
(2009) 07 P&H CK 0232
In the Punjab And Haryana At Chandigarh

A.P. Raheja and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 39

Citation : (2010) 154 CompCas 449 : (2010) 29 VST 103

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—Shri Rajiv Raheja-petitioner No. 2 is a former director of M/s. V.P. Engineering Service P. Ltd., Karnal (for brevity, "the company") whereas Shri A.P. Raheja-petitioner No. 1 is his attorney. The respondent Department served notices on petitioner No. 1 being the attorney of petitioner No. 2 to effect the recovery of sales tax amounting to Rs. 90,000, in respect of assessment year 1981-82 on the ground that petitioner No. 2 had been a director of the company. The notices were duly replied by petitioner No. 1 on November 2, 1987 (petitioners Nos. 3 and 4). He also filed an affidavit stating that petitioner No. 2 is the son of petitioner No. 1 and he is settled in U.K. and he had resigned as a director of the company on November 21, 1983 (petitioner No. 5). It has further been asserted in the petition that the letter of resignation was forwarded to the Registrar of Companies on December 20, 1983, on a prescribed form (petitioner No. 2). The prayer made by the petitioner is that no recovery from a former director of the company could be effected because the company is a separate entity and the assessment has been made against the company and not against an individual director, The basic principle of company law that corporate character of the company continues and the director cannot be made liable is sought to be applied at the instance of the petitioners.

2. In the written statement filed by the respondents the usual objection of 2 non-filing of an appeal u/s 39 of the Haryana General Sales Tax Act, 1973 (for brevity, "the Act") has been raised. It has further been stated that u/s 18 of the Central

Sales Tax Act, 1956 (for brevity, "the CST Act"), recovery could be effected from the director as well.

3. When the matter came up for consideration at the motion stage on 3 December 28, 1987, the vacation Bench has issued notice for January 7, 1988 and arrest of petitioner No. 1 was stayed till further orders. When the Division Bench issued notice of motion, stay was allowed to continue.

4. Mr. Suvir Sehgal, learned Counsel for the petitioners has argued that 4 within this jurisdiction itself the principle of law that no recovery of tax could be effected from the director, has been settled by a Division Bench of this court as early as 1964 in the case of Surinder Nath Khosla v. Excise and Taxation Commissioner [1964] 15 STC 838. According to learned Counsel an incorporated company is a juristic person and a separate identity distinct from any individual shareholder. Therefore, the business carried on by the company belongs to it in its juristic capacity and not to its shareholders. For similar view reliance has also been placed on another judgment of learned single judge in the case of Tikam Chand Jain Vs. State Government of Haryana and Another, .

5. Ms. Ritu Bahri, learned State counsel, however, has submitted that sec- 5 tion 18 of the CST Act permits recovery from the director of the company.

6. We have thoughtfully considered the submissions made by learned 6 Counsel for the parties and are of the view that the petitioners have not been treated fairly by the respondents. It is a well-settled principle of law that a company registered under the Companies Act, 1956, is a complete separate entity and it has a corporate veil which can be lifted only for the limited purposes. The directors of the company cannot be a substitute of the company in their individual capacity. However, the respondent State of Haryana preferred to proceed against one of the directors-petitioner No. 2 by issuing him notice to recover the amount of arrears of sales tax, which were payable by the company. Petitioner No. 1, who is attorney of petitioner No. 2, replied to the recovery proceedings initiated by the Assistant Collector, Tis Hazari, New Delhi and stated that his son Shri Rajiv Raheja, who was a director in the company, had ceased to be its director on December 20, 1983, when his resignation dated November 21, 1983, was forwarded to the Registrar of Companies. He also clarified that according to the company law and the Act, no recovery proceedings could be initiated against the director of a company in his personal capacity for recovering the arrears due against the company. Although no precedent for the above proposition would be required, yet the issue was settled by a Division Bench of this court as early as 1964 in the case of Surinder Nath [1964] 15 STC 838, on which reliance has been placed by learned Counsel for the petitioners. The Division Bench held that a incorporated company is a juristic person, a separate entity distinct from any individual shareholder and the business carried on by the company belongs to it as a juristic person and not to its planners like the managing director or the directors. It is equally well-settled in the case of partnership firm that the liability has to be shared by the partners individually as

well as severally. This is the basic distinction which is well rooted and is very well known in the legal world. The matter was again considered by a learned single judge of this court in the case of Tikam Chand Jain [1987] 67 STC 388 : [1987] 92 PLR 151, wherein it was held that in the company law there is no provision for making the managing director personally liable for the recovery of the dues of the company. Two more Division Benches of this court deserves to be noticed on the issue, namely, Suneet Khurana v. Assistant Collector [1997] 10 PHT 495 and Mukesh Gupta v. State of Haryana [1996] 8 PHT 326. Another Division Bench of this court in the case of Om Parkash Walecha Vs. State of Haryana and Others, (of which one of us M.M. Kumar J. was a member) after considering various judgments, has reiterated the same principle. The argument that Section 18 of the CST Act could be invoked, has also been rejected in Om Parkash Walecha Vs. State of Haryana and Others, , because Section 18 would be applicable in case the company has been wound up. In the present case, there is not even a whisper that the company has been wound up, which would result into attracting of applicability of Section 18 of the CST Act.

7. On principle as well as on precedent it becomes obvious that the writ petition merits acceptance. Accordingly, all recovery proceedings against petitioner No. 2 are set aside and a direction is issued to the respondents to restrain from issuing any notice to petitioner No. 2 or his attorney petitioner No. 1 on the pretext of effecting recovery of sales tax under the Act or under the CST Act. The action of the respondents being wholly unwarranted and against the settled law, the respondents are liable to be saddled with cost. The cost is assessed at Rs. 20,000.

8. The writ petition stands disposed of in the above terms.