(1998) 09 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No''s. 6795 to 6797 of 1998

Arun Kapoor APPELLANT

Vs

Assistant Collector and Another RESPONDENT

Date of Decision : 10-09-1998

Acts Referred:

Central Sales Tax Act, 1956 — Section 18
Constitution of India, 1950 — Article 226, 227

Citation : (2002) 128 STC 339

Hon'ble Judges : N.K. Agrawal, J;G.C. Garg, J

Bench : Division Bench

Advocate : Rajesh Bindal, for the Appellant; A.P. Manchanda, Additional Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

N.K. Agrawal, J.—These are three petitions under Articles 226 and 227 of the Constitution for quashing the notices issued to the petitioners by the Assistant Collector, Delhi, for the recovery of arrears of sales tax payable by the companies in which the petitioners were directors. Since the parties as well as the question for determination are common, these petitions are being decided by this common order.

2. Arun Kapoor, petitioner in Civil Writ Petitions Nos. 6795 and 6797 of 1998, was one of the directors in Aruna Day Rubber Industries Pvt. Ltd,, Sonepat, and also in Organo Rubber Pvt. Ltd., Sonepat. Similarly, Ashok Kapoor, petitioner in Civil Writ Petition No. 6796 of 1998, was one of the directors in Elasto-Chem Pvt. Ltd., Sonepat. All the three aforesaid companies carried on business at M-3, Industrial Area, Sonepat. Ex parte assessments under the Haryana General Sales Tax Act, 1973 and the Central Sales Tax Act, 1956, were framed by the Excise and Taxation Officer-cum-Assessing Authority, Sonepat and demand of sales tax was created. The amount of sales tax was sought to be recovered as arrears of land revenue from the petitioners personally on the ground that they were directors in

the companies.

3. The plea put forward by the petitioners is that the amount of tax cannot be recovered from them as they were merely directors of the company and were not liable to pay in their personal capacity the dues payable by the company.

4. Shri Rajesh Bindal, learned counsel for the petitioners, has argued that there is no enabling provision in the Haryana General Sales Tax Act nor in the Central Sales Tax Act under which liability of a private limited company relating to the arrears of tax could be enforced against or recovered personally from the directors of the company. The amount of tax can be recovered from the assets of the company or from the sureties of the company, who furnished security before the Sales Tax Department at the time of registration of the company. Shri Bindal has, therefore, contended that the recovery proceedings are wholly illegal.

5. The respondents have in their written statements, raised an objection that the petitioners have an alternative remedy to file appeal and that they are not entitled to invoke the jurisdiction of this Court under Articles 226 and 227 of the Constitution. It is further stated that Section 18 of the Central Sales Tax Act, 1956 permitted the recovery of arrears of sales tax from the directors. The petitioners were, admittedly, directors of the company and, therefore, recovery of tax could be made from them. It is stated that there was no provision in the Haryana General Sales Tax Act creating a bar against the recovery of dues from a director of a private limited company. Further, even if arrears of tax are not recoverable under the Haryana General Sales Tax Act, these are recoverable under the Land Revenue Act as the arrears of land revenue. Since there are no movable or immovable assets of the company free from encumbrances from which tax may be recovered, the arrears of tax could be recovered from the directors.

6. The objection taken by the respondents that the petitioners had an alternative remedy of appeal is found to have no substance inasmuch as they are not challenging the assessments made against the company, but they are disputing their personal liability in respect of the recovery of tax payable by the company.

7. There is no dispute about the petitioners'' assertion that they were directors of the company. u/s 18 of the Central Sales Tax Act, 1956, when any private company is wound up and any tax assessed on the company under the said Act cannot be recovered, then every person, who was a director of the private company at any time during the period on which tax is due, shall be jointly and severally liable for the payment of tax unless he proved that the non-recovery cannot be attributed to any gross negligence, misfeasance or prejudice of duty on his part. In the case in hand, it is not shown by the respondents as to what is the amount of tax assessed on the company under the Central Sales Tax Act. It is also not shown as to what efforts were made to recover the arrears of tax from the assets of the company. Liability of the directors would arise if the amount of tax was assessed on the company under the Central Sales Tax Act and it cannot

be recovered from the company. Since the respondents have shown neither the amount of tax recoverable under the Central Sales Tax Act nor they have brought any material on record to establish that the amount of tax cannot be recovered from the company, the proceeding relating to recovery of arrears of tax from the petitioners are held to be not permissible in law.

8. This Court has, in Mukesh Gupta v. State of Haryana (1996) 8 PHT 326 (P&H) examined a similar question and has held that a director was not liable personally for the amount due towards arrears of sales tax from the company. This view was reiterated by this Court in Suneet Khurana v. Assistant Collector (1997) 10 PHT 495 (P&H).

9. We are inclined to take the same view as in the aforesaid two cases and we, therefore, hold that the recovery of arrears of sales tax from the petitioners cannot be made.

10. In the result, the writ petitions are allowed and the respondents are directed to refrain from recovering the amount of sales tax from the petitioners. The respondents shall, however, be at liberty to proceed in accordance with law against the assets of the company or against any other person liable to pay sales tax for and on behalf of the company. No order as to costs.