
(1979) 03 BOM CK 0015

In the Bombay High Court

Case No : Miscellaneous Petition No. 581 of 1972

Gulam Nabi Chaku

APPELLANT

Vs

G.M. Shahdadpuri and Others

RESPONDENT

Date of Decision : 20-03-1979

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 18, 19, 30, 63
Gujarat Sales Tax Act, 1969 — Section 25

Citation : (1979) 44 STC 387

Hon'ble Judges : B. Lentin, J

Bench : Single Bench

Advocate : V.H. Patil, for the Appellant; F.D. Sikandar, for the Respondent

Judgement

Lentin, J.—This is a petition filed under article 226 of the Constitution of India, challenging the validity of, and for setting aside, certain assessment and penalty orders passed by respondents 1 and 2, viz., the Sales Tax Officer, A Ward, Bombay, and the Sales Tax Officer (Enforcement Branch), Greater Bombay, and the demand notice dated 31st July, 1972, issued by the fourth respondent, viz., the Special Tahsildar (Recoveries), Srinagar. The fifth respondent is the erstwhile partner of the petitioner.

2. The facts leading to this petition are as follows :

3. From 24th June, 1964, till 24th March, 1966, the petitioner and the fifth respondent carried on business in partnership in the name and style of M/s. Kashmir Palace in Bombay. This partnership was dissolved by a deed of dissolution dated 24th March, 1966, in terms whereof, inter alia, the accounts between the partners were settled and the fifth respondent took upon himself the entire responsibility of paying and discharging all the debts and liabilities of the firm, including sales tax liabilities, prior to 24th March, 1966. Thereafter, the petitioner has been carrying on his own business in Kashmir where he permanently resides. On 3rd August, 1972, the petitioner received a notice dated 31st July, 1972, from the fourth respondent stating that an amount of Rs.

1,18,913.97 had been declared outstanding from the petitioner on account of sales tax arrears by the third respondent and was directed to appear before the fourth respondent on or before 4th August, 1972, with the amount of Rs. 1,18,913.97, in default whereof steps would be taken against the petitioner under the law. Thereafter, the petitioner addressed several communications to respondents 1 and 2, apprising them of the dissolution of the firm and asking them to withdraw the demand for Rs. 1,18,913.97 against the petitioner. As, however, the various letters and personal visits of the petitioner to the respondents yielded no result, the petitioner filed the present petition.

4. The amount of Rs. 1,18,913.97 demanded from the petitioner can be divided into two periods, viz., the pre-dissolution period and post-dissolution period, as under :

PERIOD	AMOUNT	Pre-dissolution	1 - 4 - 65 to 12 - 11 - 65	Rs. 21,035.00
		tion period.	13 - 11 - 65 to 31 - 3 - 66	Rs. 6,846.00 (Tax). Rs. 2,000.00 (Penalty).
			1 - 4 - 66 to 31 - 3 - 67	Rs. 20,250.00
		Post-dissolution	1 - 4 - 67 to 31 - 3 - 68	Rs. 21,338.13
		tion period.	1 - 4 - 68 to 31 - 3 - 69	Rs. 22,794.44
			1 - 4 - 69 to 31 - 3 - 70	Rs. 24,649.51

5. Mr. Patil, the learned counsel appearing on behalf of the petitioner, challenged the impugned assessment and penalty orders on two grounds, namely, (1) after the dissolution of the firm on 24th March, 1966, sales tax liability for the period thereafter could not be fastened on the petitioner, and (2) even in respect of the pre-dissolution period, the petitioner could not be held to be liable unless he was personally made a party to the assessment proceedings and the notice of demand was served on him.

6. Elaborating his first contention, Mr. Patil urged that it made no difference whatsoever whether or not the petitioner informed the sales tax authorities about the dissolution of the firm and that, even assuming that the petitioner had failed to do so, tax liability in respect of the post-dissolution period could not be fastened on the petitioner.

7. On behalf of the petitioner it was conceded by Mr. Patil in the course of his arguments that the dissolution of the partnership between the petitioner and the fifth respondent had not been intimated by the petitioner to the sales tax authorities until after the passing of the impugned orders. The deed of dissolution, wherein all the liabilities including sales tax liabilities, have been taken over by the fifth respondent, is not challenged, as stated, by Miss Sikandar appearing on behalf of respondents 1 to 4.

8. At this stage, a perusal of certain sections of the Sales Tax Act would be material.

9. Section 18 provides that, notwithstanding any contract to the contrary, where any firm is liable to pay tax under the Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment, provided that

where any such partner retires from the firm, he shall be liable to pay the tax and the penalty (if any) remaining unpaid at the time of his retirement, and any tax due up to the date of retirement though unassessed at the date.

10. Section 19 is a special provision regarding liability to pay tax in certain cases. Sub-section (3) states that where a dealer liable to pay tax under the Act is a firm and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable u/s 18, the tax (including any penalty) due from the firm under the Act or under any earlier law, up to the time of dissolution, whether such tax (including penalty) has been assessed before such dissolution but has remained unpaid, or is assessed after dissolution.

11. Section 30 pertains to information to be furnished regarding change in business, etc., and states, in so far as is material for the purpose of this case, that where any dealer liable to pay tax under the Act is a firm and the firm is dissolved, every person, who was a partner thereof, shall inform the prescribed authority of such dissolution. Thus, the duty and the liability to give the requisite information is mandatory as is obvious from the word "shall" in section 30. Rule 18 of the Bombay Sales Tax Rules, 1959, inter alia, provides that the information u/s 30 shall be given to the prescribed authority in writing within 60 days from the date of the occurrence of any of the events mentioned in that section, viz., dissolution, as in this case.

12. The consequence of not giving the requisite information prescribed u/s 30 is to be found in section 63, which provides for offences and penalties. Sub-section (1)(g) states that whoever fails, without sufficient cause, to furnish any information required by section 30 shall, on conviction, be punished as mentioned in that section.

13. Thus, the utmost that a party failing to give the requisite information to the prescribed authority as provided by section 30 read with rule 18 can be faced with, is a prosecution as provided by section 63(1)(g). That and nothing else. There is nothing in the Act to suggest that sales tax liability can be fastened upon a retiring partner after the date of the dissolution of the firm. Here, it may be mentioned that section 18 of the Bombay Sales Tax Act corresponds to section 25 of the Gujarat Sales Tax Act, 1969, except that, in section 25 of that Act, there is a further proviso, which stated that where no intimation is given within fifteen days from the date of retirement, the liability of the partner to pay tax and penalty (if any) remaining unpaid at the time of his retirement and any unassessed tax due up to the date of retirement shall continue until the date on which such intimation is received by the Commissioner.

14. No such provision is to be found in section 18 or elsewhere in the Bombay Act. Thus, as far as the Bombay Act is concerned, it was clearly not the intention of the legislature to visit the defaulting partner with consequences other than a prosecution as provided by section 63(1)(g) of the Bombay Act.

15. In the circumstances, while it would be open to the authority to resort to the provisions of section 63(1)(g) of the Act, there is nothing in the Act to justify the issuance of the impugned assessment and penalty orders and the demand notice against the petitioner in respect of the amounts covered by the post-dissolution period. Under the Bombay Act, as it stands, that liability can not be foisted on the petitioner by reason of his failure to bring to the notice of the concerned authority the fact of dissolution of the partnership. At the highest, he would be liable to prosecution as provided by section 63(1)(g) and that is all. It would be open to the authority to proceed against the fifth respondent to recover this amount. That nothing of consequence can be recovered from him, as stated by Miss Sikandar, is no ground to foist the liability on the petitioner not contemplated by the Act.

16. Miss Sikandar urged that in the sales tax returns filed by the fifth respondent in respect of the post-dissolution period, he had stated that there was no change in the constitution of the firm. If it is not possible, as conceded by Miss Sikandar to challenge the deed of dissolution (wherein all liabilities, including sales tax liabilities, are taken over by the 5th respondent from 24th March, 1966), it is difficult to see how the petitioner can be made responsible for apparently incorrect statements made by the fifth respondent, contrary to the deed of dissolution itself.

17. Coming to the second ground of challenge urged by Mr. Patil, it is entirely devoid of any merit and was given up by Mr. Patil, and rightly so. It is difficult to envisage how the sales tax authorities could possibly make the petitioner personally a party to the assessment proceedings without the authorities being informed by the petitioner of the dissolution of the partnership, which, Mr. Patil conceded, the petitioner failed to do.

18. Miss. Sikandar urged that the petition is misconceived inasmuch as the Act is a self-contained code providing for appeal, revision and reference. Miss Sikandar urged that the petitioner not having taken advantage of them, it was not open to him to have come directly by way of this petition before exhausting the remedies provided by the Act. The short answer to this contention is, as has been laid down times out of number by the several High Courts as well as the Supreme Court, that it is open to a party to come directly by way of writ proceedings if pursuing the remedies available under the Act would be an exercise in futility. In this case, as several letters and interviews yielded no result whatsoever, the petitioner was justified in coming to the conclusion that the result, even after resorting was justified in coming to the conclusion that the result, even after resorting to the remedies under the Act, would be a foregone conclusion. Hence, it was open to the petitioner to approach this Court directly by way of writ jurisdiction.

19. In the circumstances, in respect of the post-dissolution period, no liability can attach to the petitioner under the impugned orders and demand notice. He would, however, be liable to respect of the pre-dissolution period to the amount

of Rs. 29,881.

20. In the result, the petition succeeds in part and the impugned orders and demand notice are set aside to the extent they pertain to the post-dissolution period for the amounts aggregating to Rs. 89,032.08 and the rule is made absolute accordingly. However, in so far as the impugned orders and demand notice pertain to the pre-dissolution period for the amount aggregating to Rs. 29,881, the petition is dismissed and the rule is discharged accordingly.

21. Miss Sikandar presses for costs. As both sides have succeeded in part, it is just that there should be no order as to costs. Each party will therefore bear his own costs.

22. Petition partly allowed.