M. Ct. Muthiah Vs. the Deputy Controller of Estate Duty

M. Ct. Muthiah Vs. the Deputy Controller of Estate Duty

SooperKanoon Citation : sooperkanoon.com/813870

Court : Chennai

Decided On : Nov-30-1963

Reported in : (1964)1MLJ279

Appellant : M. Ct. Muthiah

Respondent : The Deputy Controller of Estate Duty

Judgement :

S. Ramachandra Iyer, C.J.

1. This appeal arises out of proceedings initiated under Article 226 of the Constitution with regard to a penalty imposed on an accounting party under the provisions of the Estate Duty Act. It is unnecessary to set out in detail the history of the levy of the duty and of the payment made towards it. On the death of the father of the accounting party the ease was assessed to duty and a sum of Rs. 1,29.749-54 was found due after credit being given to a payment of a small sum. This the accounting party was directed to pay before 10th January, 1959. A substantial portion of the amount, viz., Rs. 1,10,965-31 was paid within the time permitted. The accounting party then approached the authority for the grant of time for the payment of the balance. That authority granted time till 5th March, 1959.

2. It will be apparent from the order granting time that the accounting party was entitled to pay the balance before the close of the day on 5th February 1959, till which date the authority itself has given time. Curiously enough on the 5th itself

the Deputy Controller made an order levying a penalty of Rs. 11,000 for nonpayment of the balance of duty due. There can obviously be no failure to pay when the accounting party had still time till the end of that day to pay the amount. Therefore, the order levying the penalty cannot be regarded as valid.

3. Srinivasan, J., appears to have thought that by an earlier letter the accounting party was directed to pay immediately and the time given till 5th March, 1959, would not avail him. This view in our opinion, is not supported by the terms of the letter of the Deputy Controller dated 24th February, 1959, on which reliance has been placed, and the relevant portion of which runs thus:

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

Far from supporting the case of the authorities, it is clear that the accounting party was given time till 5th March, 1959, to deposit the balance duty payable. It will therefore be incompetent for the Deputy Controller to pass the order levying the penalty in the case ; such an order would be tantamount to an anticipation of failure on the part of the accounting party to pay up the duty. Penalty can be levied only on failure to pay duty; not in anticipation of it. The appellants are entitled to the issue of a writ in terms prayed for, and the order levying penalty will be quashed.