REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 760 OF 2023

THE COMMERCIAL TAX OFFICER & ORS. ...APPELLANT(S)

VERSUS

NEERAJA PIPES PVT. LTD. ...RESPONDENT(S)

J U D G M E N T

S. RAVINDRA BHAT, J.

1. The appeal was heard, with consent of counsel for the parties. The appellant, Commercial Tax Officer (hereafter called "the revenue") is aggrieved by the judgment and order of the Telangana High Court[1], by which a writ petition filed by the respondent (hereafter "the assessee") was allowed.

2. The assessee questioned the revenue, complaining that it did not provide copies of assessment order for the years 2005-06, 2008-09, 2009-10, and 2010-11 under the Andhra Pradesh General Sales Tax Act, 1957 (hereafter "APGST Act") and Telangana State Value Added Tax Act, 2005 (hereafter "VAT Act")

[1] Dated 28.09.2021 in WP No. 3703/2020

and for not lifting attachment order dated 03.02.2012 and another, revised attachment order dated 20.02.2018 under Form V invoking the provisions of Revenue Recovery Act, 1864 (hereafter "the RR Act"), under Section 27 of the VAT Act. The revenue had issued assessment orders for the assessment years (AYs) 2005-06 to 2008-09, 2009-10 and 2010-11, under which ₹1,88,81,000/-, ₹2,38,84,000/- and ₹2,21,83,854/- was claimed respectively, as tax due and payable.

3. The assessee argued, before the High Court that the revenue, despite several requests, did not furnish assessment orders, and that it was not aware of them. Since these orders were allegedly not served, the assessee submitted that it was unable to examine their correctness and whether they conformed with the provisions of the VAT Act, and further to enable it to avail remedies under the statute. The assessee alleged that the notice dated 03.02.2012 in Form V under the RR Act invoking Section 27 of the VAT Act for non-payment of arrears of tax to the tune of ₹5,59,58,758/- and attaching its various properties, led it to bring to the notice of the authorities that the arrears so reflected in Form V were erroneous. The assessee requested to cancel the said demand, since the assessment orders for the year 2001-02 and 2003-04 were revised on 24.04.2005 resulting in excess tax collection; it requested that such excess tax collected be adjusted for the subsequent demand. According to the assessee, the revenue thereafter did not issue any further notice and after lapse of about six

years, issued a revised notice in Form V dated 20.02.2018 showing arrears of tax in a sum of ₹5,59,78,758/- for the tax periods 2005-06 to 2008-09, 2009-10 and 2010-11 and attached land and building (belonging to the assessee) being Sy. No.182 - H.No.7-3-52/1/2 situated at Gaganpahad village, Rajender Nagar Mandal, Ranga Reddy district measuring 2,224.05 square yards. The assessee relied on various representations[2] asking the revenue to cancel the demand and attachment notices.

4. It was also urged that, though the assessee made several requests for furnishing copies of assessment orders and also the date of service of such orders passed, the revenue maintained silence, and provided neither. The assessee therefore urged that without effecting the service of the assessment orders, as mandated by law, the revenue could not claim tax shown as arrears, and could not resort to provisions of the RR Act, attaching its properties.

5. The revenue, in its return, resisted the claim and urged that the assessee engaged itself in the business of manufacturing and selling HR strips, sections, and pipes and effected intra-state and inter-state sales. For AY 2005-06 to 2008-09, it was issued with show cause notice in Form VAT 305A on 06.06.2009 proposing to raise a demand of ₹1,86,80,708/-. Objections were called for, from the assessee which were not filed till 06.07.2009. Consequently, assessment orders were passed on 07.07.2009 confirming the tax demand as proposed in the show cause notice. This assessment order was challenged before the High Court

[2] Dated 18.06.2018, 16.07.2018, 23.08.2018, 24.10.2018, 05.03.2019, 18.06.2019, and 04.11.2019.

in a writ petition[3]; which was disposed of by the court on 15.04.2010 permitting the assessee to file objection to the notice in VAT 305A dated 06.06.2009 within a period of six weeks from the date, on the condition that the assessee deposited ₹20 lakhs within four weeks from 15.04.2010. However, no deposit of the amount within the period specified was made; the assessee also did not file its objections to the show cause notice, as directed by the court. As a result, the revenue issued proceedings dated 31.03.2011 confirming the demand of tax in a sum of ₹1,86,80,708/- as arrived at by assessment order dated 07.07.2009. The revenue alleged that the said proceeding was served on one Mr. Pankaj Agarwal, Director of the company on 31.03.2011 itself, which was duly acknowledged.

6. The revenue further contended that similarly for AYs 2009-10 and 2010-11, assessments under VAT Act were finalized raising a demand of ₹2,38,84,812/- and ₹1,21,83,884/-. Since the assessee did not pay the tax due in the normal course, an urgent notice dated 14.06.2011 was issued for payment of ₹5,50,58,758/- which included the arrears of tax payable for the earlier period i.e., 2005-06 to 2008-09. It was claimed that this urgent notice was served on Mr. Neeraj Agarwal, one of the Directors of the assessee company on the same day. The arrears shown as due, were not paid, resulting in a demand notice in Form IV dated 12.09.2011 under the RR Act, before attaching the assessee's properties. Since there was no response, or compliance, an attachment order

[3] W.P. No. 27331/ 2009

dated 03.02.2012 in Form V under the RR Act was issued. Even then the assessee did not approach the revenue to seek any relief and instead remained silent.

7. The revenue also urged that it became aware that the assessee's banker, Canara Bank, had issued a notification on 14.08.2011 bringing its immovable properties for sale in public auction to recover the loans extended to it. Under provisions of Section 25 and 26 of VAT Act, the tax arrears have a priority over the dues of the bank. They provide for first charge over the properties of the VAT dealer. Therefore, the revenue requested the petitioner's banker not to proceed with sale of the property, pursuant to the notification dated 14.08.2011 and also requested it to remit the sale proceeds towards the assessee's tax arrears, in case sale takes place in public auction. The revenue then approached the High Court by filing a writ petition[4] to declare the notification dated 14.08.2011 issued by the bank, as illegal and contrary to the provisions of the VAT Act. The assessee was arrayed as second respondent in that proceeding. The revenue had specifically averred that the assessment orders were served on the assessee and that those assessment orders had attained finality, resulting in the demand of liability getting crystalized. The assessee did not object to those averments by filing a counter affidavit denying the service of assessment order. In that writ proceeding, after an initial interim order, the High Court, on 13.02.2015, permitted the assessee's banker to proceed with the auction in

[4] W.P. No. 25943/2011

respect of its director's properties, but continued the order of restraint of not issuing confirmation of sale in respect of the company's property mentioned at serial Nos. 4, 5 and 6 of the notification dated 14.08.2011. As a result, the revenue issued revised attachment notices in Form IV and V on 07.03.2015 and 27.04.2015 under the RR Act attaching the immovable property of the assessee being land admeasuring 2,224.25 square yards and building standing thereon. Even to the said revised attachment proceedings issued in Form IV and V there was no response forthcoming from the assessee company. It was in these circumstances that the revenue issued another notice of attachment dated 20.02.2018 in Form V, in respect of the property and served copy of the said notice on Sri Pankaj Agarwal and Neeraj Agarwal i.e., Directors of the assessee company.

8. It was claimed that the assessee then for the first time, submitted representation dated 18.06.2018 for furnishing certified copies of assessment orders. Similar representations renewing the said request are stated to have been made on 24.10.2018 and 05.03.2019. According to the revenue none of the said representations, claimed that the assessment orders passed by the revenue were not served and on the other hand it claimed that *"the assessment orders are not available with us and our factory is closed long back and above orders are not traceable in our records"*. The revenue averred that the allegation of not furnishing of copies of assessment orders passed, was an after-thought, to

thwart the proceeding initiated by the respondent for recovery of tax dues. Non-service of assessment orders was not raised in the earlier two writ proceedings and this, it was contended by the revenue, demonstrated absence of bonafides.

9. The impugned order noticed that the VAT Act stipulates the manner and method of service of notices and orders on the assessee; Rule 64 of the Telangana VAT Rules[5] ("the rules") prescribes the procedure thereunder. The court held that an order by the revenue to be considered as validly served, would have to be only in the manner prescribed under the Rules and that since the assessee is a company, it was governed by Rule 64(1)(b) in terms of which any notice or an order passed can be considered as validly served under any one of the modes, namely - (i) if the same is personally served on the nominated person; or (ii) it is left at the registered office of the person or person's address for service of notices under the Act; or (iii) it is left at or sent by registered post to any office or place of business of that person in the State; and (iv) where it is returned unserved, if it is put on board in the office of local chamber of commerce or trader's association. It was held that so far as the assessment order

[5] *"**64. Mode of Service of orders and notices***
(1) Unless otherwise provided in the Act, or these Rules, a notice or other document required or authorized under the Act or these Rules to be served shall be considered as sufficiently served,-
(a) on a person being an individual other than in a representative capacity if,-
(i) it is personally served on that person ; or
(ii) it is left at the person's usual or last known place of residence or office or business in the State; or
(iii) it is sent by registered post to such place of residence, office or business, or to the person's usual or last known address in the State; or
(b) on any other person if,-
(i) it is personally served on the nominated person ; or
(ii) it is left at the registered office of the person or the person's address for service of notices under the Act; or
(iii) it is left at or sent by registered post to any office or place of business of that person in the State; (iv) where it is returned unserved, if it is put on board in the office of local chamber of commerce or traders association.
(2) The certificate of service signed by the person serving the notice shall be evidence of the facts stated therein."

dated 31.03.2011 for AY 2005-06 to 2008-09 were concerned, the material placed on record showed that the order was served on the assessee, represented by its Director Mr. Pankaj Agarwal, who was deponent to the affidavit in the writ petition. The court held that the service of the order passed for AY 2005-06 to 2008-09 could not be called in question; since the assessee did not question the assessment order, it has attained finality.

10. So far as AY 2009-10 and 2010-11 are concerned, the revenue's contention with respect to the admission by the assessee in its pleadings in the previous writ petition was rejected:

> *"the said contention urged does not hold water, since the challenge in the said Writ Petition filed by the respondent as petitioner was in relation to a notification issued by the petitioner's banker bringing to auction the properties of the petitioner for recovery of loans advanced to it wherein the respondent, as petitioner, sought to claim priority over such assets being a crown debt. The dispute in the said Writ Petition is primarily between the respondent as petitioner and the bank. Thus, the claim of the respondent in the counter affidavit that the petitioner herein did not choose to file a counter affidavit therein raising the said plea would not preclude the petitioner from taking the said plea in the present proceeding."*[6]

11. The impugned order also held that the revenue did not have record evidencing the service of assessment order on the assessee for AY 2009-10 and 2010-11 by any of the modes prescribed under Rule 64(1)(b). It was noted that Section 42 of the VAT Act mandates an assessee to maintain the record minimum for a period of six years from the end of the year, however, the revenue in whom the power of revision is vested, claimed that the record was

[6] Paragraph 32 of impugned High Court judgment.

not traceable even though it had only been 10 years since the relevant period. It was held that if such statement were to be accepted, it was not clear on what basis revised notices in Form IV and V were issued on 07.03.2015 as well as notice of attachment in Form V dated 20.02.2018 under the RR Act, claiming arrears of tax from the assessee for the above said period. Noting that nothing prevented the revenue from issuing certified copies of the orders pursuant to the request made by the assessee on 18.06.2018 (just about four months after revised Form V notice was issued on 20.02.2018), the assessee's stance is justified.

12. On the basis of this reasoning, the impugned judgment was delivered. Since the revenue was unable to show how the service of assessment orders for AY 2009-10 and 2010-11, was effected and when, the attachment notice issued in Form V dated 20.02.2018 invoking the RR Act for recovery of a sum of ₹5,59,58,758/- was set aside. The court, however, clarified that it was open for the revenue to initiate recovery proceedings afresh only to the extent of arrears of tax due for the period 2005-06 to 2008-09 as crystalized under order dated 31.03.2011 in accordance with law, by excluding the tax arrears shown as due for the period 2009-10 and 2010-11.

Contentions of parties

13. The revenue contends that the impugned order is in error. Its principal submission is that the assessee was an established concern, and had, in the past,

occasion to contest its liability, even in respect of the same assessments. Notice of this court is drawn to the previous writ petition initiated by the assessee, whereby the court had remitted the matter for fresh consideration, and permitted filing of objections, despite which the assessee did not participate in the proceedings, leading to fresh orders. Likewise, it was submitted that when a composite attachment order was made, and the revenue had gone to the court, filing a writ petition, it had specifically stated the extent of the assessee's liabilities, which the latter did not dispute. It never alleged non-service of orders, or that it was unaware of proceedings leading to those orders. In these circumstances, its plea that it was not served with orders, could not be entertained; even otherwise, that was not the subject matter of its representations. Having regard to all these factors, the assessee was estopped from contending that the attachment orders were vitiated in law.

14. Counsel for the assessee relied on the findings of the High Court, and stated that the revenue's arguments are meritless, with respect to service of assessment orders. It was submitted that Rule 64, relied on by the High Court is unambiguous, as every assessee has a right to expect service of assessment orders upon it, to enable it to seek appellate or revisional remedies. Even otherwise the correctness of assessment orders and their compliance with law, required service of orders, in terms of the two enactments. Without resorting to the precondition of such notice, the revenue could not have sought recourse to

the RR Act and attached the assessee's properties. Therefore, the findings in the impugned order were justified and in accordance with law.

Analysis and conclusions

15. The High Court's reasoning is based entirely on the effect of Rule 64 of the rules. There can be no doubt that when any statutory or administrative order, visits a citizen or entity with adverse consequences, such an order has to be served upon the concerned person; especially so, when that order is appealable or subject to revision by higher authorities. That is the substance of the requirement under Rule 64. The High Court, in the present case, drew a distinction between two periods; for AY 2005-06 to 2008-09 it was held that the assessments could not be called in question. So far as AY 2009-10 and 2010-11 were concerned, the court held that the attachment orders were invalid, since the assessment orders were not served.

16. The findings of the High Court, on the facts would not normally have required a second look by this court; however, the peculiar circumstances of this case compel scrutiny. After the disposal of the writ petition filed by the assessee (on 15.04.2010) concededly, it made no attempt to file objections or even deposit the amounts the court had required it to. As a regular dealer, it had filed returns not only for AY 2005-06 to 2008-09 but also later periods (i.e., AY 2009-10 and 2010-11). However, if its contentions were to be believed, it made no attempt to ascertain the fate of its assessments for those periods. More

importantly, the assessee's banker had attached and sought to bring to sale, its properties. At that stage, the revenue approached the High Court, seeking to enforce its first charge, under provisions of the APGST Act and the Telangana VAT Act; the assessee was a party (second respondent) in those proceedings. In those proceedings, specifically, the liabilities of the assessee were pleaded. It however did not deny those averments, nor contended that the assessment orders were not served upon it. Further, it alleged that its representations seeking copies of assessment orders were not replied to by the state. The revenue however, pointed out to the High Court, that the representations never alleged that assessment orders were not served and that the attachments were therefore not compliant with provision of law.

17. In *Amina Bi Kaskar (D) by LRs. v. Union of India & Ors.*[7] this court had occasion to deal with complaints of non-service of notice, which led to forfeiture of property. The court held that the conduct of the party is relevant, and in the facts of that case, denied relief:

> *"**16.** In the light of the aforementioned finding of fact recorded by the Tribunal and affirmed by the High Court, we do not consider it necessary to examine the question though vehemently argued by Dr Rajeev Dhavan, learned Senior Counsel for the appellants, namely, whether in a given case service of the order on the appellants' lawyer is proper or not and whether the service on the appellants' minor daughter was in accordance with the procedure prescribed under Section 22 of SAFEMA or not.*
>
> ***17.** If the appellants had the knowledge of the order passed against them and which they admit to have as per their own admission mentioned above, pursuant to which they filed appeals, then in our opinion, so-called irregularity in the manner of effecting the service of*

[7] (2018) 16 SCC 266

the order on them, etc. was of no consequence and cannot be termed as illegal per se (if found to exist though denied by the Revenue).”

In *Sri Budhia Swain & Ors. v. Gopinath Deb & Ors.*[8] similarly, the court observed as follows:

“As already noted the appellants sought for review or recall of the order from the O.E.A. Collector solely by alleging that the notice which was required to be published in the locality before settling the land in favour of the respondent No. 1 was not served in accordance with the manner prescribed by law. The appellants did not plead 'non-service of the notice' but raised objection only with regard to 'the manner of service of the notice'. The High court had called for and perused the record of the O.E.A. Collector and noted that the notice was issued on 15.12.1963 inviting public objection. The notice was available on record but some of its pages were missing. The O.E.A. Collector had noted in his order dated 23.2.1966 as under :-

‘It is only due to missing of some pages of the proclamation-including the last page over which the report of the process server was there, a scope was available to the objectors to file this petition. Under the above circumstances, it is not necessary to issue another proclamation and entertain further objection since the case is being heard and going to be finalised on 14.3.66.’

The O.E.A. Collector was satisfied of the notice having been published. Assuming that the notice was not published in the manner contemplated by law, it will at best be a case of irregularity in the proceedings but certainly not a fact striking at the very jurisdiction of the authority passing the order.

The Appellate Authority, i.e., the ADM has in his order noted two other contentions raised by the appellants, viz., (i) the application for settlement by the respondent No. 1 was not filed within the prescribed time, and (2) the application should have been treated as an application for lease and should not have been treated as a claim case.

None of the two pleas was raised by the appellants in their pleadings. None of the two was urged before O.E.A. Collector. Therefore, there was no occasion to consider those pleas. Still we may make it clear that none of the two pleas could have been a ground for recalling the order which was otherwise within the jurisdiction conferred on the O.E.A. Collector...”

[8] [1999] 2 SCR 1189: (1999) 4 SCC 396

18. In the present case, *arguendo* if the assessee was unaware, in the first instance regarding the issuance of assessment orders against it, at least when the revenue filed a writ petition (W.P. No. 25943/2011) complaining about Canara Bank's proposal to auction the assessee's properties, it had impleaded the assessee too. In the pleadings, there was a specific mention about the assessment orders, them having become final, and why those demands had to be given primacy as revenue dues, over and above the bank's dues. The assessee was served in those writ proceedings; however, it did not dispute the revenue's contention. This, in the opinion of the court is a telling aspect, as it highlights the assessee's conduct in deliberately choosing to keep quiet, even when it could have raised a grievance.

19. Moreover, the assessee also did not dispute that it had not received the copies of assessment orders, in those writ proceedings. Further, it did not seek copies of the assessment orders, in the representations addressed to the revenue after the second attachment order was issued, on 20.02.2018. In these circumstances, the assessee's contentions that the attachment orders were unenforceable, because the assessment orders were not served on it, are untenable. The High Court, with due respect, fell into error, in holding that since the subject matter of the revenue's writ petition (W.P. No. 25943/2011) was different, the assessee could not be faulted for highlighting that it had not received a copy of the assessment order. In fact, the entire premise of that writ

petition was that the assessee owed tax dues, to the extent of ₹5,59,58,758/- and that the bank could not sell the assessee's properties.

20. In the light of the foregoing discussion, the revenue's appeal has to succeed. The impugned judgment and order are therefore, set aside. As a result, the attachment notice in Form V dated 20.02.2018, is revived and it is open to the revenue to recover the dues owed, as per the said notice. The present appeal is allowed. There shall be no order on costs.

…….....J.
[S. RAVINDRA BHAT]

.....J.
[DIPANKAR DATTA]

NEW DELHI,
MARCH 15, 2023.