

D. Subramaniam Vs. Assistant Controller of Estate Duty and ors.

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Court : Chennai

Decided On : Nov-02-1970

Reported in : AIR1971Mad314; [1971]80ITR281(Mad); (1971)IIMLJ71

Judge : Veeraswami, C.J. and ;Gokulakrishnan, J.

Acts : [Estate Duty Act, 1953](#) - Sections 73(3); Ceylon Exchange Control Act, 1953
- Sections 7, 8 and 22

Appeal No. : Writ Petition No. 2517 of 1967

Appellant : D. Subramaniam

Respondent : Assistant Controller of Estate Duty and ors.

Advocate for Def. : V. Balasubramanyan, Adv. for Respondent No. 1 and
;Government Pleader for Respondent No. 2

Advocate for Pet/Ap. : T.R. Srinivasan, Adv.

Judgement :

Veeraswami, C.J.

1. There was, as on March 9, 1966, due a sum of Rs. 37,287.95 as estate duty In India in respect of late T. A. Deivanayaga Thevar, Tirunelveli. It appears that the estate duty represented duty on Ceylon movables. The petition is now taken for a mandamus on the ground that, in view of Section 73(3) of the Estate Duty Act, the

petitioner cannot be compelled to pay the duty out of his Indian assets. He is one of the legal representatives of the late assessee. Section 73(3) of the Estate Duty Act directs the Controller to treat and continue to treat an accountable person as not in default in respect of that part of the duty an assets outside India until the prohibition or restriction of remittance is removed in the foreign country. Sections 7, 8 and 22 of the Exchange Control Act of Ceylon do show that there is restriction on remittance of money from Ceylon to this country without the permission of the Central Bank of Ceylon. But it seems to us that these provisions will not suffice to enable the petitioner to get the relief. There should be bona fide effort on the part of the petitioner to get repatriation of his Ceylon assets to pay the estate duty. One Shanmuga Raja seems to have carried on correspondence with the Controller of Ceylon for the purpose. But so far as the petitioner is concerned, he had made no effort in that direction. The last letter from the Controller of Exchange, Ceylon, was dated April 16, 1966, by which the Controller informed the petitioner that in terms of current exchange control procedure, Indian assets and income should be first utilised to settle the liability. But this leaves the impression that once the petitioner proves that out of Indian assets, he would not be able to pay the duty, the Ceylon authorities might possibly be persuaded to release the exchange. Sections 7, 8 and 22 do not prevent the Central Bank of Ceylon from granting permission if it is convinced that it was necessary. We are not satisfied in this case that the petitioner has made any efforts subsequent to April, 1966. All that Section 7 of the Ceylon Exchange Control Act says is that no payment to or credit to a person outside Ceylon should be made without the permission of the bank. To similar effect is Section 8. Section 22 places restrictions on export from Ceylon of any Ceylon currency, or any foreign currency or treasury bills. That again is a bar which can be got over with the permission of the Central Bank of Ceylon. In the circumstances, therefore, merely because there was a restriction in the Ceylon Exchange Control Act, the petitioner could not entirely rely on it, take no action to get the permission of that bank and come to this court asking for a rule to prevent the revenue from realising the estate duty. The petitioner must show bona fides on his part that, in spite of his effort taken to get the permission of the Central Bank of Ceylon, he could not succeed. But, unfortunately, the materials on record before us only show that he has not made any such effort.

2. That being the case, we dismiss, the petition with costs. Counsel's fee Rs. 250.

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