(2014) 11 KL CK 0252

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6152 of 2006 (G)

Johnson Paulose K. APPELLANT

Vs

Asst. Commissioner of C. Ex. RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A — Central Sales Tax Act, 1956 - Section 18 — Customs Act, 1962 - Section 142 — Income Tax Act, 1961 - Section 179

Citation : (2015) 319 ELT 283

Hon'ble Judges : A.K. Jayasankaran Nambiar, J.

Bench : Single Bench

Advocate : S. Arun Raj, Advocate, for the Appellant; Abraham Thomas, CGC and John Varghese, for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.?The petitioner was a Director of a private limited company engaged in servicing, maintenance and assembling of computer systems. By Ext. P1 order dated 30-3-1992, the 3rd respondent had confirmed a central excise duty demand of Rs. 2,57,987.53 on the said company under Section 11A of the Central Excise Act, 1944 read with Rule 9(2) of the Central Excise Rules. A penalty of Rs. 50,000/- under Rule 173Q/226/52A of the aforementioned Rules was also imposed on the said company. The petitioner, being a Director of the company, was not proceeded against and in Ext. P1 order also, there is no penalty imposed on the petitioner in his capacity as Director of the company. It is the case of the petitioner that almost 14 years thereafter, by Ext. P2 notice dated 20-1-2006, the 1st respondent has sought to recover the dues of the company, pursuant to Ext. P1 order, from the petitioner by invoking the provisions of Section 142 of the Customs Act, 1962 read with Rule 4 of the Customs (Attachment of Property of Defaulters for recovery of Government Dues) Rules, 1995. It is the specific case of the petitioner that there is no provision under the Central Excise Act and Rules that would enable the respondents to proceed against the petitioner for recovery of the dues of the company. Ext. P2 notice is therefore impugned in the writ petition in which there is also a prayer to direct the respondents not to take any coercive steps to attach the movable and immovable properties of the petitioner to recover the Government dues of the company. A counter affidavit has been filed on behalf of the respondents wherein the stand taken is that the petitioner was a Director of the company during the relevant period and, it was on account of his being a Director of the company during the material time that proceedings, that were initiated against the company for recovery of dues, were continued against him in terms of Section 142 of the Customs Act read with Rule 4 of the Customs (Attachment of property of Defaulters for recovery of Government Dues) Rules, 1995. It is pointed out that the said provisions are applicable to proceedings under the Central Excise Act as well.

2. I have heard Sri Arun Raj. S., the learned counsel appearing on behalf of the petitioner as also Sri John Varghese, the learned Senior Standing counsel for the Central Board of Excise and Customs appearing on behalf of the respondents. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I note that this is a case where the respondents have sought to proceed against the petitioner, who was the Director of the company, for realisation of dues from the said company. It is trite that a company has a separate and distinct legal personality from its members, and, therefore, proceedings which ought to be taken against the company cannot be taken against the members of the company, in the absence of any specific statutory provision that enables the respondents to do so. Although the respondents have purported to act in accordance with the provisions of Section 142 of the Customs Act, read with Rule 4 of the Customs (Attachment of property of Defaulters for recovery of Government Dues) Rules, 1995, I find that the issue of applicability of the said Rules, in a case where the authorities under the Central Excise Act sought to proceed against the Director of a company for realization of the dues of the company, came up for consideration before the Delhi High Court in the decision reported in Anita Grover Vs. Commissioner of Central Excise and Others, . A Division Bench of that court, while considering the applicability of the aforementioned Rules, held that it is only the defaulter against whom steps could be taken under the Rules. It was clarified that a defaulter is a person from whom dues are recoverable under the Act and that there was no provision in the Customs Act 1962 corresponding to Section 179 of the Income Tax Act, 1961 or Section 18 of the Central Sales Tax, 1956, which enabled the revenue authorities to proceed against directors of companies, or such like third parties, who are not defaulters. On a consideration of the facts in the instant case, I find that they are similar to the case that was considered by the Delhi High Court in the aforesaid decision, and hence, following the said judgment of the Division Bench of the Delhi High Court, I allow this writ petition by quashing Ext. P2 notice, issued to the petitioner by the 1st respondent, and declaring that the petitioner is not liable to be proceeded against for the recovery of Government dues pertaining to the company.