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Court : Chennai

Decided On : Apr-03-1962

Reported in : AIR1963Mad235

Judge : Srinivasan, J.

Acts : Estate Duty Act, 1953 - Sections 63(6), 67(4), 70 and 70(1)

Appeal No. : Writ Petn. Nos. 215 and 224 of 1959

Appellant : M.C.T. Muthiah and anr.

Respondent : Deputy Controller of Estate Duty, Southern Zone

Advocate for Def. : S. Ranganathan, Adv.

Advocate for Pet/Ap. : T.V. Balakrishnan and ;A. Seshan, Advs.

Disposition : Petitions dismissed

Judgement :

Srinivasan, J.

1. The petitioners in these two writ petitions are the accountable persons. In respect of the estate of the deceased Chidambaram Chettiar, the Deputy Controller of Estate Duty by his order dated 29th November 1958, served upon the petitioners on 2nd December 1958, called upon the petitioners to pay the net duty

of Rs. 1,81,400-46 nP. After deducting the sum paid by the petitioners, he demanded the payment of the balance of Rs. 1,29,749-54 nP. on or before the 10th January 1959. The petitioners applied to the Deputy Controller for a postponement of the collection of the estate duty to the extent to which there was a dispute and which dispute was the subject-matter of an appeal pending before the Central Board of Revenue. The Deputy Controller, while conceding the right of the petitioners to exercise the option under Section 70(2) of the Act in respect of the duty on the immoveable property, declined to grant the request for postponement of the collection of the balance on the ground that the petitioners had not shown that the further duty could not be paid except without excessive sacrifice.

He also rejected the claim that there could be any postponement of collection of the duty solely for the reason that the accountable persons had not agreed with the computation of the duty or that the matter was pending in appeal. The Central Board of Revenue also intimated to the petitioners that it saw no justification for postponement of the collection of the disputed duty on an application made by the petitioners to it. Thereafter, the Deputy Controller called upon the petitioners to pay the duty on or before the 5th March 1959, failing which he threatened resort to the penal provisions of the Act.

2. W. P. No. 215 of 1959 has been filed by the petitioners seeking the issue of a writ of mandamus alleging that the demand made by the Deputy Controller is illegal, ultra vires and in excess of his jurisdiction. The contention is that the Deputy Controller has no right to call upon the accountable persons to pay the duty before the Central Board had disposed of the appeal before it. This fetter upon the jurisdiction of the Deputy Controller is sought to be inferred by the petitioners from the provisions of the Act.

3. On 5th March 1959 the Deputy Controllermade an order in these terms: ,

'......duty of Rs. 1,29,749-54 was payable onor before 1st January 1959. The accountable persons paid a sum of Rs. 18,784-03. For the balance Rs. 1,10,985-51 time was allowed till 5th March 1959. As the amount has not so far been paid, I levy a penalty of Rs. 11,000 under Section 67(4) of the Estate Duty Act.........'

4. W. P. No. 224 of 1959 has been filed by the petitioners seeking to have the order quashed on the short ground that the Deputy Controller having granted time for payment of the duty till 5th March 1959, had no jurisdiction to make the order on 5th March 1959, and that the whole of that day, that is, 5th March 1959, was available to the petitioners for the purpose of making the payment. It is contended, therefore, that the order has been made without jurisdiction and is consequently liable to be quashed.

5. On behalf of the Deputy Controller, an affidavit has been filed. The contention of the respondent is shortly that the power to postpone the collection of the duty is conferred by Section 70 of the Act and that unless the accountable persons could establish that the estate duty leviable in respect of the property cannot without excessive sacrifice be raised at once, and the Controller is satisfied in that regard, the Controller cannot allow postponement of the duty. It is claimed that no attempt was made by the accountable persons to satisfy the Deputy Controller for any difficulties attendant upon the payment and on this contention It is urged that there is no defect of jurisdiction on the part of the Deputy Controller.

6. In the counter affidavit filed by the respondent in W. P. No. 224 of 1959, it is alleged that on and after the making of the assessment and the issue of the demand notice calling upon the petitioners to pay duty on 10th January 1959, by reason of the non-compliance with that direction, the petitioners were in default and unless the time for payment was validly extended by the proper authority, it was open to the Deputy Controller to exercise his powers under Section 67(4) of the Act imposing the penalty. It is claimed that till the petitioners were called upon to pay the duty on or before 5th March 1959, this order was not made on the exercise of any power conferred on the Deputy Controller under the Act. In the absence of compliance with the requirements of Section 70(1), it was not competent to the Deputy Controller to postpone the collection of the duty. It is urged accordingly that the order imposing the penalty under Section 67(4) of the Act was rightly made by reason of the failure to pay the duty on or before the 10th January 1959, and is not liable to be quashed as beyond jurisdiction.

7. It seems to me that the contentions of the respondent must prevail. Under Section 63 as it stood, there was a provision for appeal against the order of the Controller assessing the estate duty payable, to the Central Board of Revenue. Sub-section (6) of that section stated,

'Notwithstanding that an appeal has been filed before the Board, so much of the estate duty as is not in dispute shall be payable by the appellant.'

8. It is principally on the wording of the subsection that the petitioners rely in seeking to substantiate their contention that the Deputy Controller had no jurisdiction to proceed against the petitioners for the collection of the disputed duty pending the appeal. It seems to me that this provision cannot have that significance. Where a person appeals against an order of the Deputy Controller assessing the estate duty payable, even the whole order may be the subject-matter of the appeal and the dispute might relate to the entirety of the demand of the estate duty or the appellant might dispute only a part of the estate duty levied. Sub-section (6) of Section 63 as it stood, referred the appellant to pay the undisputed part of the estate duty notwithstanding the pendency of the appeal. There could clearly be no stay of the undisputed part of the estate duty. In so far as the disputed part of the estate duty is concerned, the positionwould accordingly be that there was an assessment by the Deputy Controller as authorised by the law but that the validity of that part of the assessment was sought to be canvassed in the appeal.

There is no provision of the Act which suggests that there would be a stay of operation of the collection of the duty where an appeal was filed against the order imposing the duty. Normally, therefore, any such collection of the disputed part of the estate duty should depend upon the specific orders passed in that regard either by the assessing authority or by the Appellate Authority. The only provision that is found in the Act is Section 70 which deals with the postponement of the collection of duty. It makes no distinction between cases where an appeal has been filed and where an appeal has not been filed. The only circumstance under which the Controller may allow postponement of payment would be those which are laid down in Section 70(1) of the Act. From the wording of Section 63(6) alone, it is impossible to infer that there is an automatic stay of collection of the disputed part of the duty on the filing of an appeal.

9. Coming now to Section 70, it is seen that a discretion is vested in the Controller to postpone the payment of the duty but that discretion can be brought into play only on fufilling certain requirements embodied in that provision, and the specific condition laid down therein is that the Controller should be satisfied that the duty leviable in respect of any property cannot without excessive sacrifice be raised at once. It is seen from the counter affidavit filed by the Controller, that he invited the petitioners to place before him evidence to establish that their case fell within the scope of Section 70(1) of the Act. They failed to do so. The Controller also points out in his counter affidavit that a sum of Rs. two lakhs in cash was realised by the accountable persons from the Insurance companies so that this is clearly not a case where any sacrifice is involved in the raising of the money required for the payment of the estate duty. The case is not one which comes within the four corners of Section 70(1) of the Act, and that being so, the Controller had in fact made no discretion which he could exercise in favour of the accountable persons by directing the postponement of the collection of the duty.

10. It follows, therefore, that the order of the Controller refusing to stay his hands in respect of the collection of the duty cannot be rightly attacked as illegal, ultra vires and in excess of his jurisdiction. W. P No. 215 of 1959 is accordingly dismissed.

11. Section 67(4) of the Act, as it stood before its amendment in 1958, read:

'If the person accountable does not pay the amount of duty due from him under Sub-section (1) or Sub-section (3), within the period specified therein, he shall be liable to pay a penalty of Rs. 1,000, or a sum equal to twice the amount due, according as the Controller may elect, provided that the controller may in any particular case reduce the penalty.'

12. The question is whether this section is applicable to the present case.

13. The attack upon the order of the Controller is based on the following facts. The demand notice had been served on the petitioners on the 2nd December 1958, and the petitioners had been called upon to pay the duty on or before the 10th January 1959. They preferred an appeal to the Central Board of Revenue for a stay of the collection of the disputed duty pending the appeal. That request was refused. Their request to the Deputy Controller himself in that regard was answered by that officer by his letter dated 17th January 1959. The 'Deputy Controller declined to postpone the collection of the duty and stated:

'In the circumstances I would, advise the accountable persons to pay proportionate duty on the moveables immediately.'

After the petitioner's request was turned down by the Central Board of Revenue, the officer wrote on the 24th February 1959 to the petitioners in these terms:

'In the absence of any specific direction from the Board, I do not propose to postpone collection of duty any further. Please note that if the duty is not paid immediately, in any case on or before the 5th March 1959, I shall be constrained to resort to the penal provisions of the Act.'

14. Thereafter, on the 5th March 1959, the Deputy Controller made an order under Section 67(4) of the Act levying a penalty of Rs. 11000 for failure to pay estate duty. It is contended on behalf of the petitioners that since the Deputy Controller had granted time for the payment on or before the 5th March 1959, it was not open to the officer to have made the order imposing the penalty on the 5th March 1959. It is claimed that they were entitled to the whole of the day 5th March 1959 and that the Deputy Controller could validly make an order imposing the penalty only after the expiry of that day. It is urged that even assuming that the Deputy Controller had no authority under any of the provisions of the Act to extend the time for payment, the petitioners are entitled to rely upon the terms of his order and withhold payment till the end of the day stipulated in that order.

15. I have already indicated earlier that the only provision of the Act which confers any power upon the Deputy. Controller to postpone the collection of the estate duty is contained in Section 70 of the Act. The conditions which would enable the

Deputy Controller to exercise the discretion under that provision did not exist so that the) Deputy Controller could not validly have made any order postponing the collection of the duty. It is true that if the Deputy Controller purported to grant time till a specified day, whether he had the authority to do so or not, he could not make an order imposing the penalty in advance of the day. Such an order would certainly be open to attack on the ground that it violates the principles of natural justice. If the petitioners had been given to understand that they could not be visited . with any penal consequences till after a certain date had expired, they were entitled to rely upon the terms of the order granting time to them. Learned counsel for the petitioners relied upon Janakumara v. Periaswamy, AIR 1949 Mad 376, wherein it was held that where a Court fixesa date for the fulfilment of a certain condition; the person on whom that obligation is imposed will have the whole of that day for complying with that order. But the question however is whether in the terms of the order made by the controller, the petitioners in the present case can claim immunity from the penal provisions of the Act.

16. In dealing with this aspect of the matter, I cannot ignore the circumstance that when the petitioners moved the Deputy Controller for postponing the collection of the duty, that officer clearly informed the petitioners that their case could fall only within the scope of Section 70 of the Act and that they had not established the conditions which would warrant the postponement of the collection. The letter of the Deputy Controller dated 17th January 1959, made this position perfectly clear and in that letter the Deputy Controller stated:

'In the circumstances I would advise the accountable persons to pay proportionate duty on the moveables immediately.'

17. This was again reiterated in the subsequent letter in these terms:

'Please note that if, the duty is not paid immediately, in any case on or before the 5th March 1959, 1 shall be constrained to resort to the penal provisions of the Act.'

18. In both of these letters, the petitioners were directed to pay the duty immediately, as it had already fallen due by the 10th January 1959. In the light of these circumstances, I am unable to attach any importance to the further

expression 'on or before the 5th March 1959' at any rate, to the extent of implying that the Deputy Controller had no jurisdiction to invoke the penal provisions till after the expiry of the last date, 5th March 1959, and unless the petitioners can establish any lack of jurisdiction, the order imposing the penalty is not vitiated for any reason.

19. In the result, this petition also fails. The petitioners will pay the costs of the respondent. Counsel's fee-one set Rs. 200.