

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

M/S. SHER SINGH-KARTAR SINGH AND ANOTHER,—

Petitioners.

versus

THE TEHSILDAR (SALES TAX) AND OTHERS,—*Respondents.*

Civil Writ No. 248-D of 1958.

Bombay Sales-Tax Act (III of 1953)—S. 17—Revenue Recovery Act (I of 1890)—Ss. 3 and 4—Sales-tax due from a firm—Whether can be recovered from a debtor of the firm as arrears of land revenue.

1964

Sept., 28th.

Held, that under section 17 of the Bombay Sales Tax Act, 1953, the Collector can recover the amount due either from the assessee or any other person who owes money to the assessee. The only condition precedent, however, is that a notice has to be issued to the person concerned. On the receipt of the notice, that person can file objections before the Collector to the effect that he, in fact, does not owe any money or a part thereof to the assessee. In case his objections prevail with the Collector, the result would be that no such amount would be demanded from him, otherwise, the said sum would be recovered as arrears of land revenue. Since the provisions of this section and section 3 of the Revenue Recovery Act, 1890, give ample powers to the Government to recover the amount of sales tax from the debtor of the assessee-defaulter, against whom the latter has obtained a decree from a Civil Court, as arrears of land revenue, there is no necessity for them to go to the executing Court for this purpose. The debtor can pay the amount under protest and file a suit for its recovery under section 4 of the Revenue Recovery Act, 1890.

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to grant this petition and to restrain the respondents by a Writ in the nature of "Prohibition" or by other appropriate writ, order or direction from enforcing the impugned demand against the petitioners.

R. S. NARULA WITH S. S. CHADHA, ADVOCATES, for the Petitioners.

S. N. SHANKER, ADVOCATE, for the Respondent.

ORDER

PANDIT, J.—On 2nd April, 1953 Messrs, Sita Ram-Har Narain Kapur. of Bombay. (hereinafter referred to as the Bombay firm) obtained a decree for Rs. 16,800 against Messrs Sher Singh-Kartar Singh, Chandni Chowk, Delhi, petitioner No. 1. It appears that some amount was

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due from the Bombay firm on account of Sales-tax and when it was demanded from them by the Sales-tax Authorities, they said that the same be recovered from their debtors, petitioner No. 1. The Sales Tax Officer, Bombay on 31st August, 1956, issued a recovery certificate in the sum of Rs. 13,872-12-0 against petitioner No. 1 under section 17(b) of the Bombay Sales Tax Act, (No. 3 of 1953) and on the basis of the same on 17th September, 1956 the Collector of Bombay issued a revenue recovery certificate and sent it to the Collector of Delhi, respondent No. 4, for the recovery of this amount from the petitioners under section 3(1) of the Revenue Recovery Act (No. 1 of 1890). After the receipt of this certificate, the Naib Tehsildar (Sales Tax), Delhi, respondent No. 2, issued a notice to the petitioner-firm for appearance before him on 17th May, 1957. As a result, Sher Singh, petitioner No. 2, who is the Managing Partner of petitioner No. 1, appeared before the said officer and was informed about the recovery certificate that had been received from the Collector of Bombay. Thereafter petitioner No. 2 went to Bombay and appeared before the Collector and made a statement on 25th May, 1957 to the effect that he had to pay Rs. 16,800 to the Bombay-Firm. He, however, stated that out of this decretal amount he had made certain payments to the Bombay-Firm and was willing to pay the balance of Rs. 7,515-5-6 to the Government on behalf of their creditor-firm in suitable instalments at Delhi. On 13th June, 1957, the petitioner made an application to respondent No. 4 that he had approached the Collector of Bombay and the proceedings of recovery be, therefore, stayed. The said proceedings were, consequently, stayed. Thereafter, fresh notice of demand was issued by respondent No. 2 to the petitioners and they were asked to appear before him on 20th September, 1957. On this date, two months' time was given to the petitioners for getting the necessary orders from the Collector of Bombay. Since no intimation was received from Bombay, a fresh notice was issued to the petitioner-firm by the Tehsildar Sales Tax, Delhi, respondent No. 1, for appearance before him on 4th December, 1957. On this date, the petitioners filed certain objections before the Collector of Delhi. According to them, these were accepted and the recovery certificate was returned to Bombay as unexecuted; whereas,

according to the respondents, these objections were rejected and another notice was issued by respondent No. 2 to the petitioners for appearance on 25th July, 1958. On this date, time was taken by them for filing fresh objections, which were actually put in before respondent No. 4 on 5th August, 1958. According to the petitioners, they were advised by respondent No. 4 to get suitable orders from this Court, and as a result, the present writ petition was filed on 14th August, 1958 for quashing the demand notice and for suitable directions restraining the respondents from enforcing their demand for Rs. 13,872.75 nP. This came up for hearing on 18th August, 1958, but it was adjourned till the objections filed before the Collector of Delhi were disposed of. The petitioners appeared before the Collector and made an application dated 22nd August, 1958, for passing final orders on their objections. The Collector stayed the enforcement of the demand and enquired from the Collector of Bombay about the provisions under which an amount payable under a civil court decree could be recovered as arrears of land revenue, since the petitioners had alleged before him that no money was due from them to the Bombay-firm and that the decree could not be legally enforced being time-barred. The Collector of Bombay,—*vide* his letter dated 8th October, 1958, informed the Collector of Delhi that the revenue recovery certificate was issued on the strength of a recovery certificate granted by the Sales Tax Officer, Bombay and, consequently, the amount was recoverable as arrears of land revenue. The proper course under the Revenue Recovery Act for the party concerned was to pay the dues under protest and then institute a suit for the payment of this amount. On 7th November, 1958 a fresh notice of demand was received by the petitioners asking them to pay the sum of Rs. 13,872.75 nP. on 12th November, 1958. On this date, the petitioners filed Civil Miscellaneous No. 1618-D of 1958 in this Court, praying that the present writ petition be admitted and the recovery proceedings be stopped pending its disposal. On 13th November, 1958, the writ was admitted and recovery of the amount in dispute was stayed.

Learned Counsel for the petitioners submitted that the petitioner-firm was not an assessee within the meaning of

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the Bombay Sales Tax Act, and, therefore, no recovery of sales tax or penalty could be made from them and the demand in dispute could not be enforced against them. The petitioners did not owe any money to the Government and consequently, the provisions of the Revenue Recovery Act could not be made use of in the present case. It was also submitted that the respondents could not demand money from third parties in execution of a claim against an assessee. In any case, if the amount in dispute could be recovered from the petitioner-firm, then the proper forum for the realisation of the same was the executing Court. The demand, however, could not be enforced under the provisions of the Revenue Recovery Act, 1890.

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It is undisputed that the Bombay-firm owed certain money on account of sales tax to the Government. It is also clear on the record that a decree for the recovery of Rs. 16,800 had been passed in favour of the Bombay-firm against the petitioners. It may, however, be mentioned that in the writ petition the case of the petitioners was that they did not owe anything to the Bombay-firm but after the return filed by the respondents, they did not press this objection. Now the question that arises for decision is whether the Government could claim the amount due from the Bombay-firm from the petitioners on the basis of the decree, which had been passed against them and in favour of the Bombay-Firm. In order to determine this matter, it would be useful to reproduce the provisions of section 17 of Bombay Act, 3 of 1953, which deal with the special mode of recovery of the sales tax and are in the following terms:—

'S. 17(1). Notwithstanding anything contained in any law or contract to the contrary, the Collector may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address known to the Collector, require:—

- (a) Any person from whom any amount is due or may become due to a dealer on whom a notice has been served under sub-section (5) of section 16, or

(b) any person, who holds or may subsequently hold money for or on account of such dealer,

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to pay to the Collector, either forthwith upon the money becoming due or being held, or at or within the time specified in the notice (not being before the money becomes due or it is held), so much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of the tax and penalty under this Act or the whole of the money when it is equal to or less than that amount.

Explanation.—For the purposes of this sub-section the amount due to a dealer or money held for or on account of dealer by any person shall be computed after taking into account such claims, if any, as may have fallen due for payment by such dealer to such person and as may be lawfully subsisting.

(2) The Collector may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer and the receipt of the Collector shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount referred to in the receipt.

(4) Any person discharging any liability to the dealer after receipt of the notice referred to in this section shall be personally liable to the Collector to the extent of the liability discharged or to the extent of the liability of the dealer for tax and penalties, whichever is less.

(5) Where a person to whom a notice under this section is sent proves to the satisfaction of the

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Collector that the sum demanded or any part thereof is not due to the dealer or that he does not hold any money for or on account of the dealer, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be to the Collector.

- (6) Any amount of money which a person is required to pay to the Collector or for which he is personally liable to the Collector under this section shall, if it remains unpaid, be recoverable as an arrear of land revenue."

A plain reading of this section would show that the Collector can recover the amount due either from the assessee or any other person, who owes money to the assessee. The only condition precedent, however, is that a notice has to be issued to the person concerned. On the receipt of the notice, that person can file objections before the Collector, to the effect that he, in fact, does not owe any money or a part thereof to the assessee. In case, his objections prevail with the Collector, the result would be that no such amount would be demanded from him, otherwise, the said sum would be recovered as arrears of land revenue. This is what has happened in the present case. According to the affidavit of the Collector of Sales Tax, Bombay, prior to the action taken by him a notice dated 27th September, 1955, under section 17 of the Bombay Sales Tax Act was served upon the petitioners, but they failed to reply thereto or pay the amount as demanded therein in spite of a reminder dated 3rd January, 1956. The said reminder was duly delivered to the petitioners on 12th January, 1956, but they did not dispute their liability under the Civil Court decree. It may, however, be mentioned that the petitioners in their counter-affidavit, dated 18th September, 1964, had stated that they had not received any notice under section 17 of the Bombay Sales Tax Act. They had searched the entire record of the partnership-firm, but neither the notice dated 27th September, 1955 nor the reminder, dated 3rd January, 1956, appeared to have been received by them. This reply is evasive and in face of the clear assertion made by the Collector of Bombay, it is not possible to hold that no notice under section 17 was given

to the petitioners before the recovery certificate, dated 31st August, 1956, had been issued by the Sales Tax Officer of Bombay against them. Under these circumstances, the revenue recovery certificate issued by the Collector of Bombay, was in accordance with law. This amount under the provisions of sub-section (6) of section 17 of the Bombay Sales Tax Act could, therefore, be recovered as arrears of land revenue from the petitioner-firm.

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Now coming to the provisions of the Revenue Recovery Act, section 3 of this Act lays down:—

“S. 3(1) Where an arrear of land-revenue, or a sum recoverable as an arrear of land revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the Schedule stating:—

(a) the name of the defaulter and such other particulars as may be necessary, for his identification, and

(b) the amount payable by him and the account on which it is due,

(2) The certificate shall be signed by the Collector making it or by any officer to whom such Collector may, by order in writing, delegate this duty, and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district.”

The amount in dispute was recoverable as arrears of land revenue from the petitioner-firm and since this firm had failed to pay the same, they had become a “defaulter”

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within the meaning of section 2(3) of the Revenue Recovery Act. It says:—

“ ‘defaulter’ means a person from whom an arrear of land-revenue or a sum recoverable as an arrear of land-revenue, is due, and includes a person, who is responsible as surety for the payment of any such arrear or sum.”

Under the provisions of sub-section (3) of section 3, the Collector of Delhi could, on receiving the certificate from the Collector of Bombay, proceed to recover the amount stated therein as if it were arrears of land revenue from the petitioner-firm. It is for this purpose that the impugned notices were issued by respondents 1 and 2, and the same were, therefore, quite valid in law. Since the provisions of the Bombay Sales Tax Act and the Revenue Recovery Act, gave ample powers to the Government to recover the amount in dispute from the petitioners, there was no necessity for them to go to the executing court for this purpose. There is, thus no merit in any of the above-mentioned contentions raised by the learned counsel for the petitioners.

It was then argued by the learned counsel that the maximum amount which could be recovered from the petitioners was only Rs. 7,515-0-6, because after the passing of the decree against them, they had paid some amounts to the Bombay-Firm and the balance left due was only Rs. 7,515-5-6.

No such plea was taken by the petitioners in the writ petition. As a matter of fact, their case was that they did not owe anything to the Bombay-firm. It was only after the return had been filed by the respondents wherein it was mentioned that petitioner No. 2 had gone to Bombay and admitted before the Collector there that a decree in the sum of Rs. 16,800 had been passed against them and in favour of the Bombay-firm, out of which they had paid certain amounts and only a balance of Rs. 7,515-5-6 was due from them and which they were willing to pay to the Government on behalf of the defaulter (The Bombay-firm) in suitable instalments at Delhi, that they changed their stand during the course of arguments and took up the present plea. They cannot be permitted to set up an entirely new case at the argument stage. Moreover, when notice

under section 17 of the Bombay Sales Tax Act, was issued to them, they should have gone to Bombay and raised all these objections before the Collector there. They are themselves to be blamed for not taking up the right course at the proper stage. Besides, a remedy was open to them even under the provisions of section 4 of the Revenue Recovery Act.

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This section says—

“S. 4(1) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for the payment of the amount or the part thereof so paid.

(2) A suit under sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

(3) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject to the law in force at the place aforesaid, give evidence with respect to any matter stated in the certificate.

(4) This section shall apply if under this Act as in force as part of the law of Pakistan or Burma, or under any other similar Act forming part of the law of Pakistan or Burma, proceedings are taken against a person in Pakistan or Burma, as the case may be, for the recovery of an amount stated in a certificate made by a Collector in any State to which this Act extends.”

The remedy by way of a suit was, therefore, available to the petitioners, which, admittedly, they did not make use

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of. Therefore, the objection raised by the learned counsel is pointless.

The result is that this petition fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs.

B.R.T.