

K.G. Devassy Vs. Additional Sales Tax Officer I and ors.

K.G. Devassy Vs. Additional Sales Tax Officer I and ors.

SooperKanoon Citation : sooperkanoon.com/723395

Court : Kerala

Decided On : Mar-06-1980

Reported in : [1980]46STC118(Ker)

Judge : T. Kochu Thommen, J.

Appeal No. : O.P. No. 2174 of 1977-H

Appellant : K.G. Devassy

Respondent : Additional Sales Tax Officer I and ors.

Advocate for Def. : The Government Pleader

Advocate for Pet/Ap. : C.S. Balagangadharan, Adv.

Disposition : Petition dismissed

Judgement :

T. Kochu Thommen, J.

1. The petitioner's son died in a scooter accident on 14th July, 1974. The son was a dealer under the Kerala General Sales Tax Act. The father, on the death of the son, being his legal representative, is deemed to be a dealer by virtue of Section 20 of the Kerala General Sales Tax Act, 1963 ('the Act'). In that capacity, the father was treated as a defaulter in respect of the amounts due from the deceased

son and in respect of which notices of demand had been issued to the latter. The amount due as per the demand notices was Rs. 3,186.56 in respect of the final assessment for the years 1971.-72 and 1972-73 and the provisional assessment for the year 1973-74. This amount was collected from the father on 29th October, 1975. Subsequently, assessment for the year 1973-74 was finalised and exhibit P5 dated 25th October, 1976, was passed showing the balance due from the assessee as nil.

2. Nevertheless, the petitioner has approached this Court for a writ of certiorari to quash exhibits Pi to P3 notices and exhibit P5 final order of assessment for the year 1973-74 issued to the petitioner in his capacity as the legal representative. It is contended that the tax liability of the deceased could not validly be fastened on the father. The petitioner further seeks a writ of prohibition to restrain the respondents from proceeding against the petitioner for realisation of any arrears which might be due from the deceased son and for a writ of mandamus directing the respondents to pay back to the petitioner the sum of Rs. 3,186.56 paid by him towards the liabilities of his deceased son.

3. It is admitted by the respondents that no amount is now due from the son in respect of the assessment years in question. Consequently, the prayer for writ of prohibition is unsustainable. In support of the prayer for a writ of certiorari, the petitioner's counsel Shri C. S. Balagangadharan submits that, although the petitioner is the legal representative of his deceased son, he has no liability to carry out the obligations of his son under the Act in the matter of payment of tax. In any case, the counsel submits that the petitioner cannot be deemed to be a defaulter respecting the amounts the payment of which the son has defaulted. Even assuming that the petitioner is liable to be treated as a defaulter, the counsel says, such liability does not arise until a notice of demand has been served upon him, because no person is liable to be treated as a defaulter under the Act until he has failed to comply with the notice of demand.

As regards the first two contentions they have only to be stated to be rejected in view of the provisions of Section 20, which says that the legal representative of a deceased dealer shall be liable in respect of the liabilities of the deceased to the

extent of the assets of the deceased in the hands of the legal representative. As regards the third contention that, in any event, the legal representative is not liable to be proceeded against for recovery of the amounts due from the deceased until notice of demand has been issued to the legal representative, the counsel relies upon a Full Bench decision of the Mysore High Court in *Raja Pid Naik v. Agricultural Income-tax Officer, Yadgiri* [1968] 69 I.T.R. 401 at 419 (F.B.). Referring to Section 22(1) of the Hyderabad Agricultural Income-tax Act, 1950, the court stated :

Section 22(1) transmits the liability of the deceased-assessee and not his default. So, the character of an assessee in default which had fastened itself on the father did not descend upon the son. There can be a default only when there is a duty to pay, and so, the father's default was not the son's when the tax had not yet become payable by the son.

Relying on that observation, the counsel says that notice might have been served on the son demanding payment of the amounts due from him in respect of the assessment years in question. But such notice cannot be ascribed to the father, his status as a legal representative notwithstanding. The father may be liable under Section 20 to pay the amounts due from the son but recovery steps can be initiated against the father only when he becomes a defaulter. Admittedly, no notice of demand had been served on the father at a time when he was compelled to part with Rs. 3,186.56. This amount, the counsel says, was collected from the father at a time when he was mentally depressed on account of the death of his young son in tragic circumstances, and also under threat of attachment of his shop.

4. The Government Pleader tells me that a demand notice had been issued to the father subsequent to the payment of the money. Prior to the payment of the amount by the father as legal representative no demand notice for the year 1973-74 had been served on him. The question therefore is whether the father is right in contending that he had no liability to pay the said sum of Rs. 3,186.56 in respect of the three assessment years in question.

5. Section 23(1) reads:

The tax assessed or any other amount demanded under this Act shall be paid in such manner and in such instalments, if any, and within such time, as may be specified in the notice of demand, not being less than twenty-one days from the date of service of the notice. If default is made in paying according to the notice of demand, the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or other amount under this Act.

The effect of this provision is that a person becomes a defaulter and liable to be proceeded against only when he has failed to comply with a notice of demand. Until then, although liable to pay, he is not a defaulter and cannot therefore be proceeded against for recovery. In the present case, it is not disputed that notices of demand had been served upon the son both in respect of the two final assessments for the years 1971-72 and 1972-73 and the provisional assessment for the year 1973-74. The son was thus a defaulter when he died. Proceedings for recovery could have been taken against the son during his life. The question is whether, without separate notice of demand, the father himself is liable to be proceeded against. This question would have to be answered in the negative if the counsel were right in his contentions based on the observations of the Mysore High Court in *Raja Pid Naik v. Agricultural Income-tax Officer, Yadgiri* [1968] 69 I.T.R. 401 at 419 (F.B.). With great respect, I am of the view that that decision turns on the interpretation of a section, which is not *pari materia*, and is therefore not applicable to the petitioner's case, which is governed by the provisions of Section 20 of our Act, which reads :

20. 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, fee or other amount assessed as payable by any such dealer or levied on him or any tax, fee or other amount 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.

6. The legal representative of a deceased dealer is deemed to be the dealer himself for the purposes of the Act, although his liability is limited to the extent of the assets of the deceased in his hands. He is not only liable in respect of the liabilities incurred by the deceased dealer, but he is deemed to be the dealer himself. In other words, the knowledge of the dealer is ascribed to the legal representative. Notice issued to the dealer is deemed to have been issued to the legal representative. The legal representative is, therefore, for the purposes of Section 23 of the Act, deemed to be the deceased himself. If the deceased could have been in his life proceeded against, so can the legal representative be. This is a degree higher than his position as a mere legal representative. While Section 22(1) of the Hyderabad Agricultural Income-tax Act, referred to in the Mysore decision [1968]69 I.T.R. 401 at 419(F.B.), fastened the liability of the deceased upon the legal representative, it did not say that the legal representative was deemed to be the deceased himself. That is done only under our section. In the circumstances, the petitioner's counsel's argument that the knowledge of the deceased cannot be ascribed to the legal representative cannot be accepted. Notices of demand had been issued to the deceased, but he had not complied with them; and, so the steps taken under Section 23 against the petitioner were perfectly in order.

7. In the circumstances, the challenge against the impugned orders fails and the petitioner is not entitled to claim a refund of the amount already paid by him. The petition is accordingly dismissed. No costs.