

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

&

HON'BLE SRI JUSTICE HARINATH.N

WRIT PETITION No.23004 of 2007

Between:

Manikonda Rama Rao,
S/o.Narayana Swamy,
Dwarakanagar, Krishnalanka,
Vijayawada, Krishna District.

...Petitioner

Versus

The Deputy Commissioner (CT),
No.II Division, Vijayawada and 5 others.

...Respondents

Counsel for the Petitioner : Sri S. Dwarakanath
represented by Sri Karthik
Ramana

Counsel for respondents : 1. Dantu Srinivas (Special
Standing Counsel for CT)

2. G.P for Commercial Tax
(AP)

3. G.P for Revenue

ORDER

Dt.: 09.09.2024

(per Hon'ble Sri Justice R.Raghunandan Rao)

Heard Sri Dwarakanath represented by Sri Karthik Ramana and the learned Government Pleader for Commercial Taxes for respondents.

2. The petitioner herein had purchased a portion of a property bearing House No.41-1/4-42A, Dwarakanagar, Krishna Lanka, Vijayawada from the 5th respondent in the year 2000, by way of a registered deed of sale, for a sum of Rs.3.51 lakhs. Out of this amount, a sum of Rs.2 lakhs is said to have been paid to a Finance Company to redeem the mortgage of the property and the balance amount was paid to the 5th respondent. It may also be mentioned that the 5th respondent is the father-in-law of the petitioner.

3. The 1st respondent, by proceedings dated 14.09.2007, under Section 17-A of APGST Act read with Section 80 of the APGST Act had declared the purchase of the aforesaid property, by the petitioner, as void on the ground that the said transaction had been conducted for the purposes of evading payment of tax under the APGST Act.

4. The back ground for the said order was that, the 5th respondent was one of the directors of the 6th respondent, which was a private limited company. The 6th respondent-Company had fallen

into arrears of A.P. Sales Tax, under the APGST Act, to the tune of Rs.63,19,981/-, for the period 1992-93 to 1998-99. Admittedly, by the time of the passing of the impugned order, the 6th respondent was under liquidation. Under section 16B of the Andhra Pradesh General Sales Tax Act, 1957, every director of a private limited company, which goes into liquidation, is liable to pay the tax dues, provided that he can deny such liability if he can show that non-payment of such dues, by the private limited company was not on account of the director 's gross negligence, misfeasance or breach of duty. The 1st respondent took the view that the 5th respondent to evade such payment had alienated his property in favour of the petitioner, who is none other than his son-in-law and, by another transaction, to his daughter.

5. Aggrieved by the said proceedings, the petitioner has approached this Court. It may also be noted that the petitioner, in the affidavit filed in support of the writ petition, also states that the 6th respondent was under the liquidation and that the State Finance Corporation had auctioned the property of the 6th respondent company, under Section 29 of the SFC Act.

6. Sri Karthik Ramana, learned counsel for the petitioner assails the said proceeding of the 1st respondent dated 14.09.2007 on the following grounds:

- 1) Section 17-A of the Andhra Pradesh General Sales Tax Act, 1957 does not specify the authority who can exercise the power set out under that provision. The 1st respondent, cannot arrogate such power to himself and pass the impugned proceeding. The said proceeding is without jurisdiction;
- 2) The sale of the property had taken place in the year 2000 and the proceeding, declaring such sale void, was passed on 14.09.2007, that is 7 years after the sale. Though, no period of limitation has been prescribed for exercise of such power, the inordinate delay of seven years clearly bars such exercise of power;
- 3) The provision of Section 17-A ought to be invoked only where there are dues of a private limited company and the said private limited company goes into liquidation. Thereafter, a notice would have to be issued to the Directors, calling upon them to pay the arrears of tax of the Private Limited Company and upon such notice, the every

Director of the said company would be entitled to demonstrate that nonpayment of such tax was not on account of his negligence or misfeasance or breach of duty. In the event of any such representation made by the Director, the authority under the APGST Act would have to determine whether such a defense is available to the Director and thereafter initiate proceedings for recovery of tax from the said Director. In the absence of such proceedings taking place, an order under Section 17-A of APGST Act cannot be passed;

- 4) The proviso of Section 17-A states that where the transfer is made for adequate consideration without notice of pendency of any proceedings under the Act, the said transaction cannot be declared to be void. In the present case, payment of Rs.3,51,000/- in the year 2000, for the property in question is payment of adequate consideration and that the petitioner had no knowledge of the arrears of the 6th respondent. Consequently, the protection of the proviso would have to be given to the petitioner.
- 5) A Division Bench of the erstwhile High Court of Judicature for the State of Telangana and the State of Hyderabad in

Damera Ramakrishna and Ors vs. Commercial Tax Officer (Fac), Vijayawada and Ors¹ had held that Section 17-A of APGST Act, 1957 can be invoked by the department only when the department is able to show that the transfer was made to defraud the revenue and thereafter the burden shifts to the petitioner to show it is a bonafide transaction. The 1st respondent, in the impugned proceedings, has not placed any material to show that there is a basis to say that the transfer was to defraud the revenue.

7. The learned Government Pleader for Commercial Taxes, on the other hand, would contend that the petitioner is no other than the son-in-law of the 5th respondent and was fully aware of the difficulties of the 6th respondent in paying its taxes and other dues. He would submit that the payment of sale consideration of Rs.3.51 lakhs included payment of about Rs.2 lakhs for clearing the mortgage on the property. This would mean that the sale consideration was essentially used to clear the charge over the property so that the property can be transferred to the petitioner. He would submit that in such circumstances, there is neither adequate consideration nor was the purchase a bona fide purchase without

¹ (2005) 142 STC page 515

notice of the pending dues. He would further submit that the impugned proceedings itself record that various notices had been issued to the 6th respondent to clear its dues and failure of the 6th respondent to clear the tax dues resulted in the passing of the impugned order.

8. The learned Government Pleader would also submit that though no authority has been prescribed under Section 17-A, such powers would clearly be attributable to the assessing authority or officers who are superior to such assessing authority. As the 1st respondent, is the Deputy Commissioner (CT) who is superior to the assessing authority, it cannot be said that the 1st respondent does not have jurisdiction or authority to pass the impugned proceedings.

Consideration of the Court:

9. Section 17-A of Andhra Pradesh General Sales Tax, 1957 reads as follows:

17A. Transfers to defraud revenue void.- Where during the pendency of any proceeding under this Act, or after the completion thereof any dealer creates a charge on, or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise:

Provided that, such charge or transfer shall not be void if it is made –

(i)for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the dealer; or

(ii)with the previous permission of the assessing authority.

10. The provisions of Section 17-A, provide the commercial tax department with a provision to safeguard recovery of revenue by permitting an authority under the Act to declare any transaction which takes away an asset out of the reach of the department. Needless to say, this provision would be available only where it is shown that such property had been alienated for adequate consideration and the purchaser was unaware of the liability of the vendor in alienating such property. There could be a situation where a dealer, who is aware of the financial position of the dealer, takes steps to alienate property to evade payment of taxes, even before any assessment of the taxes is made or even before the assessing authority wakes up to the fact that the dealer had not paid the taxes declared under the periodic returns filed by the dealer. The said power to declare an alienation of property as void, need not be only after the tax liability has been fixed. Any other view would render this provision *otiose*.

11. This provision came to be considered by a Division Bench of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the case of **Damera Ramakrishna and Ors vs. Commercial Tax Officer (Fac), Vijayawada and Ors**². In this case, a Private Limited Company had fallen in sales tax arrears to the tune of Rs.35,98,030/-. The said assessee, while steps were being taken to recover the tax dues, had sold away immovable property belonging to it and orders under Section 17-A were passed. Upon challenge, a Division Bench of the erstwhile High Court took the view that the initial burden to show that the property was sold to defraud revenue and avoid payment of tax falls on the sales tax authorities. Upon such onus being discharged, the burden would fall on the purchaser to show that they were bona fide purchasers who have paid adequate consideration for the purchase. On the facts in that case, the Division bench came to the conclusion that the purchasers were bona fide purchasers and quashed the proceedings under Section 17-A of the APGST Act.

12. In the present case, the facts are different. The petitioner is no other than the son-in-law of the 5th respondent and the assertion of the petitioner that he was unaware of the tax dues of

² (2005)1 ALT 293 (DB): 2005) 142 STC Page 515

the 6th respondent, which was essentially a family concern of the 5th respondent, cannot be taken on face value.

13. However, there is one difference in the present case from the facts of **Damera Ramakrishna's** case. In **Damera Ramakrishna's** case, the dealer itself had sold the property while in the present case a Director of the dealer had alienated the property. In the circumstances, the provisions of Section 16-B have to be considered. Section 16-B of the APGST Act reads as follows:

Section 16B Liability of directors of private company in liquidation.

When any private company is wound up and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax, unless he proves that the non recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

14. Section 16-B states that Director of a Private Limited Company, under liquidation, would be liable to clear sales tax dues of such company. However, the Director can get out of the said liability by demonstrating that non-payment of tax was not on account of his negligence, misfeasance or breach of duty. It is only after the Director is given an opportunity to demonstrate that non-

payment of tax by the Private Limited Company was not on account of his negligence, misfeasance or breach of duty and after rejecting any such representation by the Director, that the tax authority can recover the tax dues of the liquidated private company from its Directors.

15. In the present case, though the company is admitted to be in liquidation, no steps have been taken against the 5th respondent by issuance of a notice calling upon him to pay the tax dues of the 6th respondent Private Limited Company nor was the 5th respondent given an opportunity of hearing to demonstrate that there was no liability to pay such taxes. In the absence of such an opportunity being given to the 5th respondent, tax liability cannot be fastened upon the 5th respondent.

16. The 6th respondent became liable to pay sales tax between 1992 to 1998. The alienation of property took place in the year 2000 and the proceedings declaring the alienation, as void, took place in the year 2007. Thereafter, no steps have been taken for fixing tax liability on the 6th respondent. In the absence of fixation of such liability, passing an order under Section 17-A of the APGST Act is not a reasonable exercise of power. It may also be noted that no steps have been taken to recover taxes from the 5th respondent till

date and the question remains as to whether such recovery is permissible today.

17. In the circumstances, this Court is of the view that the proceedings of the 1st respondent dated 14.09.2007 would have to be set aside, subject to the condition that such proceedings can again be issued, provided steps are taken to fix liability of payment of tax dues of the 6th respondent on the 5th respondent and thereafter steps are taken for recovery of such tax dues.

18. Accordingly, this Writ Petition is allowed by setting aside the order passed by the 1st respondent in RcB2 191/2007, dated 14.09.2007 under Section 17-A of APGST Act, 1957. However, it shall be open to the 1st respondent or any other competent authority under the APGST Act or the successor Acts, provided such authority is vested in any authority, under the Successor Act, to take steps to ascertain whether the 5th respondent would be liable to clear the dues of the 6th respondent and whether such tax dues can be recovered from the 5th respondent, if it is found that he would be liable to pay the tax dues of the 6th respondent. In the event of any such findings, it would be open to the 1st respondent or any competent authority to exercise power under Section 17-A of the APGST Act. For this purpose, the petitioner shall be prohibited from

transferring the property in question for a period of six months. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

HARINATH.N,J

RJS

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
HON'BLE SRI JUSTICE HARNITH.N**

WRIT PETITION No.23004 of 2007

(per Hon'ble Sri Justice R. Raghunandan Rao)

Dt: 09.09.2024

RJS