IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.6777 & 6806 of 2020
and
WMP. Nos.8069, 8106, 8107 of 2020

Mrs.Kancherla Bala Saroja Bindu Rekha
Proprietrix of M/s.Sri Mahaeejaksha Oils
...Petitioner in WP.No.6777 of 2020

M/s.Sri Sowbhagya Estates
Rep.by its Managing Partner
Smt.Kancherla Suryavathi ...Petitioner in WP.No.6806 of 2020

Vs.

1.Union Territory of Puducherry
Represented by its Secretary of Commercial Tax Department,
Puducherry

2.The Deputy Collector (Revenue),
Yanam, Puducherry.

3.The Deputy Tahsildar (Rev),
Yanam, Puducherry

4.The Deputy Commercial Tax Officer,
Yanamm, Puducherry ...R1 to R4 in both WPs

5. State Bank of India (SBI)
SME Branch, 1st Floor,
SBI Main Branch Building,
Main Road, Kakinada 533001 ...R5 in WP.No.6806 of 2020

6. State Bank of India,
Stressed Assets Recovery Branch,
Administrative Unit,
Siripuram, Junction,
Balaji Nagar, Visakhapatnam 530003
...R6 in WP.No.6806 of 2020
(R5, R6 impleaded vide order dated 12.10.2020
made in W.M.P. No. 15964/2020 in W.P.No.6806/2020)

Prayer in WP.No.6777 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of certiorari calling for the records relating to the impugned demand prior to attachment of land on Form 4 dated 28.01.2020 and the consequential proceedings in No.1025/RR Act/DTRY/2019-20/216 and Form 5 dated 14.02.2020 issued by the 3rd respondent and quash the same.

Prayer in WP.No.6806 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of certiorari calling for the records relating to the impugned proceedings of the 3rd respondent in Form 5 (Notice of attachment) dated 14.02.2020 and quash the same.

For Petitioners : Mr.S.Raveekumar

For Respondents : Mr.J.Kumaran
Additional Government Pleader for
R1 to R4 (both writ petitions)
Mr.M.L.Ganesh
for R5 and R6 (W.P.No.6806 of 2020)

C O M M O N O R D E R

W.P.No.6777 of 2020 has been filed by an individual and W.P.No.6806 of 2020 by a partnership firm, in which the individual is a partner, both challenging notice of attachment in Form No.5 dated 14.02.2020 issued by the Deputy Tahsildar, Yanam arrayed as R3, under the provisions of the Puducherry Revenue Recovery Act, 1970, (PRR Act).

2. Heard Mr.S.Raveekumar, learned counsel for the petitioners, Mr.J.Kumaran, learned Additional Government Pleader for R1 to R4 in both writ petitions and Mr.M.L.Ganesh, learned counsel for R5 and R6 in W.P.No.6806 of 2020.

3. The relevant facts necessary to adjudicate the legal issues that arise in these writ petitions are:

(i) The individual is, admittedly, in arrears of sales tax under the provisions of the Puducherry Value Added Tax Act, 2007 (Act/PVAT Act).

(ii) The firm is not registered as a dealer for the purposes of the PVAT Act and has not been assessed thus far under the provisions of the Act.

(iii) The firm is assessed to income tax and a copy of its PAN card and Income tax assessment order have been placed on file.

(iv) The firm was constituted under a deed of partnership dated 11.10.2005.

(v) The registration of the partnership before the Registrar of Firms was on 28.06.2006.

(vi) Post constitution of firm but prior to registration with the Registrar Firms, the petitioner had purchased lands in Puducherry at Kanakalapeta, T.S.No.C/7/17/1, Kanakalapeta, T.S.No.C/7/17/3, Mettakur, A/9/38 and Mettakur, A/9/39/1 (properties in question).

(vii) The lands constitute assets in the hands of the firm.

(viii) The impugned notices issued by the Deputy Tahsildar attach the properties in question for non-payment of sales tax, interest and penalty in respect of which demands have been raised upon the individual.

4. The legal issues raised by the petitioners challenging the notices of attachment are as follows:

(i) Whether the procedure for attachment of property as a means of recovery of arrears of sales tax under the PVAT Act, has been followed in this case and whether the Deputy Tahsildar is the proper authority to have issued the impugned notices.

Reliance in this regard is placed upon the provisions of the Revenue Recovery Act, 1970 (PRR Act) as well as the PVAT Act by both learned counsel.

(ii) Whether the ownership of the properties in question can be questioned, seeing as the registration of the firm with the Registrar Firms has taken place post purchase of the property.

For this purposes, reliance is placed on the provisions of Section 69 of the Indian Partnership Act, 1932 (IP Act), various judgments of the Supreme Court, and a decision of the Kerala High Court.

5. I address the above issues in seriatim, referring to the relevant provisions of the statute concerned and the case law cited.

6. Issue (i). The PVAT Act, in Section 37 onwards (Chapter-V), deals with the demand and recovery of tax. Section 38 deals with the recovery of penalty, Section 39 with further modes of recovery, Section 40 with provisional attachment of property to protect the interests of revenue, Section 41 with recovery of tax where the business of a dealer is transferred, Section 42 with special powers for recovery and Section 43 with the withholding of statutory forms and seizure of goods, as a means of recovery.

7. The provisions of Section 37 referred to by Mr.Kumaran, deals with demand and recovery of tax and sub-Section (3) thereof states that any tax assessed, or any fee or any other amount due under the PVAT Act, shall be recovered as though it were an arrear of land revenue under the law for the time being in force in that behalf.

8. Section 42 refers to the PRR Act and deals with special powers of recovery. It states that for the purposes of carrying out or engaging in the procedure set out under the PRR Act for recovery, the Joint Commissioner, Deputy Commissioner or Assistant Commissioner of Commercial Taxes shall be embued with the powers of the Collector. It goes on to state that the aforesaid officers shall follow the procedure followed under the PRR Act for effecting recovery.

9. Section 37 (3) read with Section 42 thus makes it clear that the procedure for recovery shall be as set out under the PRR Act, such procedure to be enforced by the officers named under Section 42 of the PVAT Act.

10. Coming to the PRR Act , the provisions of Section 25 onwards deal with the service of demand prior to effecting recovery of arrears from sale/disposal of immovable property. Section 25 deals with service of demand prior to attachment of land and mode of service thereof. Section 26 stipulates the procedure when a defaulter neglects to pay despite service of demand, Section 27, with the mode of attachment of immovable property, Section 28 with the management of the property which is under attachment, Section 29 with notice to be given on the assumption of management and so on and so forth, the succeeding provisions not being relevant for the purpose of this writ petition.

11. All powers from Section 25 onwards, which are to be exercised by a Collector or other officer empowered by the Collector would, by application of Section 42 of the PVAT Act, be carried out by the designated officers of the Commercial Taxes Department.

12. Mr.Kumaran would attempt to state that the procedure under the PVAT Act is two pronged and Section 37(3), which refers to recovery of arrears as though it were an arrear of land revenue would permit officials of the PRR Department also to take action for recovery. This submission, in my view, is misconceived in light of the specific mandate under Section 42, which states that for the purpose of recovery of any amount due under this Act, it is only the specified officers of the Commercial Taxes Department who have the requisite powers. As a consequence of my conclusion aforesaid, the issuance of the present impugned notices by the Deputy Tahsildar is contrary to the provisions of the Act.

13. Coming to issue of ownership of the property in question, the provisions of Section 69 have been interpreted by the Supreme Court in M/s.Haldiram Bhujiawala and Anr. Vs. M/s.Anand Kumar Deepak Kumar & Anr. (2000 (2) Supreme 145) to the effect that the purpose of Section 69(2), which deals with the effect of non-registration, is only to impose a disability on the unregistered firm or its partners to enforce contractual rights entered into by the firm with third parties in the course of its business transactions. There is no other bar or embargo placed on a firm as a consequence of non-registration.

14. In Shanmugha Mudaliar Vs. P.V.Rathina Mudaliar and another (60 LW 544), which Court states expressly that Section 69 of the Partnership Act only forbids institution of suit by an unregistered firm to enforce a right arising from a contract. Section 69 (3) provides that the provisions of sub-Sections (1) or (2) shall not impact the right or power of a firm to acquire property. The Bench goes on to say that the Act places no prohibition upon an unregistered partnership making contracts either between the partners or with a third party, nor upon an unregistered partnership acquiring property or assets. The fact that the firm was not registered with the Registrar of Firm as on the date of acquisition of the property is thus, immaterial.

15. Mr.Kumaran relies on a decision of the Kerala High Court in Shakeela C.K. Vs. The Tahsildar and Others (W.P.(C). No.39599 of 2018). That case deals with whether, in a property jointly owned by the parties, recovery could be taken as against the share of one co-owner even prior to partition. The facts therein are distinguishable and do not advance the case of the respondent. The property in question, thus, vests in the firm and issue (ii) is also answered in favour of the petitioner.

16. These writ petitions are allowed and the impugned attachment shall stand lifted forthwith. Needless to say, the revenue is at liberty to initiate such action as may be necessary to collect the arrears of tax due from the individual, in accordance with law. Connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ska

To
1.The Union Territory of Puducherry
Secretary of Commercial Tax Department,
Puducherry

2.The Deputy Collector (Revenue),
Yanam, Puducherry.

3.The Deputy Tahsildar (Rev),
Yanam, Puducherry

4.The Deputy Commercial Tax Officer,
Yanamm, Puducherry

+1 CC to The Government Pleader sr 27985, 27984
+2 Ccs to Mr.S.Raveekumar, Advocate sr 27915 27916(03/08/2021)

W.P. Nos.6777 & 6806 of 2020
and
WMP. Nos.8069, 8106, 8107 of 2020

PL(CO)
SP(15/07/2021)