above discussion it appears to be clear that it is open to the legislature to impose restrictions on the right of a citizen to enforce claims and demands against the State or its officers in the interest of the public, provided such restriction is reasonable. It appears to be well established by no that the right of access to courts can be excluded by statute. But this is not usually done. It is done only in exceptional circumstances. In this case, the legislature had expressed its intention in unequivocal terms to restrict the common law rights of a subject to resort to courts against the acts of functionaries under the Act by imposing certain conditions for the exercise of that common law aright, to sub-serve public interest. Public interest consists in giving protection to the officers of the State who have been called upon to exercise certain statutory functions from frivolous action by the persons against whom the statute has been enforced. Section 49(1) cannot be struck down as offending either the subject's fundamental rights to property or the right to compensation for infringement of such fundamental rights.*

The learned counsel for the petitioner states that the action of respondents 2 and 3 in respect of which damages are claimed in the suit cannot be said to be in good faith especially in view of the decision of Ramamurti, J., in Md. Sulaiman & Co. v. State of Madras 78 L.W. 18, where the learned Judge has held that arrears of sales tax due by a partner of a firm *cannot be recovered by attachment and sale of the properties belonging to another firm of which also he happens to be a partner. It is stated that this is a clear case where defendants 2 and 3 have not acted in good faith in the seizure and attachment of the properties of the plaintiff-firm and in such a case, there is no necessity to get a sanction from the Government. It is not possible to accept this contention. Section 49(1) provides that no suit shall lie against any officer or servant of the Government for any act done or purporting to be done under the provisions of this Act, without the previous sanction of the Government. The learned counsel for the petitioner has brought to our notice an order of the Government refusing sanction in another case. That order shows that the Government refused to give sanction on the ground that the officers concerned have acted in good faith. It is no doubt true that the Government cannot refuse sanction on the ground that the officers acted within the statute or that they have acted in good faith, for those are matters which have to be decided by the court itself in the proposed suit. But the Government can consider whether the suit is frivolous or whether the petitioner has made out a prima facie case for relief against the officers concerned. In this case, the petitioner never applied for sanction and it is not known what order the Government would have passed if an application for sanction under Section 49(1) had been given by the petitioner. There may be cases in which the Government withheld sanction for improper reasons.*

In such cases, it is open to the party to attack that order on the ground that there has been no proper exercise of the discretion by the Government. But the fact that the Government has refused sanction in another case on grounds which cannot be supported or upheld by a court of law cannot be a ground for striking down the provision in Section 49(1)."

28. The plaintiff, who alleged to have suffered the assessment of tax had exhausted the statutory remedy and admittedly succeeded in few and lost the rest. Ultimately, he has paid Rs.54,539/- as against the claim of Rs.1,35,263/-. The assessment and demand of assessed tax and in case of failure to pay the arrears action for recovery are the statutory duty of the Officers empowered under the Act and any action done towards discharge of this duty cannot be called upon for Civil or Criminal prosecution. If any action is not in good faith, even then, Suit cannot be filed without prior sanction from the Government as per Section 49(1).

29. In any case, if the Government accord sanction to sue the Government or any officer or servant of the Government for act done under TNGST Act, then such suit has to be instituted within six months from the date of the act complained of.

Section 50 of TNGST Act, reads as below:-

50. Limitation for certain suits and prosecution- *No suit shall be instituted against the Government and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.*

30. Therefore, the combined reading of Sections 49(1), 49(2) and 50 of the TNGST Act, along with the judgment of this Court rendered in ***K.C.Mohamed Sulaiman case***, clearly renders the suit is not maintainable and liable to be dismissed for want of sanction.

Issue No.1

Accordingly, issue No.1 is negative and held against the plaintiff.

Issue Nos.2 & 7

The assessment orders of the year 1982 to 1986-87 is questioned in the suit presented on 29.06.2004 and numbered in the year 2008. Hence, the suit is also barred by limitation. Accordingly, issue No. 7 is answered. Since the suit itself is not maintainable, the plaintiff is not entitled for any relief including the interest claimed. Hence, issue No.2 is answered in negative.

Issue No.3

The plaint averment for cause of action discloses entire cause of action regarding assessment and recovery has arisen within the territory of Tirukovilur and Cuddalore, no cause of action is within the territory of Chennai, except the appeals filed in Tax Appellate Tribunal and High Court. This will not form part of cause of action. Therefore, on this score also the plaintiff fails. Hence, issue No.3 is negative.

Issue No.4

It is contented in the written statement of the defendants that, the plaintiff has alleged that Mr.Antonysamy at the instigation of one Aathi Sankar acted malafidely towards him and passed wilfully wrong assessment orders. The said allegations/averments are irrelevant for the suit and the said Aathi Sankar is not a party necessary to the suit. Hence, issue No.4 answered in negative.

Other Issues

In view of holding issue No.1 in negative against the plaintiff, as a consequence, the other issue Nos.5, 6, 8, 9, 10, 11, 12 and 13 are held against the plaintiff.

31. In the result, the ***Suit is dismissed.*** Since, the suit is laid by the plaintiff as indigent person. No order as to costs.

06.02.2020

Index :Yes
Speaking Order/Non-speaking order
bsm

List of Witness examined on the side of the Plaintiff:-

K.Arumugham (P.W.1)

List of Witness examined on the side of the Defendants :-

A.Valli (D.W.1)

List of the Exhibits marked on the side of the Plaintiff:-

Sl.Nos.	Exhibits	Description of documents	
1.	Ex.P.1	Original Assessment order under the PGST for the year 1984-85	16.12.1985
2.	Ex.P.2	Typed copy of Assessment order under the TNGST for the year 1984-85 passed by DCTO	29.09.1986

3.	Ex.P.3	Original Police report published in "Dhina Malar" Daily newspapers	06.04.1990
4.	Ex.P.4	Xerox copy of order under appeal M.P.No.66/87 & 67/87 passed by A.A.C (CT)	15.05.1987
5.	Ex.P.5	Typed copy of order passed by the STAT Madras in T.A.No.1087/1987 & T.A.No.1088/1987	02.06.1989
6.	Ex.P.6	Xerox Copy of order passed by the Tamil Nadu Taxation Special Tribunal	21.12.1999
7.	Ex.P.7	Original Assessment notice under TNGST for the Year 1985-1986 issued by DCTO	16.02.1987
8.	Ex.P.8	Original Re-assessment under CST passed by DCTO Tirukovilur	01.12.1992
9.	Ex.P.9	Xerox copy of order passed by STAT Madras in T.A.No.906 of 1994.	18.06.1996
10.	Ex.P.10	Xerox copy of reassessment order under TNGST for the year (1985-86) passed by DCTO, Tirukovilur	01.12.1992
11.	Ex.P.11	Xerox copy of order passed by STAT Madras in T.A.No.541/1995	17.12.1996
12	Ex.P.12	Xerox copy of order passed by the Tamil Nadu Taxation Special Tribunal T.C.(R) 57 of 2000.	12.04.2000
13.	Ex.P.13	Xerox copy of Notice in Suo Motu Revision No.R1/139946/88.	21.08.1989
14.	Ex.P.14	Original notice issued under CST for the year 1983-1984 by DCTO, Tirukovilur	17.05.1985
15	Ex.P.15	Original order passed by the A.C.C. (CT) Cuddalore in A.P.No.446/84	01.03.1985
16.	Ex.P.16	Typed copy of re-assessment order for the year 1982-1983 under the TNGST issued by DCTO, Tirukovilur	30.06.1986
17.	Ex.P.17	Original letter sent by the DCTO Tirukovilur attachment order	07.02.1985
18.	Ex.P.18	Original details of the sale tax arrears issued by DCTO	09.07.1987
19.	Ex.P.19.	Original Letter in the DCTO, Tirukovilur along with South Arcot District Gazette dated 28.02.1987	02.04.1987
20.	Ex.P.20	Xerox copy of stay order from the High Court, Madras	07.08.1987
21.	Ex.P.21	Original Garnishee notice	29.01.1985

22	Ex.P.22	Original details of payment made by the Highways Department to DCTO	27.10.1986
23.	Ex.P.23	Xerox copy of purchase order sent through TIIC, Madras to the plaintiff.	05.11.1985
24.	Ex.P.24	Xerox copy of Purchase order placed through APSFC Thirupathy	22.10.1986
25.	Ex.P.25	Xerox copy of Purchase order placed by the KSFC Bangalore	03.02.1986
26.	Ex.P.26	Original Statement of orders on hand	01.04.1986
27.	Ex.P.27	Xerox copy of letter sent by DCTO to District Industrial Centre (DIC) Cuddalore	25.11.1986
28.	Ex.P.28	Xerox copy of closing report of the Factory sent by the Inspector of Factories	16.05.1988
29.	Ex.P.29	Original Auction sale notice issued by DCTO, Tirukovilur	04.02.2002
30.	Ex.P.30	Original notice sent by DCTO, Ice House, Madras to the plaintiff	04.10.1993
31.	Ex.P.31	Original notice issued by CTO, Ice, House to the plaintiff	23.06.1998
32.	Ex.P.32	Original notice issued by CTO, Ice House, Madras to the plaintiff	11.09.1998.
33.	Ex.P.33	Original intimation letter sent by SIDCO	27.01.2000
34.	Ex.P.34	Original intimation letter of dues to TIIC	27.06.2003
35.	Ex.P.35	Original letter (correct year is 2001) sent by State Bank of India	09.02.2002
36.	Ex.P.36	Office copy of petition under Section 200 of Cr.P.C given by plaintiff to Government	25.02.2002
37.	Ex.P.37	Original Acknowledgement Card	-
38.	Ex.P.38	Office copy of Lawyers notice issued under Section 80 of C.P.C	12.09.2003
39.	Ex.P.39 (Series 2 Nos)	Acknowledgement Cards	-
40.	Ex.P.40 (Series 3 Nos)	Original notice return covers	-
41.	Ex.P.41	Xerox copy of letter sent by Deputy Commercial Tax Officer to Thasildar, Thirukoilur and others	13.12.2004

42	Ex.P.42	Xerox copy of Form No.7A issued by Deputy Commercial Tax Officer, Tirukovilur	-
43.	Ex.P.43	Xerox copy of Order passed by Hon'ble Division Bench, High Court, Madras in W.P.Nos.17357 and 17358 of 2005	14.12.2005
44.	Ex.P.44	Xerox copy of order passed by Hon'ble Division Bench, High Court, Madras in W.P.Nos.33526 of 2002	15.12.2005
45.	Ex.P.45	Xerox copy of statement given by the plaintiff on before the Deputy Commercial Tax Officer, Thirukoilur	23.02.2005
46.	Ex.P.46	Certified copy of order passed by Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No.9118/2006	04.07.2006
47.	Ex.P.47	Certified copy of order passed by Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No.9088/2006	04.07.2006
48.	Ex.P.48	Letter in Ka.No.A3 4239/84	09.06.2006
49.	Ex.P.49	Certified copy of the withdraw order passed in W.P.No.9539 of 2005 by the Hon'ble Court, Madras	30.03.2009

List of the Exhibits marked on the side of the Defendants:-

S.No.	***Exhibits***	***Description of Documents***	***Date***
1.	Ex.D.1	Authorisation Letter	24.01.2012

Dr.G.Jayachandran,J.

bsm

Pre-delivery judgment in
C.S.No.434 of 2008

06.02.2020