

Illuri Subbayya Chetty and Sons

Vs

State of Andhra Pradesh

Civil Appeal No. 315 of 1962

(P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah JJ)

25.01.1963

JUDGMENT

GAJENDRAGADKAR J. -

The short question which arises in this appeal is whether the suit instituted by the appellant firm of Illuri Subbayya Chetty and Sons, in the court of the Subordinate Judge at Kurnool, seeking to recover Rs, 8,349 from the respondent, the State of Andhra Pradesh, on the ground that the said amount had been illegally recovered from it under the Madras General Sales Tax Act, 1939 (No. IX of 1939) (hereinafter called the Act), for the years 1952-54 is competent or not; and this question has to be determined in the light of the scope and effect of section 18-A of the Act.

The appellant is a firm of merchants carrying on commission agency and other business at Kurnool and, as such, it purchases and sells groundnuts and other goods on behalf of principals for commission. For the year 1952-53, the sales tax authorities included in the appellant's taxable turnover an amount of Rs. 3,45,488-12-10 representing groundnut sales and collected the tax on the total turnover from it in September, 1953, when the amount of the said tax was determined and duly adjusted. The said turnover of Rs. 3,45,488- 12-10 in fact represented sales of groundnuts and not purchases and tax was recovered from the appellant on the said amount illegally, inasmuch as it is only on purchase of groundnuts that the tax is leviable. As a result of this illegal levy, the appellant had to pay Rs. 5,398-4-3 for the said year. Similarly, for the subsequent year 1953-54 the appellant had to pay an illegal tax of Rs. 1,159-11-9. In its plaint, the appellant claimed to recover this amount together with interest at 12 per

This claim was resisted by the respondent on two grounds. It was urged that the suit was incompetent having regard to the provisions of section 18A of the Act; and on the merits it was alleged that the transactions in regard to groundnuts on which sales tax was levied and recovered from the appellant were transactions of purchase and not of sale. In this connection, the respondent referred to the fact that the appellant itself had included the transactions in question in the return submitted by it in Form A and that it was making payments tentatively every month to be adjusted after the final assessment was made at the end of the year. Accordingly, the final adjustment was made in September and the total amount due from the appellant duly recovered. Thus the appellant having voluntarily made the return and paid the taxes, it was not open to him to contend that the transactions in regard to groundnuts were not taxable under the Act. Besides, the appellant had not preferred an appeal either to the Deputy Commi

On these pleadings, the trial court framed three principal issues. The first issue was whether the suit was barred by section 18A of the Act; the second was whether there had been excess collection of

sales tax for the two years in question and, if so, how much ? and the third issue was whether the appellant was estopped from questioning the validity of the assessment ? According to the trial court, the respondent had failed to prove its pleas against the appellant's claim and so, it recorded findings in favour of the appellant on all the three issues. In the result, a decree followed in favour of the appellant for the recovery of Rs. 6,558 with interest at 6 per cent. per annum from November 12, 1955, till the date of payment.

This decree was challenged by the respondent by preferring an appeal before the High Court of Andhra Pradesh. It appeared that the decision of the said High Court in the case of State of Andhra Pradesh v. Sri Krishna Coconut Co. was in favour of the view taken by the trial court; but the respondent urged before the High Court that the said decision was erroneous in law and required reconsideration. That is why the respondent's appeal was placed before a Full Bench of the High Court. The Full Bench has upheld the contentions raised by the respondent. It has held that in view of the provisions of section 18A of the Act, the suit is incompetent. Alternatively, it has found that, on the merits, the claim made by the appellant was not justified. The result of these findings was that the respondent's appeal was allowed and the appellant's suit was dismissed with costs. The appellant had filed cross-objections claiming additional interest on the decretal amount, but since its suit was held to be incompetent by the

Mr. Ranganadham Chetty, for the appellant, contends that the High Court was in error in coming to the conclusion that the appellant's suit was incompetent because he argues that the High Court has misjudged the effect of the provisions of section 18A. In dealing with the question whether the civil courts' jurisdiction to entertain a suit is barred or not, it is necessary to bear in mind the fact that there is a general presumption that there must be a remedy in the ordinary civil courts to a citizen claiming that an amount has been recovered from him illegally and that such a remedy can be held to be barred only on very clear and unmistakable indications to the contrary. The exclusion of the jurisdiction of civil courts to entertain civil causes will not be assumed unless the relevant statute contains an express provision to that effect, or leads to a necessary and inevitable implication of that nature. The mere fact that a special statute provides for certain remedies may not by itself necessarily exclude t

It is, therefore, necessary to enquire whether section 18 A expressly or by necessary implication excludes the jurisdiction of the civil court to entertain a suit like the present. Section 18A provides that no suit or other proceeding shall, except as expressly provided in this Act, be instituted in any Court to set aside or modify any assessment made under this Act. It is common ground that there is no express provision made in the Act under which the present suit can be said to have been filed, and so, it falls under the prohibition contained in this section. The prohibition is express and unambiguous and there can be no doubt on a fair construction of the section that a suit cannot be entertained by a civil court if, by instituting the suit, the plaintiff wants to set aside or modify any assessment made under this Act. There is, therefore, no difficulty in holding that this section excludes the jurisdiction of the civil courts in respect of the suits covered by it.

It is, however, urged by Mr. Chetty that if an order of assessment has been made illegally by the appropriate authority purporting to exercise its powers under the Act, such an assessment cannot be said to be an assessment made under this Act. He contends that the words used are "any assessment made under this Act" and the section does not cover cases of assessment which are purported to have been made under this Act. In support of this argument he has referred us to the provisions of section 17(1) and section 18 where any act done or purporting to be done under this Act is referred to. It would, however, be noticed that having regard to the subject-matter of the provisions

contained in sections 17(1) and 18 it was obviously necessary to refer not only to acts done, but also to acts purporting to be done under this Act. Section 17(1) is intended to bar certain proceedings and section 18 is intended to afford an indemnity and that is the reason why the legislature had to adopt the usual formula by referring t

The expression "any assessment made under this Act" is, in our opinion, wide enough to cover all assessments made by the appropriate authorities under this Act whether the said assessments are correct or not. It is the activity of the assessing officer acting as such officer which is intended to be protected and as soon as it is shown that exercising his jurisdiction and authority under this Act, an assessing officer has made an order of assessment, that clearly falls within the scope of section 18A. The fact that the order passed by the assessing authority may in fact be incorrect or wrong does not affect the position that in law the said order has been passed by an appropriate authority and the assessment made by it must be treated as made under this Act. Whether or not an assessment has been made under this Act will not depend on the correctness or the accuracy of the order passed by the assessing authority. In determining the applicability of section 18A, the only question to consider is : "Is the assess

In this connection, it is necessary to emphasise that while providing for a bar to suits in ordinary civil courts in respect of matters covered by section 18A, the legislature has taken the precaution of safeguarding the citizen's right by providing for adequate alternative remedies. Section 11 of the Act provides for appeals to such authority as may be prescribed; section 12 confers revisional jurisdiction on the authorities specified by it; section 12A allows an appeal to the Appellant Tribunal; section 12B provides for a revision by the High Court under the cases specified in it; section 12C provides for an appeal to the High Court; and section 12D lays down that petitions, applications and appeals to High Court should be heard by a Bench of not less than two judges. The matter can even be brought to this court by way of a petition under article 136 of the Constitution. It would thus be seen that any dealer, who is aggrieved by an order of assessment passed in respect of his transactions, can avail himself

The facts alleged by the appellant in this case are somewhat unusual. The appellant itself made voluntary returns under the relevant provisions of the Act and included the groundnut transactions as taxable transactions. It was never alleged by the appellant that the said transactions were transactions of sale and, as such, not liable to be taxed under the Act. It is true that under section 5A(2) groundnut is made liable to tax under section 3(1) only at the point of the first purchase effected in the State by a dealer who is not exempt from taxation under section 3(3), but at the rate of 2 per cent. on his turnover. When the appellant made its voluntary returns and paid the tax in advance to be adjusted at the end of the year from time to time, it treated the groundnut transactions as taxable under section 5A(2). In other words, the appellant itself having conceded the taxable character of the transactions in question, no occasion arose for the taxing authority to consider whether the said transactions could

The question about the exclusion of the jurisdiction of the civil courts to entertain civil actions by virtue of specific provisions contained in special statutes has been judicially considered on several occasions. We may in this connection refer to two decisions of the Privy Council. In *Secretary of State represented by the Collector of South Arcot v. Mask & Co.*, the Privy Council was dealing with the effect of the provisions contained in section 188 of the Sea Customs Act (VIII of 1878). The relevant portion of the said section provides that every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final. Dealing with the question about the effect of this provision, the Privy Council observed that it is settled law that the exclusion

of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. Lord Thankerton, who delivered the opinion of the Board, however, ure, that may also tend to make the proceedings illegal and void and this infirmity may affect the validity of the order passed by the authority in question. It is in cases of this character where the defect or the infirmity in the order goes to the root of the order and makes it in law invalid and void that these observations may perhaps be invoked in support of the plea that the civil court can exercise its jurisdiction notwithstanding a provision to the contrary contained in the relevant statute. In what cases such a plea would succeed it is unnecessary for us to decide in the present appeal, because we have no doubt that the contention of the appellant that, on the merits, the decision of the assessing authority was wrong, cannot be the subject- matter of a suit because section 18A clearly bars such a claim in the civil courts.

The next decision to which reference may be made was pronounced by the Privy Council in the case of Raleigh Investment Co. Ltd. v. Governor- General in Council. In that case the effect of section 67 of the Indian Income-tax Act fell to be considered. The said section, inter alia, provides that no suit shall be brought in any civil court to set aside or modify any assessment made under this Act. It would be noticed that the words used in this section are exactly similar to the words used in section 18A with which we are concerned. In determining the effect of section 67, the Privy Council considered the scheme of the Act by particular reference to the machinery provided by the Act which enables an assessee effectively to raise in courts the question whether a particular provision of the Income-tax Act bearing on the assessment made is or is not ultra vires. The presence of such machinery, observed the judgment, though by no means conclusive, marches with a construction of the section which denies an alternative

The clause "assessment made under this Act", which occurs in section 18A, also occurs in section 67 with which the Privy Council was concerned, and in construing the said clause, the Privy Council observed that "the phrase 'made under this Act' describes the provenance of the assessment : it does not relate to its accuracy in point of law. The use of the machinery provided by the Act, not the result of that use, is the test." These two Privy Council decisions support the conclusion that having regard to the scheme of the Act, section 18A must be deemed to exclude the jurisdiction of civil courts to entertain claims like the present.

In the result, we must hold that the view taken by the High Court is right and so the appeal fails and is dismissed. There would be no order as to costs.

Appeal dismissed.

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