BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.17983 of 2020 and
W.M.P.(MD)Nos.14984 & 14985 of 2020

1. S.Meena,
Daughter and Legal Representative of
Late Velusamy Konar,
Prop. Of M/s.Kanna Chemicals (Defunct.),
No.12, Lakshmiyapuram,
1st Street, Sankarankovil,
Tirunelveli District.

2. Maheswari,
Daughter and Legal Representative of
Late Velusamy Konar, Prop. Of
M/s.Kanna Chemicals (Defunct.),
No.12, Lakshmiyapuram,
1st Street, Sankarankovil,
Tirunelveli District. ... Petitioners

Vs.

The State Tax Officer(FAC),
Sankaran Kovil,
Tirunelveli District. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in its impugned proceedings made in TNGST 5661382/97-98 dated 30.09.2003 and the consequential orders in Na.Ka.A3/848/2018(Form5) and Na.Ka.A3/848/2018(Form 7) both dated 17.10.2020 and to quash the same as illegal and contrary to the scheme of the Act.

For Petitioners : Mr.S.Rajasekar,
for Ms.R.Hemalatha.

For Respondent : Ms.J.Padmavathi Devi,
Special Government Pleader.

* * *

O R D E R

Heard the learned counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondent.

2. The case on hand pertains to the assessment of a dealer by name Velusamy Konar. The assessment years pertain to 1997-98 and 1998-99. Velusamy Konar was running a business in the name and style

of "M/s.Kanna Chemicals". His place of business was inspected by the enforcement wing officials on 19.01.1998. Certain discrepancies were noticed. He was summoned on several occasions to clarify the same. It appears that he did not turn up with the accounts for enquiry and verification. Therefore, based on the available materials, the authority decided to finalise the assessment in respect of those two years. But by then, Velumsamy Konar had passed away on 04.07.2001. His wife Subbulakshmi was treated as the legal representative of Velusamy Konar and notice was issued to her. The assessments were finalised on 30.09.2003. To enforce the same, recovery was initiated. Questioning the same, Subbulakshmi filed W.P.(MD)No.11085 of 2011 and the same suffered dismissal on 30.01.2019 on the ground that the primary order of assessment had not been questioned and what was under challenge was only the recovery action. It is now stated that Subbulakshmi had also passed away in the year 2017. When the respondent issued attachment notice attaching the property comprised in Survey No.538/1A, in Kalappakulam Village, Sankarankovil Taluk, the present writ petition came to be filed.

3. The writ petition came up for admission on 08.12.2020. Interim order was granted on condition that the petitioners should pay 25% of the demand amount within a period of four weeks. The demand amount is Rs.71,13,968/-. The petitioners had remitted only a sum of Rs.4,85,000/-. They had not complied with the condition imposed by this Court while granting interim order.

4. The first objection taken by the learned Special Government Pleader is that in as much as the petitioners have not acted in terms of the interim order granted by this Court, the writ petition itself should be summarily dismissed. Her core contention is that the remedy under Article 226 of the Constitution of India is a discretionary one and that therefore this Court ought not to show indulgence in favour of a litigant who has not complied with the Court order.

5. Though the said submission is attractive, I am not persuaded to accept the same. I went through the terms of the interim order. This Court had made it clear that if the petitioners failed to pay 25% of the demand amount, interim stay shall stand automatically vacated and W.M.P.(MD) No. 14985 of 2020 shall stand automatically dismissed. Therefore, the consequence of non-compliance of the condition stipulated while granting interim order will be only on the interim application. It will not cast any cloud for availing relief that may be finally claimed by the writ petitioners. I will not non-suit the petitioners on the ground of non-fulfilment of the condition imposed while granting interim relief.

6. Going into the merits of the matter, it is seen that there are two assessment years involved. The petitioners had challenged only the assessment order dated 30.09.2003 in respect of

the assessment year 1997-98. Though the other assessment order was passed on the same day, in the present writ petition, there is no formal challenge to the same. Though the petitioners' counsel wanted me to mould the relief, I am of the view that it would be appropriate if the petitioners file an independent writ petition questioning the other assessment orders made for the assessment year 1998-99.

7. Let me take up the first objection that the property which is proceeded against belongs to the petitioner's mother Subbulakshmi and not that of the deceased assessee, namely, father of the petitioners herein. Though in the affidavit filed in support of this writ petition, a categorical averment is made in this regard, it has not been formally controverted by the respondent. The fact remains that in the typed set of papers, I do not find any material in support of the said claim. Therefore, this is a matter for enquiry by the recovery officer.

8. It is open to the petitioners herein to place materials to show that the property which is said to be proceeded against does not belong to Velusamy Konar or his business establishment, namlely M/s.Kanna Chemicals. If the property was purchased by Subbulakshmi, then it will devolve only on the petitioners herein and that cannot be taken as an inheritance from Velusamy. Therefore, the recovery officer will ensure that only the properties that belong to the deceased alone are proceeded against.

9. Now comes the question regarding the validity of the assessment order, I must note that the assessment order was passed way back on 30.09.2003. The question is whether this belated challenge can be entertained. The petitioners' counsel would point out that the dealership run by Velusamy Konar was closed after his demise and that it was not taken over by any of the legal representatives. It is obvious from the materials on record that Velusamy Konar left behind three legal representatives, namely, wife V.Subbulakshmi and daughters Meena and Maheswari. SECTION 15 OF THE TAMIL NADU GENERAL SALES TAX ACT, 1959 reads as follows:-

> "**Section 15. Assessment of legal representatives. -** Where a dealer dies, his executor, administrator, or other legal representative shall be deemed to be the dealer for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that, in respect of any tax or fee assessed as payable by any such dealer or any tax, or fee which would have been payable by him under this Act if he had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hands. "

10. Though the aforesaid provision employs the expression "legal representative" in singular it should be understood in its plurality, if more than one legal heir is left. Therefore the assessing officer should have served notice on the three legal

heirs. It appears that the marriage of the petitioners herein had taken place long prior to the assessments and that they had left for their respective marital homes. The assessing officer does not appear to have been taken the trouble to ascertain the details regarding all the legal representatives. The assessing officer thought that it was enough if Subbulakshmi alone was served with notice. It appears that Subbulakshmi was an illiterate woman. The petitioners herein were not parties to the said assessment proceedings that were concluded in the year 2003. Of course as fairly submitted by the learned counsel appearing for the petitioners, a similar issue was dealt with by the Hon'ble Supreme Court in the decision reported in (1965) 57 ITR 168 (SC) (FIRST ADDITIONAL INCOME-TAX Vs. SUSHEELA SADANANDAN AND ANR.). In the said decision, the Hon'ble Supreme Court had held that where there is more than one legal representative, the concept of substantial representation of the estate can also be applied. But then, there must be material to show that the other representatives had accepted the same. In the case on hand there is nothing on record to indicate that the petitioners herein had accepted the representation of the estate of Late. Velusamy Konar by his wife Subbulakshmi. It is for this reason that I am constrained to interfere with the order impugned in this writ petition.

11. The learned counsel appearing for the petitioners states that the petitioners had already remitted a sum of Rs.4,85,000/- and that they would pay a sum of Rs.5,00,000/-(Rupees Five Lakhs only) towards the ostensible dues of Late.Velusamy Konar within a period of six weeks from the date of receipt of a copy of this order. This undertaking given by the petitioners is placed on record. The petitioners are directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the credit of the petition mentioned proceedings before the respondent herein within a period of six weeks from the date of receipt of a copy of this order.

12. Subject to this undertaking, the orders impugned in this writ petition are quashed. This writ petition stands allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. The respondent will issue fresh hearing notice to the petitioner herein. I make it clear that the petitioners cannot take limitation as a defence. This point is foreclosed. The petitioners have to place all the relevant materials and contest the matter on merits. All the other contentions of the petitioners are left open. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:
The State Tax Officer(FAC),
Sankaran Kovil,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-15014[F] dated 01/04/2021)

W.P.(MD)No.17983 of 2020
31.03.2021

RK (23.04.2021) 5P 3C