

(1998) 06 KL CK 0059
In the High Court Of Kerala
Case No : O.P. No. 5833 of 1995-T

Nishad Patel and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-06-1998

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 23, 23(2)

Citation : (1999) 96 CompCas 861 : (1999) 1 ILR (Ker) 293

Hon'ble Judges : K. Narayana Kurup, J

Bench : Single Bench

Advocate : Joseph Markose, for the Appellant; P.K. Ravikrishnan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Narayana Kurup, J.—Heard counsel on both sides.

2. The petitioners are directors of a company by name Alliance Leathers (P.) Limited which had availed of a loan from K. S. I. D. C. and K. F. C. to set up a factory at Edayar for manufacture of dressed, tanned hides and skins from raw hides and skins. Exhibits P-2 to P-6 are the pre-assess-ment notices issued by the third respondent against the company for the years 1990-91 to 1993-94, proposing to assess the company under the Kerala General Sales Tax Act. On receipt of exhibits P-2 to P-6, the first petitioner filed exhibit P-7 reply in his capacity as a director of the company. In exhibit P-7, the first petitioner specifically requested the third respondent to keep the assessment and penalty proceedings pending till final decision is taken by the second respondent on the question of exemption as an S. S. I. unit. However, no final assessment orders or penalty order pursuant to exhibits P-2 to P-6 have been served either on the company or on the petitioners till this date to the best of the knowledge of the petitioners, While so, on March 30, 1995, officers of the fifth respondent, namely, the Special Tahsildar (RR), Kanayannur came to the house where the petitioners are residing and told the first petitioner that recovery proceedings for recovering

sales tax due from the company are sought to be taken against the petitioners u/s 23 of the Kerala General Sales Tax Act, 1963. Aggrieved by the aforesaid action of the respondent in making the petitioners liable for arrears of sales tax due from the company, they have approached this court with the present writ petition for the issuance of a writ of certiorari to quash exhibits P-2 to P-6 and for quashing all proceedings taken by respondents Nos. 3 to 5 against the petitioners u/s 23(2) of the Kerala General Sales Tax Act, 1963, in respect of the sales tax allegedly due from Alliance Leathers (P.) Limited and for other incidental reliefs.

3. When the petition came up for hearing, learned counsel for the petitioners submitted that coercive action taken by respondents Nos. 3 to 5 for recovery of sales tax arrears allegedly due from the company against the petitioner are totally without jurisdiction, illegal and unsustainable. Having heard learned counsel on both sides, I am of the view that the petitioners are not liable to be proceeded against for recovery of arrears of sales tax due from the company. It is admitted that the petitioners are only directors and as such they cannot be personally made liable to pay arrears of sales tax under the Kerala General Sales Tax Act. It is settled law that the company is a legal entity distinct from its shareholders as well as its directors, and as such no proceedings can be taken against the directors of a company for recovery of any amounts whatsoever due from the company. In the present case what respondents Nos. 3 to 5 seek to recover is arrears of sales tax allegedly due from Alliance Leathers (P.) Ltd. The petitioners are only the directors of the said company as already noted. They have in their possession no assets of the company whatsoever. As such, they have no personal liability in respect of the dues allegedly due from the company. It is by now well-settled that a director of a company cannot be proceeded against for recovery of arrears of any amount due from the company as already noticed. Therefore, the present proceedings initiated against the petitioners for recovery of sales tax arrears allegedly due from the company is totally without jurisdiction. Moreover, the present proceedings of respondents Nos. 3 to 5 are violative of the principles of natural justice and the fundamental rights of the petitioners guaranteed under articles 14 and 21 of the Constitution of India. No notice whatsoever has been issued to the petitioners before coercive action was initiated which will result in arrest and detention of the petitioners u/s 23(2)(b) of the Kerala General Sales Tax Act, 1963. As such, the said action of respondents Nos. 3 to 5 are totally unsustainable. That apart, the petitioners have a contention that the demand for sales tax arrears even against the company itself is illegal and unsustainable. The company has applied to the second respondent for exemption from payment of sales tax as recommended by the first respondent by exhibit P-1. To the best knowledge of the petitioners, the said application is still pending. It is submitted that when proceedings are pending before a competent authority for exemption from sales tax as an S. S. I. unit, proceedings for recovery of sales tax cannot be taken. Since I am accepting the aforesaid contention, I am of the opinion that the present action of

respondents Nos. 3 to 5 to recover sales tax allegedly due from the company is totally unsustainable.

4. Moreover, no assessment order has been served either on the company or on the petitioners in respect of the sales tax allegedly due from the company. Without serving assessment orders, the third respondent cannot initiate proceedings for recovery of sales tax said to have been assessed. After filing exhibit P-7 reply to the pre-assessment notices and penalty notice, the petitioners have not heard anything from the third respondent in respect of the same. As such, the proceedings initiated by the third respondent and continued by respondents Nos. 4 and 5 without serving copies of assessment orders and orders imposing penalty on the petitioners is totally without jurisdiction and unsustainable. The case law on the subject is covered by two decisions of this court in Ramachandran Vs. State of Kerala, and Punalur Paper Mills Ltd. and Another Vs. District Collector and Others, In Ramachandran Vs. State of Kerala, it has been held that there is no provision of law which enables the Revenue to proceed against the petitioners who are only directors of the company, personally for recovery of arrears of sales tax due from the company, which is a distinct and different legal entity. In the latter decision cited supra, it was ruled out that for recovery of sales tax arrears due from the company, no proceedings can be initiated against the director or the managing director. In the light of the above decisions it has to be held that the petitioners are not liable to be proceeded against for recovery of sales tax allegedly due from the company of which they are only directors with no personal liability.

5. In the result the original petition is allowed and it is hereby declared that the petitioners being directors of the company have no personal liability to pay arrears of sales tax allegedly due from the company. All proceedings initiated or to be initiated against them will be of no effect and non est in the eye of law. Exhibits P-2 to P-6 will remain quashed.

The original petition is allowed as above.

6. Order on C. M. P. No, 10355 of 1995 in O. P. No. 5833 of 1995 dismissed.