(2007) 11 DEL CK 0304

In the Delhi High Court

Case No : Writ Petition (C) No.: 19990 of 2004

Shashi Agrawal APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 14-11-2007

Acts Referred:

Central Excises and Salt Act, 1944 — Section 9AA

Citation : (2007) 10 ILR Delhi 40 Supp

Hon'ble Judges : Madan B. Lokur, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Arvind K. Nigam with Mr. Viraj Datar, for the Appellant; Sanjay Katyal, for the Respondent

Final Decision : Allowed

Judgement

1. Rule D.B. The only issue urged in this writ petition is with regard to the validity of the notice dated 30th November, 2004/3rd December, 2004 issued by the office of the Commissioner, Central Excise, Delhi to the Petitioner who is said to be a defaulter in respect of payment of a demand of central excise duty to the extent of Rs. 42,06,963/-.

2. The contention of learned counsel for the Petitioner is that a show cause notice for recovery of excise duty was issued not to the Petitioner but to a company called M/s. Perfect Spray Pac (P) Ltd., Okhla Industrial Area (for short ''the Company''). It may be that the Petitioner was the Managing Director of the Company during the relevant time that but that by itself does not make the Petitioner liable on behalf of the Company.

3. The Company responded to the show cause notice issued to it and by an adjudication order dated 24th September, 1993 (a copy of which has been handed over to us in Court today by learned counsel for the Revenue) it was held that a demand of Rs. 39,74,157/- on the Company stood confirmed. In addition, goods valued at Rs. 53,460/- were seized but could be released on payment of a

redemption fine of Rs. 15,000/-.

4. Against the order passed by the Adjudicating Authority, the Company preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal but that appeal was dismissed because the Company did not make any deposit pursuant to an order passed by the Tribunal as a condition for hearing the appeal.

5. After the dismissal of the appeal filed by the Company, the Revenue sought to recover the amount from the Petitioner on the ground that she was its Managing Director at the relevant time and was in charge of its affairs and had also been representing the Company during the adjudication proceedings.

6. We find that even though the Petitioner may have been involved in the day to day affairs of the Company, the fact of the matter is that no notice was issued to her demanding any amount towards the excise dues. A demand was made only against the Company. There is, therefore, no doubt that the Revenue is entitled to recover the demanded amount from the assets of the Company, whatever they are. Merely because the Revenue is unable to recover anything from the Company does not entitle it to recover the outstanding amount from the Petitioner.

7. Learned counsel for the Revenue has contended before us, by relying upon two decisions of the Supreme Court, namely, Juggi Lal Kamlapat Vs. Commissioner of Income Tax, U.P., and Union of India (UOI) and Others Vs. Playworld Electronics Pvt. Ltd. and Another, that this Court can lift the corporate veil and permit the Revenue to recover the amount from the Petitioner.

8. On the other hand, learned counsel for the Petitioner has drawn our attention to Section 9AA of the Central Excise Act, 1944 to contend that if an offence is committed under the Act by a company, then every person who at the time of commission of the offence was in charge of, and was responsible to the company for the conduct of its business, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. It is submitted that this provision deals only with offences under the Act and does not deal with any civil liability that may arise in the adjudication proceedings. It is submitted that the recovery of central excise duty is essentially a civil action that is sought to be taken by the Revenue. Consequently, Section 9AA of the Act would not come to the aid of the Revenue and there is no other provision on the basis of which recovery can be made against the Petitioner.

9. Learned counsel for the Revenue has not been able to show us any provision under the Act or any other law which would require us to lift the corporate veil and foist a liability on the Petitioner when none exists. The decisions cited by learned counsel for the Revenue do permit lifting the corporate veil, but not to recover dues from a person who is not liable. It is true that the Revenue is being deprived of a considerable amount but we feel that this is of its own making. The Revenue ought to have been far more careful while initiating proceedings.

Perhaps the Revenue ought to have issued a notice to the Petitioner also. However, because of its inaction we cannot bend the law to enable the Revenue to recover excise dues from the Petitioner.

10. No other point has been urged before us. Consequently, the writ petition is allowed and the impugned notice dated 30th November, 2004/3rd December, 2004 is quashed. No costs.