K. Packirisamy Vs. the Deputy Commercial Tax Officer (Enforcement I), Tiruvarur,

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SooperKanoon Citation : sooperkanoon.com/834384

Court : Chennai

Decided On : Dec-21-2005

Reported in : (2006)1MLJ186; [2006]147STC368(Mad)

Judge : A. Kulasekaran, J.

Acts : Tamil Nadu General Sales Tax Act - Sections 41(3)

Appeal No. : W.P. No. 40583 of 2005 and W.P.M.P. No. 43532 of 2005

Appellant : K. Packirisamy

Respondent : The Deputy Commercial Tax Officer (Enforcement I), Tiruvarur, ; the Deputy Commercial Tax Officer (

Advocate for Def. : M.C. Govindan, Spl. G.P.

Advocate for Pet/Ap. : K. Soundararajan, Adv.

Disposition : Petition allowed

Judgement :
ORDER

A. Kulasekaran, J.

1. The prayer in this writ petition is for a Writ of Certiorarified Mandamus to call for the records of the first respondent in D2 No. 25/05-06 dated 5.12.2005 and quash the same as illegal, arbitrary and without any authority of law and further direct the respondents to refund the tax amount of Rs. 1,00,000/= collected from the petitioner illegally by way of cheque on 19.11.2005.

2. Learned counsel appearing for the petitioner submits that the Enforcement Wing has passed the impugned order for which it is not vested with any jurisdiction. Learned counsel for the petitioner further submits that if at all the Enforcement Wing suspects that any dealer is attempting to evade the payment of any tax, fee or other amount due from him under the Act, it may, for reasons to be recorded in writing, seize such accounts, registers, records or other documents of the dealer as it may consider necessary, and it shall give the dealer a receipt of the same; that it may retain all the said document which may be necessary for their examination and for any inquiry, but beyond that no jurisdiction is conferred on them to levy tax.

3. In support of his contention, learned counsel for the petitioner relied upon Section 41(3) of the Tamil Nadu General Sales Tax Act, which reads as follows:-

Section 41(3) If any such officer has reason to suspect that any dealer is attempting to evade the payment of any tax, fee or other amount due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers, records or other documents of the dealer as he may consider necessary, and shall give seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

Provided that such accounts, registers, records and documents shall not be retained for more than thirty days at a time except with the permission of the next higher authority in which case they could be retained upto a period of ninety days at a time.

4. The legal position pointed out by the learned counsel for the petitioner is perfectly valid. If at all, the respondents can seize the documents and retain for sometime. Whereas in this case, the respondent has assessed the tax and

recovered a cheque for a sum of Rs. 1 lakh, which was encashed by him. The levy and collection of the said tax is without jurisdiction. Hence, the order impugned in this writ petition is liable to be quashed and accordingly quashed. The respondents are directed to transfer the amount recovered from the petitioner to the regular Assessing Authority, namely, the third respondent, who is directed to adjust it towards the tax dues.

5. With the above observation, the writ petition is allowed. No costs. Consequently, connected WPMP is closed.