

SUPREME COURT OF INDIA

Commissioner of Income-tax, Madras

Vs.

Vinod Kumar Didwania

Petn, for Spl. Leave to Appeal (Civil) No. 5790 of 1984 (A/N)

(P. N. Bhagwati and Sabyasachi Mukharji, JJ.)

17.12.1984

ORDER:-

1. This is one of those rare cases where we find that the process of law has been completely abused for the purpose of gaining an undeserved advantage. Three prohibitory orders under S. 132(3) of the Income-tax Act, 1961 were issued to the first respondent with respect to goods in the following three godowns :

(a) No. 1 Krishnan Koli Street, Madras- 600001.

(b) No. 143, Mannarswamy Koli Street Royapuram;

(c) No. old No. 9/143, Mouhat Road, Guindy, Madras by the Income-tax Authorities. The Ist respondent thereupon filed a Writ Petition in the Calcutta High Court challenging the validity of these three prohibitory orders and obtained an ex parte interim injunction prohibiting the petitioners

and each of them and their servants and agents from interfering with the operation of the said godowns of the respondent and from interfering with the operation of the said godown of the 1st respondent and from interfering with the removal of and/or parting with and/or handling with and/or disposal of the materials stored in the said godowns situated at (1) No. 1, Krishnan Koli Street, Madras and (2) No. 143, Mannarsamy Koli Street, Royapuram, Madras and the stocks lying at the shop of the 1st respondent at 77, Sembudoss Street, Madras and the stock lying in the open yard godown belonging to Shri Bajijnath Gupta at Guindy, Madras in any manner whatsoever and also restraining the petitioners from giving effect to any of the said three prohibitory orders. This ex parte order of injunction was passed by the single Judge of the Calcutta High Court on 12th April, 1984 and on the strength of this ex parte order of injunction, the 1st respondent removed the goods lying in the aforesaid three godowns. The purpose of filing the Writ Petition having been accomplished by the removal of the goods from the aforesaid three godowns, the 1st respondent withdrew the Writ Petition in the Calcutta High Court. But before that the Deputy Director of Inspection, Madras filed a petition in this Court for special leave to appeal against the ex parte order of injunction which enabled the 1st respondent to remove the goods from the three godowns. It is this Special Leave Petition which has come up for hearing before us today.

2. It is obvious from the above narration of facts that the strategy of obtaining an ex parte order of injunction from the Court and thereafter removing the goods from the three godowns on the strength of this ex parte order of injunction and then withdrawing the Writ Petition was adopted by the 1st respondent with a view to defeating the prohibitory orders issued against the 1st respondent and taking the goods out of the reach of the Income-tax Authorities. We are not concerned whether the prohibitory orders issued by the Income-tax Department were valid or not. It is enough that the prohibitory orders were there and by using this stratagem the goods were removed from the three godowns and the prohibitory orders were set at naught.

3. The learned Attorney General appearing on behalf of the Deputy Director of Inspection submitted before us that the amount representing the value of the goods removed from the three godowns should be restituted by the 1st respondent since the goods were removed by him under an ex parte order of injunction obtained from the High Court of Calcutta in the Writ Petition filed by him and the nefarious purpose of filing the Writ Petition having been accomplished by removal of the goods, the writ petition was withdrawn. There is great force in his submission of the learned Attorney General. There is no doubt that the 1st respondent has abused the process of the Court for securing removal of the goods from the three godowns and he cannot be allowed to retain that advantage. However, before we make any order in this respect, it would have to be ascertained as to what was the value of the goods which were removed from the three godowns. The Deputy Director of Inspection Madras has filed an affidavit stating what according to him were the goods removed by the 1st respondent from the three godowns and what was the value of those goods. This is, however, a matter which will have to be enquired into and we would, therefore, direct that an inquiry be held for determining the value of the goods removed by the 1st respondent from the three godowns after obtaining an ex parte order of injunction from the Calcutta High Court. Such inquiry shall be held by an Inspecting Assistant Commissioner to be nominated by the Chairman of the Central Board of Direct Taxes and the Inspecting Assistant Commissioner so nominated will hold an inquiry after giving notice to the 1st respondent as also to the concerned Income-tax Officer and submit his report to this Court on or before 25th February, 1985. The 1st respondent is directed to place before the

inquiry officer whatever material there is to show what were the goods removed by him from the three godowns and the concerned Income-tax Officer will also be given an opportunity of placing the necessary material before the inquiry officer. The inquiry officer will not entertain any application for adjournment of the inquiry proceedings and complete the inquiry as early as possible so that he is able to make his report on or before 25th February, 1985. As soon as the report is received copies thereof shall be supplied immediately to the learned Advocates appearing on behalf of the parties.

4. The case will stand adjourned to 28th February, 1985. The text of this Order shall be communicated immediately to the Chairman of the Central Board of Direct Taxes.

Order accordingly.