(2013) 11 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19839 of 1996

P.K. Rajgarhiya	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2014) 174 PLR 82

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Judgement

Rajive Bhalla, J.—The petitioner prays for issuance of a writ of certiorari quashing order Annexure P-3 and notice Annexure P-3/A directing the petitioner to discharge liability incurred by M/s. Corolie Electronics Pvt. Ltd. under the Central Sales Tax Act (in short the "C.S.T. Act") and the Haryana General Sales Tax Act. Counsel for the petitioner submits that apart from the fact that the company is still in existence, payment of tax, as discernible from Annexure P-3, pertains to assessment year 1987-88. The petitioner, if at all, assumed the role of a Director, in the company, on 7.5.1989 and resigned on 5.9.1990. The demand of sales tax pertaining to assessment year 1987-88 cannot be recovered from the petitioner even if he was a Director of the company. It is further submitted that before raising the demand, the Excise and Taxation Officer was required to follow the procedure prescribed by Section 18 of the C.S.T. Act, i.e., grant an opportunity to contest liability and prove that default in payment of tax was not on account of gross neglect, misfeasance or breach of duty. Admittedly, no show cause notice was served upon the petitioner before the impugned order Annexure P-3 was passed and thereafter forwarded to the Assistant Collector 2nd Grade, Delhi to initiate proceedings for recovery of sales tax as arrears of land revenue. It is prayed that as the petitioner is not liable to discharge liabilities of the company, the impugned notices may be quashed.

2. Counsel for the State of Haryana submits that as assessment orders were not challenged by the company and were passed after affording an opportunity to

the company to put forth its objections, the petitioner who was a Director is required by Section 18 of the Act to discharge liability of the company. It is further submitted that the question of gross neglect, misfeasance or breach of duty is entirely irrelevant. The petitioner was a Director and therefore, obliged to discharge liability of the company which has shut down. It is further contended that the petitioner cannot evade liability much less under the garb of failure to grant an opportunity of hearing or any other related matter, particularly when there is no denial to the passing of assessment orders and the demand raised.

3. We have heard counsel for the parties, perused the impugned notices and considered the pleadings.

4. The petitioner has been served with notice Annexure P-3/A apparently based upon order Annexure P-3, calling upon him to discharge liability of the company under the C.S.T. Act and the Haryana General Sales Tax Act. The petitioner, has averred that he was a Director from 7.5.1989 to 5.9.1990 and as the assessment order pertains to the year 1987-88, liability cannot be foisted upon the petitioner. This apart, the petitioner also challenges order Annexure P-3 which is the foundation of notice Annexure P-3/A as having been passed without affording an opportunity to the petitioner to prove that he is not liable to discharge liabilities of the company. In order to satisfy ourselves, whether any notice was issued to the petitioner prior to passing of order Annexure P-3, the State of Haryana was called upon to produce the original record. Counsel for the State of Haryana is unable to refer to any notice served upon the petitioner before order Annexure P-3 was passed.

5. Section 18 of the C.S.T. Act reads as follows:--

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 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.

6. Section 18 provides that notwithstanding anything contained in Companies Act, 1956, if a private company has been wound up and tax cannot be recovered, a person who was Director of the company during the relevant period would be liable to pay such tax, unless he proves that 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. Section 18 leaves no ambiguity that before passing an order u/s 18 of the C.S.T. Act, the officer concerned would be required to grant the director concerned an opportunity to defend himself and prove that he was

not responsible for any gross neglect, misfeasance, breach of duty. Admittedly, no opportunity was granted to the petitioner in terms of Section 18 of the Act. The impugned order Annexure P-3 is, therefore, null and void for violation of Section 18 and the principles of natural justice. The petitioner also alleges that he was not a director during the relevant period. The authority would be required to consider these facts before foisting liability upon the petitioner. In view of what has been recorded hereinabove, the writ petition is allowed, order Annexure P-3 and notice Annexure P-3/A are quashed and the matter is remitted to the Assistant Excise and Taxation Commissioner, Gurgaon to decide the matter afresh and in accordance with law. The parties shall appear before the Assistant Excise and Taxation Commissioner, Gurgaon on 20-1-2014. The petitioner would be entitled to raise all such pleas as may be available to him in accordance with law.

