
(2019) 02 P&H CK 0223

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 27217 Of 2015

Narinder Singh

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Central Excise Act, 1944 — Section 35F, 11, 11(2)
Central Sales Tax Act, 1956 — Section 18
Delhi Land Reforms Act, 1887 — Section 139
Constitution of India, 1950 — Article 226, 227

Citation : (2019) 02 P&H CK 0223

Hon'ble Judges : Ajay Kumar Mittal, J;Manjari Nehru Kaul, J

Bench : Division Bench

Advocate : Jagmohan Bansal, Anshuman Chopra

Final Decision : Allowed

Judgement

1. The petitioner through the present petition under Articles 226/227 of the Constitution of India prays for issuance of a writ of mandamus/prohibition restraining the respondents from taking coercive recovery measures against him.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. M/s Narindera Paper Mills Limited is engaged in the manufacture of paper products falling under Chapter heading 48 of Central Excise Tariff Act, 1985. The company was having sixteen Directors. The respondent department initiated investigation against the company which culminated into show cause notice whereby the company was called upon to show cause as to why duty amounting to `2.65 crores should not be demanded and recovered from it. The company was also called upon to show cause as to why penalty should not be imposed. The company in its reply disputed the duty liability. The adjudicating authority held the company liable to pay duty alongwith penalty. Duty amounting to `2.65 crores was confirmed against the company apart from equal amount of penalty. The company preferred an appeal before the

Tribunal alongwith stay application under Section 35F of the Central Excise Act, 1944 (in short, "the 1944 Act"). The Tribunal vide order dated 12.1.2010 directed the company to make deposit of `2.65 crores as pre-deposit. The company preferred CWP No.2187 of 2010 before the Delhi High Court seeking quashing of pre-deposit order passed by the Tribunal. Vide order dated 16.4.2010, Annexure P.2, the Delhi High Court remanded the matter to the Tribunal to consider plea of financial hardship. The company due to closure of its business could not comply with the orders of the Tribunal. The Tribunal vide order dated 10.6.2011, Annexure P.3 dismissed the appeal of the company for non compliance of condition of pre-deposit. The respondent-department vide order dated 2.2.2015, Annexure P.4 asked the petitioner to deposit outstanding dues of the company. In case of non deposit, appropriate action was to be initiated against the petitioner. The petitioner vide letter dated 16.2.2015, Annexure P.5, informed the respondents that a share holder could not be called upon to pay dues of the company. There was no market value of shares of the company. The liability of share holder was limited. There was no guarantee agreement for payment of dues of the company. The respondents vide recovery notice dated 18.6.2015, Annexure P.6, directed Bank of India, Chhaba Branch, Amritsar to transfer any amount lying in the credit of the company as well as the petitioner to the account of the Government. The Bank vide letter dated 16.11.2015, Annexure P.7, informed the petitioner that they had received a recovery notice under Section 11(2) of the 1944 Act from the office of Deputy Commissioner, Central Excise Division, Amritsar to remit the money lying in the account of Directors to the account of the Government of India. According to the petitioner, the respondents have initiated recovery proceedings under Section 11 of the 1944 Act. Under the said Act, there is no other provision of recovery. Further, there is no provision of recovery of outstanding excise dues of a company from its Directors or share holders like recovery of income tax from Directors of a private limited company. In the absence of specific provision, the respondents had no right to recover dues of a company from its share holder or Director. Hence the instant petition by the petitioner.

3. We have heard learned counsel for the parties.

4. Admittedly, in the present case, the respondent Directorate General of Central Excise Intelligence issued show cause notice to the company alleging clandestine clearance of goods without payment of Central Excise Duty. The company was having sixteen Directors including the petitioner as one of them. The respondent department called upon the company to show cause as to why duty amounting to `2.65 crores should not be recovered from them as also equal amount of penalty. The company replied to the show cause notice. The adjudicating authority turned down all the submissions and held the company liable to pay duty alongwith the penalty. The company filed appeal before the Tribunal alongwith stay application under Section 35F of the 1944 Act. The Tribunal directed the company to deposit `2.65 crores as pre-deposit. A Civil Writ Petition was filed by the company before the Delhi High Court seeking stay of pre-deposit

order passed by the Tribunal. The High Court remanded the matter back to the Tribunal to consider plea of financial hardship. The company failed to make the pre-deposit. The appeal filed before the Tribunal was dismissed on 10.6.2011. Thereafter, the respondent department asked the petitioner as one of the Directors to deposit the outstanding dues of the company.

5. It is well settled that in the absence of any specific provision in the statute, the duty/penalty liability of the company cannot be recovered from the assets of its director. The Director is not personally liable towards liability of the company. This court while delving into an identical issue in Subhash Goyal vs. State of Haryana and others, 2014(4) PLR 343 held that in the absence of taking any specific recourse to proceedings under Section 18 of the Central Sales Tax Act, 1956 and any valid order for effecting recovery of arrears of sales tax from the directors of a private limited company in liquidation, the proceedings relating to recovery of arrears of tax from the petitioner being a director were not permissible in law. The relevant findings read thus:-

"11. Taking up issue No. (ii), examining the argument of learned counsel for the respondents regarding Section 18 of the CST Act, it may be noticed that under Section 18 of the CST Act, 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 breach of duty on his part in relation to the affairs of the company. In the absence of taking any specific recourse to proceedings under Section 18 of the CST Act and passing of any valid order for effecting recovery of CST from the directors of the private limited company in liquidation, the proceedings relating to recovery of arrears of CST from the petitioner is held to be not permissible in law. Further, the respondents have not shown that the amount of tax recoverable under the CST Act cannot be recovered from the company. It is also not shown as to what efforts were made to recover the arrears of CST from the assets of the company. Thus, recovery of CST from the petitioner is unsustainable. However, it shall be open for the respondents to proceed to recover the amount on account of CST after taking proper action under Section 18 of the CST Act and considering the notification dated 4.9.1995 (Annexure P-11) issued under Section 8(5) of the CST Act."

Further, identical matter has already been decided by this Court in favour of the petitioner in CWP No.9363 of 2015 (Krishan Kumar vs. Union of India and another), decided on 18.11.2015.

6. Adverting to the judgments relied upon by the learned counsel for the respondents, it may be noticed that in Delhi Development Authority vs. Skipper Construction Company (P) Limited and another, 1996(4) SCC 622, it was held by the Apex Court that in case of corporate bodies created by an individual and his family members for defrauding people, the court can treat them as one entity.

Such is not the position in the present case. In *India Waste Energy Development Limited and another vs. Government of NCT of Delhi and another*, 2003(66) DRJ 224, there was transfer of business by assessee company to its sister concern. Both the companies were owned and controlled by one and the same entity. The transfer of business was with the intent to evade tax. The Collector was entitled to tear the veil of corporateness. The attachment of transferee's property to recover the outstanding arrears of transferor relating to transferred business as arrears of land revenue by recourse to Section 139 of Delhi Land Reforms Act, 1887 was held to be not illegal by the Delhi High Court. The position in the present case is different.

7. In view of the above, the action of the respondents in compelling the petitioner to clear the dues of the company cannot be sustained. The petition is allowed. However, the respondents shall be at liberty to proceed against the company for clearance of its dues in accordance with law.