(2007) 12 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Om Parkash Walecha APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Revenue Recovery Act, 1890 — Section 3

Citation : (2008) 145 CompCas 799 : (2009) 238 ELT 215 : (2008) 149 PLR 547 : (2009) 20 STT 107 : (2008) 16 VST 530

Hon'ble Judges : Rakesh Kumar Jain, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The moot controversy raised in, the instant petition filed under Article 226 of the Constitution is as to whether the outstanding dues of the State and Central Sales Tax payable by a Company can be reversed from the Director of the Company in his personal capacity The instant petition prays for quashing show cause notice dated 22.12.2005 (P-1), issued by the Assistant Collector Grade-I/Sub-Divisional Magistrate (Hauz Khas), New Delhi-respondent No. 2, for recovery of Rs. 22,25,036/- as arrears of land revenue on the basis of Recovery Certificate dated 19.10.2005, issued, by the Collector-cum-Deputy Excise and Taxation Commissioner, Bahadurgarh-respondent No. 3. Quashing of an earlier notice dated nil, issued by respondent No. 2 for recovery of Rs. 23,20,036/- on account of Sales Tax payable by M/s Agni Wire Industries (P) Ltd., Bahadurgarh, has been sought (P-3), which was issued in the name of the petitioner as well as his son Shri Pankaj Walecha. It has further been prayed that the respondents be directed not to recover the. amount in question from the petitioner in his personal capacity being the Director of the Company.

2. The petitioner is one of the Directors of M/s Agni Wire Industries'' Pvt. Ltd. Bahadurgarh, which started its business of manufacture of aluminum wires in 1996. It is claimed that sales tax exemption for the period from 24.4.1996 to

23.4.2005, in terms of Rule 28-A of the Haryana General Sales Tax Rules, 1975, was granted to the company of the petitioner, as is evident from Exemption Entitlement Certificate dated 16.3.1997 (P-2). Somehow, the company could not survive and suffered huge financial losses. In the year 1999, the company was taken over by the Haryana Financial Corporation from whom a loan was taken. Subsequently, the Haryana Financial Corporation sold the moveable and Immovable assets of the company. In December 2002, the petitioner and his son, who was also on the Board of Directors of the Company, received a notice from respondent No. 2 to pay an amount of Rs. 23,20,036/- as sales tax liability of M/s Agni Wire Industries Pvt. Ltd. (P-3). The petitioner replied to the said notice, which was duly received on 28.1.2003, taking the stand that he was not aware of any proceedings out of which the demand notice was issued (P-4). On 22.12.2005, respondent No. 2 again sent a show cause notice to the petitioner for recovery of Rs. 22,25,036/- as arrears of land revenue on the basis of Recovery Certificate dated 19.10.2005 issued by the Collector-cum-Deputy Excise and Taxation Commissioner, Bahadurgarh-respondent No. 3 (P-1). On 18.1.2006, the petitioner sent a reply to the notice (P-5). It has further been claimed that the son of the petitioner also addressed a letter to respondent No. 2 apprising him various judgments passed by this Court as well as Kerala High Court wherein it has been held that the directors of the company are not personally liable to pay the sales tax liability of the company (P-6). The petitioner then filed C.W.P. No. 9395 of 2006 in the Delhi High Court, impugning notice dated 22.12.2005, however, the same was dismissed as withdrawn vide order dated 23.5.2006 with liberty to file the same in appropriate Court (P-7). The petitioner has challenged the notice (P-1 & P-3) on the issue of jurisdiction of the respondents to demand and recover arrears of sales tax personally from him being a Director of the Company on the ground that neither he is an assessee nor a defaulter and there is no provision under the Haryana General Sales Tax Act, 1973 (for brevity, "the 1973 Act") or the Central Sales Tax Act, 1956 (for brevity, ''the 1956 Act''), which empowers the respondents to recover the arrears due from the company by proceeding against its Director.

3. In the written statement filed on behalf of respondent Nos. 1 and 3 the stand taken is that a total sum of Rs. 22,25,036/- on account of Central Sales Tax arrears was outstanding against the company of which the petitioner was one of the Director, which was not deposited despite several notices. Accordingly, a recovery certificate u/s 3(i) of the Revenue Recovery Act, 1890 was sent to the Collector, Delhi. It has been asserted that the recovery certificate has been rightly issued and the recovery of the aforesaid amount can be effected from the Director of the Company under the provisions of Section 18 of the 1956 Act, which reads as under:

18. Liability of Directors of Private'' Company in Liquidation.- Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956). When any private company is wound up after the commencement of this Act, and any tax assessed on the company under this Act for any period, whether before or in the course of

or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due shall be jointly and severally be liable for the payment of such tax unless he proves that the non recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

4. The petitioner filed replication to the written statement categorically mentioning that M/s Agni Wires Industries Pvt. Ltd. was neither wound up nor formally liquidated. The respondents, however, did not controvert this fact.

5. Learned Counsel for the petitioner has vehemently argued that the matter is squarely covered by the Division Bench judgments of this Court in the cases of Suneet Khurana v. Assistant Collector (1997)10 P.H.T. 495 (P&H) an Mukesh Gupta v. State of Haryana (1996)8 P.H.T. 326 (P&H) wherein it has been held that no recovery either of Haryana General Sales Tax or Central Sales Tax could be effected personally from the Director in respect of the liability of the Company. Learned Counsel also referred to Single Bench judgments of Karnataka High Court and Kerala High Court in the cases of Lalita Shivaram Ubhaykar v. Commercial Tax Officer, Bangalore (1975) 35 S.T.C. 267 and Ramachandran v. State of Kerala (1984) 55 S.T.C. 209.

6. Learned Counsel for the respondents has placed reliance on Section 18 of the 1956 Act to argue that when any private company is wound up after the commencement of the 1956 Act and any tax assessed under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a Director of the Private Company at any time during the period for which tax is due shall be jointly and severally liable for the payment of such taxes.

7. No other argument has been raised.

8. Having heard learned Counsel for the parties at a considerable length we are of the considered view that the instant petition deserves acceptance. The provisions of Section 18 of the 1956 Act, as referred by the learned Counsel for the respondents, are not attracted to the present case. It is an admitted fact that M/s Agni Wire Industries Pvt. Ltd., of which the petitioner was one of the Directors, has not been wound up or formally liquidated.

9. Learned Counsel for the respondents has not been able to raise any other issue nor could cite any law which may be contrary to the view taken by two Division Benches of this Court in these cases of Suneet Khurana (supra) and Mukesh Gupta (supra).

10. As a sequel to the above discussion, instant petition is allowed. Accordingly, impugned notices (P-1 & P-3) are quashed. Since the impugned notices were issued in palpable violation of law and without any application of mind, the respondents are burdened with costs of Rs. 10,000/-.

