(1973) 05 AHC CK 0038

In the Allahabad High Court

Case No : Special Appeal No. 545 of 1968

Sales Tax Officer — APPELLANT

Vs

The Official Liquidator — RESPONDENT

Date of Decision : 16-05-1973

Acts Referred:
COMPANIES ACT, 1956 — Section 530

Citation : (1975) 35 STC 639

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

C.S.P. Singh, J.—This special appeal arises out of an application under Rule 164 of the Companies Rules, 1959, and has been filed by the Sales Tax Officer.

2. An order for winding up of Messrs. Northern India Oil Industries was made by this court on 7th August, 1963. The company was in arrears of sales tax to the tune of Rs. 22,468.88 for the assessment years from 1954-55 to 1959-60. A claim for priority of this arrear was made u/s 530(1) of the Companies Act. The Official Liquidator accepted the claim for priority in respect of arrears of some of the years, but rejected the claim in respect of arrears for the assessment years 1954-55 to 1958-59, on the ground that these arrears had not become due within twelve months before the date of the winding up order, i.e., between 7th August, 1962, and 7th August, 1963. An appeal filed to the Company Judge was rejected qua the claim for priority. The Sales Tax Officer has now appealed against this part of the order of the learned single Judge. Section 530(1)(a) of the Companies Act, 1956, under which the claim for priority has been made, is as under :

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

(a) all revenues, taxes, ceases 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 next before that date.

3. This sub-section contemplates priority being given only to such taxes as become due and payable within twelve months preceding the date of the winding up order, or the date of the appointment of an Official Liquidator. In the present case, as no Official Liquidator was appointed, we are concerned with the date of the winding up order which, as has been seen, was passed on 7th August, 1963. Now, it cannot be denied that under the Sales Tax Act, taxes become due and payable after an assessment is made and a demand notice in respect thereof has been issued. The counsel for the appellant has not been able to establish that taxes in question became due or payable at any point of time within the period of twelve months between 7th August, 1962, and 7th August, 1963. This being so, priority for payment of these taxes could not be claimed u/s 530 of the Companies Act. It has also been urged that inasmuch as sales tax arrears are realisable as an arrear of land revenue, and inasmuch as they had been ordered to be realised as such within the period of twelve months aforesaid, they were entitled to priority on this ground alone. We are unable to accept this contention for the reason that the mere fact that sales tax arrears can be realised as an arrear of land revenue, does not lead to the result that they are revenues as contemplated by Section 530 of the Companies Act. The mere adoption of a similar mode of recovery for taxes and revenue arrears does not transmute taxes into revenues for the purposes of Section 530. Although all taxes are part of revenue in the generic sense, it appears that Section 530 has treated them separately, inasmuch as apart from mentioning taxes, ceases and rates, it also mentions revenue separately thereby indicating that the legislature used the word "taxes" as distinct from revenue, ceases and rates. The word "revenue" as used in the section as such has to be interpreted in a restricted sense, as excluding taxes, ceases and rates, which are specifically mentioned in the section. The acceptance of the wider connotation of the word "revenue" as occurring in the section would render the words "taxes, ceases and rates" superfluous and redundant and, as such, we cannot accede to the construction sought to be put on the word "revenue" by the appellant.

4. The appeal is accordingly dismissed but there shall be no order as to costs.

