(2009) 10 AHC CK 0032

In the Allahabad High Court

Case No : Writ Tax No. 1460 of 2008

Niranjan Lal Agrawal and Another APPELLANT

Vs

Deputy Commissioner (Assessment) and Others RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Citation : (2013) 58 VST 238

Hon'ble Judges : Subhash Chandra Nigam, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Rakesh Ranjan Agrawal and Suyash Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

1. Niranjan Lal Agrawal, Suresh Nagpal and Nem Chand have jointly filed the present writ petition who claims that they were directors of a company, namely, M/s. Vaishno Devi Rice Mills Pvt. Ltd., Koshi Kala, Mathura. The said company had also taken loan from the Central Bank of India, Koshi Kala Branch, Mathura and its movable and immovable properties were mortgaged with the bank. The company suffered heavy loss with the result that it could not discharge the loan of the bank and the bank filed a case No. 135 of 1998 before the Debts Recovery Tribunal, Jabalpur, wherein an order directing to recover an amount of Rs. 18,41,456.29 along with interest and recovery charges was passed against the company. The Trade Tax Department finalized the assessments of the said company for the assessment years 1995-96 (U.P. and Central), 1996-97 (U.P. and Central) and 1997-98 (U.P. and Central). The said assessment orders were challenged in appeal and thereafter in second appeal before the Tribunal, but unsuccessfully. A sum of Rs. 7,91,939 is outstanding towards the trade tax liability against the said company in respect of the aforestated assessment years. Recovery certificates all dated November 29, 2007 to recover the outstanding trade tax were issued by the respondents. When the Department sought to recover the said amount from the personal assets of the petitioners, the present writ petition has been filed mainly on the ground that the personal assets of the

petitioners (erstwhile directors of the company) could not be attached or sold for the satisfaction of the recovery of the dues outstanding against the said company. A supplementary counter-affidavit has been filed stating that none of the directors of the said company has executed any personal security or guarantee towards any trade tax liability of M/s. Vaishno Devi Rice Mills Pvt. Ltd., Koshi Kala, Mathura.

2. A counter-affidavit has been filed on behalf of respondent Nos. 1, 2 and 3 wherein the stand taken by them is that the petitioners being the directors of the company were responsible for proper handling of financial matters. The mishandling of the financial matters of the company by the petitioners resulted into loss and ultimately closure of the company as such the petitioners are still obliged to meet out the legal obligations on behalf of the company.

3. Sri Rakesh Ranjan Agrawal, learned counsel for the petitioners, submits that in view of the authoritative pronouncements of this court in Meekin Transmission Ltd. and Purushottam Sootwala Vs. State of Uttar Pradesh and Others, , no recovery can be made from the personal assets of the petitioners in respect of outstanding dues of the company in question.

4. The learned standing counsel, on the other hand, supports the impugned action of the Department.

5. Considered the respective submissions of the learned counsel for the parties and perused the record. There appears to be no dispute with regard to the facts of the case. In the counter-affidavit there is not even a slightest whisper that the petitioners who were directors have illegally siphoned off the assets of the company in question. There is no allegation of fraud, etc., against the petitioners. The only ground raised in the counter-affidavit against the petitioners is that they were directors of the company at the relevant point of time.

6. In this state of affairs, we are of the considered opinion that the dictum as laid down by the Division Bench of this court in Meekin Transmission Ltd. and Purushottam Sootwala Vs. State of Uttar Pradesh and Others, is fully attracted. It has been held therein that mere fact that the company has failed to pay the Government dues or public revenue that by itself would not invite the doctrine of piercing the veil and is not sufficient to ignore the statutory corporate personality conferred upon a company and make its directors or shareholders responsible personally--When the tax dues are to be recovered from a corporate body, the directors of such corporate body would not automatically be responsible unless the doctrine of lifting of veil is found to be applicable in the facts and circumstances of the affairs of the company. A director or shareholder cannot be made personally responsible for the dues of a company except of those cases where such a provision is made in the statute or otherwise warranted in law.

7. In view of the above discussion, we are satisfied that the recovery cannot be pressed against the personal assets of the petitioners in respect of the outstanding dues of the company. By way of clarification, it is added that if

ultimately it is found by the Department that the petitioners are in any manner in possession of any property or assets of the company, it will be open to the Department to press the recovery against the said assets of the company. With the aforesaid observation, the writ petition is allowed as indicated above. But no order as to costs.