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**(1984) 09 DEL CK 0025**

**In the Delhi High Court**

**Case No : Civil Writ Petition No. 353 of 1971**

Shri Kasturi Lal

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision : 24-09-1984**

**Acts Referred:**

**Citation : (1987) 65 STC 372**

**Hon'ble Judges : Charanjit Talwar, J**

**Bench : Single Bench**

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## **Judgement**

Charanjit Talwar, J.—A partnership firm, M/s. Ruby Electronics Corporation, sought a registration certificate as a dealer under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi. The Commissioner of Sales Tax in exercise of the powers vested in him u/s 8-A of the Act asked the firm to give a security up to the amount of Rs. 5,000 for the payment of tax levied under the Act for which the firm may become liable. The petitioner, Kasturi Lal, executed the requisite surety bond on 14th July, 1966. A Copy of that bond has been filed by the respondents as annexure R-1. Thereafter, on the issuance of the registration certificate the partnership firm carried on the business as a dealer. The partnership firm which was "at Will" was dissolved on 6th June, 1968, vide deed of dissolution. Another partnership was formed vide partnership deed executed on 8th June, 1968. A Copy of that deed is annexure E to the Writ Petition. Two of the partners of the original firm agreed to admit Kesar Singh as a partner in the business of radios and transistors manufacture which business was being carried on by earlier partnership firm in the same name and style of M/s. Ruby Electronics Corporation. The business premises, however, were changed from 69, Najafgarh Road, New Delhi to H-58, Bali Nagar, New Delhi. This partnership was also dissolved vide a deed of dissolution on 28th May, 1969. Thereafter M/s. Ruby Electronics Corporation has become a propriety concern of one of the original partners, namely Yashpal Gulati.

2. It is the admitted case of the parties that the subsequent partnership and also

the propriety concern continued to carry on the business under the registration certificate issued by the sales tax authorities to M/s. Ruby Electronics Corporation.

3. The challenge in the Writ petition is to the legality of two notices served on the petitioner, one for recovery of Rs. 14,137.30 and Rs. 658.80, on account of sales tax for the year 1967-68 (English translation annexure B) and the other attaching the property of the petitioner for recovery of Rs. 934.00 together with Rs. 4.50 as sales tax from that very firm. Copy of the English translation of the same is annexure A to the Writ Petition. The original notices have been placed on the record as annexures B-1 and A-1 respectively.

4. Annexure A-1 does not show the year of assessment whereas annexure B-1 mentions that the recovery of the sales tax was for the year 1967-68, i.e., during the period when the first partnership firm was in existence.

5. The first question which has been raised is that the petitioner who had stood surety to the extent of Rs. 5,000 for the payment of sales tax in case of default in payment of the same by the partnership firm, M/S. Ruby Electronics Corporation, cannot be asked to pay more than the extent of his liability under the surety bond.

6. Mr. Chawla, learned counsel for the respondents, has fairly conceded that the petitioner is liable under the bond up to extent of Rs. 5000 only. He has drawn my attention to the averments in paragraph 27 of the counter-affidavit wherein this fact has been admitted by the respondents. The relevant portion of that paragraph reads :

"The petitioner being the surety of the dealer, is liable to pay dues outstanding against the firm up to Rs. 5,000 in terms of the surety bond."

7. The submission of Mr. Joshi, learned counsel for the petitioner, was that on formation of the subsequent partnership firm vide deed executed on 8th June, 1968, the liability of the earlier partnership was taken over by the new partnership and thus by virtue of section 17 of the Act the earlier partners as dealers were discharged of their liability to pay the sales tax which was due to be paid by the earlier partnership firm. The plea is that as the partners of the earlier firm were discharged, hence the petitioner who had stood surety for them is also deemed to have discharged. Section 17 of the Act reads as follows :

"17. Transfer of business. - Where the ownership of the business of a registered dealer is entirely transferred and the transferee carries on such business either in its old name in some other name, then, save as otherwise provided in section 12A, the transferee shall for all purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered as if the certificate of registration of such dealer had initially been granted to the transferee; and the transferee shall on application to the Commissioner entitled to have the registration certificate amended accordingly."

8. The argument loses sight of the fact that at the appropriate stage, indeed at no stage the registration certificate was got amended on the new partnership coming in to being. The business continued to be run in the name and style of M/s. Ruby Electronics Corporation under the old registration certificate. The petitioner does not allege that any information as required u/s 16 of the Act was furnished by the dealer to the sales tax authorities regarding selling or otherwise disposing of the business or any other change in the ownership of the business. The information required to be furnished is :

"16. Information to be furnished regarding changes of business. - If any dealer to whom the provisions of sub-section (2) of section 10 apply, -

(a) sells or otherwise disposes of his business or any part of his business or any place of business, or effects or comes to know of any other change in the ownership of the business,

(b) discontinues his business or changes his place of business or opens a new place of business, or

(c) changes the name or nature of his business or effects any change in the class or classes of goods in which he carries on his business and which is or are specified in his certificate of registration,

he shall within the prescribed time inform the prescribed authority accordingly; and if any such dealer dies, his legal representative, shall in like manner, inform the said authority."

9. In any case the liability for the assessment year in question, i.e., 1967-68, of the petitioner in his capacity as surety was co-extensive with that of the principal debtor, i.e., the partners of the first partnership firm. Mr. Joshi was unable to show me any provisions under the Act whereby on the transfer of a business, assuming for the sake of argument that provisions of section 17 had come into play, the liability of the surety relating to the period when the earlier partnership was in existence, stood discharged. The question before me is not whether the petitioner by executing the bond in question is deemed to have stood surety for the partnership firm which came into existence subsequently, vide partnership deed dated 8th June, 1968, Mr. Chawla conceded and rightly so that the petitioner's liability for the duration of the subsequent partnership stood discharged automatically because of the dissolution of the first partnership firm for which he had furnished the surety bond. For the period the first partnership was in existence, the petitioner's liability being co-existence with the partnership remains, it is urged. I agree with Mr. Chawla that the surety bond in question is an independent agreement executed by the petitioner whereby he undertook to pay up to Rs. 5000, for the payment of sales tax for which M/s. Ruby Electronics Corporation was liable till the dissolution of the partnership firm.

10. Mr. Joshi's next contention is that the sales tax authorities were duly informed of the dissolution of the old partnership on 6th June, 1968, and

formation of the new partnership on 8th June, 1968. The authorities having not objected to the transfer of the business but in fact allowing the new partnership to continue to carry on the business under the then existing registration certificate, it would be deemed that the provisions of sections 16 and 17 have been complied with. In that view of the matter he submits that by accepting the new partnership as a dealer without the consent of the surety, the variance in the contract discharges the petitioner of his liability even for the transactions prior to the dissolution. His alternative submission is that by accepting the new partnership the contract between the parties, i.e., the firm as the principal debtor and the authorities as creditor, has been altered without the concurrence of the surety and on that ground also the petitioner is absolved of the earlier liability.

11. In my view the submission are misconceived. The registration of M/s. Ruby Electronics Corporation as a dealer to carry on the business of radios and transistors manufacture cannot be said to have been altered simply because the constitution of the partnership was changed as the firm continued to be run under the same name and style and by virtue of the same registration certificate. However, as noticed above, it is conceded by Mr. Chawla that by virtue of section 133 of the Contract Act, the petitioner's liability as a surety ceased as to the transaction subsequent to the formation of the new partnership. As such, In need not go into the question raised by Mr. Joshi on the construction of section 133 of the Contract Act. Thus, the petitioner cannot be asked to discharge the liability of the subsequent partnership firm.

12. In the present case the recovery relates to the year 1967-68 (annexure B English translation) i.e., for the period when the original partnership was in existence and not for the years subsequent thereto. The petitioner admittedly was liable to pay to the extent of Rs. 5,000 as a result of the surety bond, copy annexure R-1, Thus, notice of recovery for Rs. 14,137.30 and Rs. 658.80 (annexure B-1) for the assessment year 1967-68 is valid only to the extent of Rs. 5,000. The other notice relates to the attachment of property for recovery of Rs. 934. It is not clear as to for which assessment year that amount is being sought to be recovered. In any case the liability of the surety, petitioner herein, being up to Rs. 5,000 as such the further sum of Rs. 936.50, as shown in annexure A-1 (English translation annexure A) cannot be recovered from him. That notice is liable to be quashed, and it is hereby quashed.

13. The result is that the writ petition is allowed to the extent indicated above. I grant one month's time to the petitioner to pay the amount of Rs. 5000. In the event of the petitioner not paying this amount within the period of one month, the sales tax authorities will be at liberty to proceed against the petitioner in accordance with law.

14. Writ petition partly allowed.