

(1976) 01 KL CK 0001

In the High Court Of Kerala

Case No : Application No. 381 of 1975, in Company Petition No. 17 of 1965

OFFICIAL LIQUIDATOR, PALGHAT METAL INDUSTRIES CO.
LTD.

APPELLANT

Vs

THE ASST. COMMISSIONER, (ASST.), SALES TAX SPECIAL
CIRCLE, PALGHAT. (EXPARTE).

RESPONDENT

Date of Decision : 23-01-1976

Acts Referred:

COMPANIES ACT, 1956 — Section 528, 530

Citation : (1976) 5 CTR 225

Hon'ble Judges : V. Khalid, J

Bench : Division Bench

Judgement

V. Khalid, J. - The Palghat Metal Industries Company Ltd., was ordered to be wound up by an order of this Court dated 4-7-1966. The company was assessed to sales-tax by the Sales Tax Officer, Special Circle, Palghat, for the assessment years 1962-63, 1963-64 and 1964-65, on the basis of best judgment assessment as per his order dated 25-12-1965. The company preferred appeals before the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax, Palghat, on 5-8-1966. The appeals were decided on favour of the company by order dated 7-8-1969 by the Appellate Assistant Commissioner. He set aside the original order and remanded the case to the Sales Tax Officer for fresh disposal.

2. Thereafter fresh returns were filed for the aforesaid years by the official liquidator. The assessment was completed by the Assistant Commissioner (Assessment) Special Circle, Palghat, as per his order dated 31-7-1974. As per this order, the company had to pay an amount of Rs. 9,681.98 towards sales tax. The details of the tax for each of the year are given by the official liquidator in his affidavit. The difference between the original assessment and the final assessment is Rs. 12,704.15. The Tahsildar realised an amount of Rs. 18,811.74 by revenue recovery proceedings and the balance was paid in cash. The Tahsildar, Palghat, sold the properties on 18-4-1966 and the sale was confirmed on 23-6-1966. The amount was actually realised by the sales tax authority only

on 3-7-1966. The application by the official liquidator is for refund of the entire amount Rs. 22,386.13 realised from the company by the Sales Tax Officer.

3. Notice was issued to the Revenue. Revenue did not enter appearance, and contest the claim.

4. The question for determination in this application is whether the official liquidator entitled to the refund of the entire amount or whether the revenue is entitled to preferential treatment regarding the amounts due to it. According to section 528 of the Companies Act, all debts contingent or ascertained due from the company will have to be proved when the company is ordered to be wound up. This is a company ordered to be wound up on 4-7-1966. That the Central Government or the State Government as the case may be, are entitled to preference regarding payments cannot be disputed since section 530 of the Companies Act provides for it. But this preference is subject to the fact that the claim of the Government should be before the date mentioned in section 530. For a better appreciation of this contention, I shall read section 530 :

"S. 530. Preferential Payments :- (1) In a winding up, there shall be paid in priority to all other debts, -

(a) all revenues, taxes, cases and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months before that date;

xx

xx

xx

(S) For the purpose of this section. -

(a) x x x x

(b) d d d d

(c) the expression "the relevant date" means. -

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

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(ii) x x x x

Since the final order of assessment in this case is only on 31-7-1975, that is, long after the winding up the company, the remedy available to the revenue, being an unsecured creditor, is to prove the debt and receive payment in the course of the winding up.

5. The principle enunciated in the decision reported in *Union of India (UOI) and Another Vs. India Fisheries (P) Ltd.*, is useful in deciding the issue in question before me. In that case, a company was directed to be wound up and an official liquidator was appointed by the High Court in October, 1950. The company was assessed to Income Tax for the year 1948-49 in a sum of Rs. 8,737/- A claim was made for this tax on the official liquidator and the claim was adjudged and allowed as an ordinary claim. The liquidator paid a sum of Rs. 5,188.00 to the department pursuant to the declaration of a dividend of 9 1/2 annas per rupee and paid that sum, leaving a balance of Rs. 3,549.00. In June 1954 the department made a demand from the company for advance tax and a sum of Rs. 2,565 was paid in the year 1955-56. When the regular assessment was made, only Rs. 1,125/- was assessed as payable for the year 1955-56, which left with the department an excess of Rs. 1,460/- inclusive of interest as refundable to the company. The Income Tax Officer in purported exercise of the power available to him u/s 49-E of the Income Tax Act, 1922, set off this amount against the balance of Rs. 3,549/- due for the year 1948-49. A revision filed before the Commissioner was rejected. The matter was taken to the High Court and the Court held that the demand for Rs. 8,537/- in 1948-49, which is adjudged and certified, had all incidence and character of unsecured debt payable by the liquidator to the department and therefore it is governed by the provisions of the Companies Act. The Supreme Court accepted this and held that in all cases, an unsecured creditor must prove his debts and the provisions of the Income Tax Act are subordinate to the provisions of the Companies Act.

6. Although the facts of the case are not on all fours with the facts of the case on hand, the principle laid down in the said decision is squarely applicable to the present case. As already stated, the amount of tax payable become ascertained only on 31-7-1975 and therefore the remedy open to the Revenue is only to prove the claim and seek appropriate relief.

7. The application is allowed.