

O. Chandrashekarappa Vs The Commercial Tax Officer

Court: Karnataka High Court

Date of Decision: April 11, 2014

Acts Referred: Karnataka Sales Tax Act, 1957 " Section 13, 13(4), 16, 36(c)(b)

Hon'ble Judges: Dr. Jawad Rahim, J

Bench: Single Bench

Advocate: Atul Krishna Rao Alur, Advocate for the Appellant; S.V. Girikumar, AGA, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dr. Jawad Rahim, J.

The petitioners have sought writ in the nature of certiorari to quash the order dated 19.5.2010 in Cr. Misc. No.

10/2009 vide Annexure-P and they also seek to declare the petitioners No. 1 and 2 are not the partners of the firm M/s. Saleswar Rice Mill,

Harihar and further to hold they are not liable to pay any arrears of sales tax in respect of the said firm.

2. On preliminary hearing Dr. Girikumar, learned Government Advocate taken notice for the respondent No. 1.

3. Heard.

4. The petitioners" claim they were partners of M/s. Saleswar Industries which was engaged in hulling rice. Originally the partnership consisted of

four partners. One of the partner Sri. H. Veerabhadrappe died in the year 1990. The partnership was continued with the remaining partners. The

firm is entitled to claim exemption under the Industrial. Policy as it is a small scale Industry. It was registered under the provisions of Karnataka

Sales Tax Act.

5. The first respondent collected assessment for the period 1980-81 to 1984-85 under the KST Act. After assessment orders were passed the

partners of the firm including the petitioners could not pay tax assessed by the first respondent. There was dispute between the partners of the firm

over the properties owned. By intervention of elders there was partition among the partners. As per the partition deed the mill and properties of the

firm were allocated and allotted to the 2nd respondent viz., O. Basavarajappa and the petitioners were held not to be entitled to any share in the

business of the mill or other properties. Thus the 2nd respondent continued the business as proprietor.

6. It is further averred that the firm had purchased certain properties and constructed a mill. The 2nd respondent sold the property to third party

and utilized the amount without paying anything to the petitioners. The tax liability of the firm was not discharged. Consequently the first respondent

filed application before the Civil Judge(Jr. Dn.) & JMFC,. Harihar in Cr.Misc. No. 10/2009 to issue process for recovery of the amount due

towards tax and in this regard impleaded three surviving partners viz., the petitioners and the 2nd respondent.

7. Learned counsel contends the petitioners No. 1 and 2 appeared before the Magistrate and filed statement brings to the notice of the Magistrate

that the entire firm was allotted to the 2nd respondent under partition and therefore they(petitioners) have no liability to pay tax. Besides they also

contended in view of death of one of the partners of legal heirs of the deceased partner should have been brought on record as per Section 16 of

the KST Act. Since that was not done, the proceedings were untenable. The objections filed by them is at Annexure-M.

8. The first respondent Commercial Tax Officer has filed reply to the objections filed by the petitioners. Later the learned jurisdictional Magistrate

considered the Objections raised by the petitioner vide Annexure-M and reply filed by the first respondent Annexure-N has passed order issuing

warrant for recovery of the amount, in pursuant to the Magistrate's Order fine levy warrant has been issued vide Annexure-P. Aggrieved by

Annexure-P, petitioners have preferred revision petition in CrI. R.P. No. 1575/2010 before this court. The petition was dismissed by this court

with liberty to the petitioner to question its jurisdiction. The order passed by this court is at Annexure-Q. Based on Annexure-Q they have filed this

writ petition.

9. Learned counsel would submit as per Sec. 13(4) of the KST Act any person aggrieved by the order of the Magistrate can file a criminal revision

petition. They preferred CRP which was dismissed by this court. Therefore they have no remedy except to oppose. He would submit this court in

the case of Umashankar V.U. & Others v. Commercial Tax Officer, (1987 KLJ Tri Supp(HC) held that the assessment in the name assessee is

shown as M/s. Sai Pharmaceuticals Infarct which was a partnership firm registered under the partnership Act, the defect of showing the assessee

as individual and not partnership should have been collected/rectified within the period of 5 years from the date of assessment order. Since that

was not corrected, this court held it cannot be treated as defaulter under section 36(c)(b) of the Act and hence proceedings were quashed.

10. He then relied on the decision of this court in the case of K.V. Suvarna Vs. Commercial Tax Officer, VI Circle and others, , wherein it was

held a harmonious reading of section 16 of the KST Act 1957 and Rule 42 of KST Rules 1957, makes it clear that the liability of the legal

representatives of the deceased dealer to liquidate the outstanding tax liability of any such dealer is limited to the extent of the estate that has fallen

to the hands of the legal representatives.

11. On this basis he-submits even if there is any tax liability which was to be determined by the Magistrate keeping in mind the contention of the

petitioners".

12. Responding to such grounds Dr. Giri Kumar submits proceedings under section 13 of the Act do not call for detailed enquiry. The Magistrate

has to enforce the assessment order for recovery of the tax liability. He has no jurisdiction to determine the questions raised in this writ petition. He

would submit if the petitioners" have retired from partnership firm and had no subsisting right, title or interest for the period tax has been assessed,

they should seek remedy in a civil court.

13. Keeping in mind what is urged, I have examined the grounds made out by the petitioner. It admits, no doubt, action initiated by the Magistrate

is based on the complaint submitted by the first respondent for recovery of the amount determined as Tax. If the petitioners" feel that they have no

liability to pay tax, they had right to question the assessment order itself. In the instant case, the grounds urged is, under family partition while

dividing properties of the joint family firm fell to the share of one of the partner who is 2nd respondent. If that is so, the petitioners had to intimate

the taxation authorities the date from which they ceased to be the partners and the date on which the partnership firm was transformed into the

proprietorship concern. The petitioners admittedly have not reported to the first respondent that they had no subsisting right, title or interest in the

firm in question. In the circumstances, based on the material; information available, showing the assessee as a partnership of which the petitioner

has been shown as partners, assessment order has been passed and the same is being in force. The petitioners have not taken required steps at the

right time have to blame themselves.

14. As far as the Magistrate"s jurisdiction is concerned, under section 13 of the Act, the Magistrate cannot sit in judgment Over the legality or

validity of the Assessment order. Section 13 provides for recovery proceedings and gives right to a person against whom action is initiated to show

that he has preferred any appeal or revision to stay the orders of the Magistrate. The petitioners have not either preferred revision or appeal against

the Assessment order and therefore, the Magistrate cannot be called upon to decide its validity.

In the circumstances, I do not find any infirmity legal or otherwise in the proceedings of the jurisdictional Magistrate or in the order dated

19.5.2010 vide Annexure P issuing FLW. However, the petitioners" are at liberty to question the Assessment order even if it is legally permissible

before the appropriate authority. Being of this view, the writ petition is dismissed.

Dr. Girikumar is permitted to file memo of appearance within three weeks.