IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.5854 to 5856 of 2015
and
M.P.Nos.1, 1 & 1 of 2015

Vijay Anand Nataraj
...Petitioner in W.P.No.5854/2015

P.Manivannaraj
...Petitioner in W.P.No.5855/2015

P.Rajarajan
...Petitioner in W.P.No.5856/2015

Vs

The Assistant commissioner(CT)(FAC)
Tiruchengode (Rural)
Tiruchengode. ... Respondent in all W.Ps

Common Prayer : These Writ Petitions are filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records on the files of the respondent in Assessment No.772025/89-90/Na.Ka.1631/2002/A3 dated 16.12.2014 and quash the same as being without jurisdiction and authority of law and contrary to the principle laid down by this Honourable Court in the judgment reported in (1989) 74 STC Page 33 (K.M.Mohd.Abdul Khader Firm Vs. Deputy Commercial Tax Officer, Kodaikanal and another).

For Petitioner : Mr.R.Senniappan
[in all W.Ps]

For Respondents : Mr.V.Veluchamy
Government Advocate
[in all W.Ps]

COMMON ORDER

The Notice dated 16.12.2014 issued by the respondent, raising demand of Sales Tax arrears to be paid and attachment of immovable property is under challenge in the present writ petitions.

2. The petitioners state that the subject property is in their possession and enjoyment for long years. However, the defaulter Smt.P.Vasumathi has not paid the arrears of Sales Tax for the Assessment Year 1889-1990. Thereafter, on 03.07.2014, the property was settled in favour of the petitioners. Even before the said settlement deed, another settlement deed was executed on 08.10.2007 in respect of the other property.

3. The learned counsel for the petitioners made a submission that the arrears of Sales Tax claimed in the impugned order is for the Assessment Year 1889-1990 and the notice itself was issued after a lapse of about 25 years. This apart, the petitioners have not given any security nor the subject property was encumbered during the relevant point of time. Thus, the order was issued without jurisdiction and beyond the reasonable period.

4. This Court is of the considered opinion that every action under the provisions of the Act is to be initiated either as contemplated or in absence within a reasonable period of time. Actions initiated after twenty five years can never be accepted and pertinently, during the Interregnum period, two settlement deeds were executed by the tax defaulter in respect of two different properties. In this regard, this Court is of the considered opinion that the respondent authorities slept over the issue for long years and woke up one fine morning and issued impugned notice. Such lapses committed by the authorities can never be condoned. The authorities are answerable, responsible and accountable for their lapses, negligence and dereliction of duty for initiating action under the provisions of the Act within a reasonable period of time or as per the time limit prescribed in the Statute and rules. In the event of lapses, negligence or dereliction of duty, the arrears are to be collected from the authority, who is responsible and accountable and appropriate actions are also to be initiated against the competent authority, who committed such negligence and dereliction of duty in recovering the Sales Tax arrears from the defaulter by initiating appropriate proceedings within a reasonable period of time.

5. Every public servant is duty bound to perform his duties vigilantly, prudently and in accordance with the statutes. However, in many such cases of recovery of arrears of sales tax, the Department is not acting vigilantly and prudently and initiating action belatedly, after a lapse of many years, which would provide way for escape from payment of tax or its recovery. Such a blatant dereliction of duty and negligence are to be enquired into by the Competent Authority and all suitable actions are to be initiated against the authorities, who all are liable and accountable for such lapses. Even in cases where

there is a long delay in initiating action against the authority responsible, disciplinary actions are to be initiated and recovery of arrears of sales tax is to be made.

6. The Revenue of the State is of paramount importance for the effective and efficient functioning of the Government. Therefore, the dereliction of duty, negligence, delay in initiating action must be construed as serious lapses as far as the recovery of sales tax arrears are concerned and all those officials who are responsible and accountable must be fixed and those arrears of sales tax are to be recovered from those officials by initiating appropriate proceedings for recovery under the Discipline and Appeal Rules and other relevant Rules. Thus, it is not as if the Authorities can make the Revenue of the State to lapse in such a manner, which would have serious repercussions in the matter of implementing the Public Welfare Schemes under the Constitution of India.

7. This Court has seen many number of such cases, where there is long delay in initiation of action for recovery of sales tax arrears. The inactions are sometimes based on collusions and due to corrupt activities. Thus, serious actions are warranted and an enquiry is to be conducted in all these aspects.

8. In view of the fact that the Sales Tax arrears to be recovered is of the Assessment Year 1989-1990 as impugned notices are issued after a lapse of about 25 years in proceedings dated 16.12.2014 and further, the fact remains that the property was already settled in favour of the petitioners by the defaulter in the year 2014 itself, there is no reason whatsoever to sustain the notice impugned and accordingly, the impugned notice issued by the respondent in proceedings in Assessment No.772025/89-90/Na.Ka.1631/2002/A3 dated 16.12.2014 are quashed and all the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Kak

To

The Assistant commissioner(CT)(FAC)
Tiruchengode (Rural)
Tiruchengode.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.32659

+3ccs to the Special Government Pleader, S.R.No.32688 to 32690

W.P.Nos.5854 to 5856 of 2015

RSI(CO)
RLP(09/08/2021)