(2014) 12 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No. 5137 of 2008

V.N. Saraswathy APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0018

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

2. The petitioner is one Tmt.V.N.Saraswathy, W/o Mr.T.A.Padmanabhan and she has filed this writ petition praying for issuance of a writ of certiorari, to quash the impugned notice dated 30.1.2008. Notice is pertaining to arrears of sales tax payable by M/s Carryon Trailers Private Limited, which was carrying on business at No. 55, SIDCO Estate, Thirumazhisai. The arrears is sought to be recovered based on the assessment orders passed under the provisions of the Tamil Nadu General Sales Tax Act for the assessment years 1992-93, 1994-95 to 1997-98.

3. On perusal of the impugned notice, it is seen that the fault committed by the company, which has been registered as a dealer on the file of the assessing authority under the provisions of the TNGST Act, notice has been sent to the petitioner. The notice does not state as to how the petitioner, who is an individual, could be made liable for the dues of the company.

4. The learned Additional Government Pleader for the respondent, on written instructions, submitted that there were three directors in the company and the petitioner was one such director and there is no record to show that the petitioner had disassociated herself from the company and no such intimation was received by the assessing officer and therefore, the assessing officer is entitled to invoke the powers vested under Section 19-D of the TNGST Act.

Further, it was stated that the petitioner could have raised all the contentions before the authority and need not have rushed to this Court by filing the writ petition. It was also stated that the defaulter company has not paid the huge arrears for several years and there are no special circumstances to exclude the petitioner.

5. In the affidavit filed in support of the writ petition, the petitioner has taken a specific stand that the Board of Directors in their meeting held on 3.7.89 have relieved the petitioner from the Board of the company (much prior to assessment years in question) and the same has been communicated by the company by the proceedings dated 6.7.89 and thereafter the petitioner had disassociated herself from the affairs of the company. Further, in paragraph-5 of the affidavit, the petitioner has stated that she was not in the country from March, 1989 onwards and that the details of the places where she visited have also been mentioned in a tabulated form.

6. The legal issue which falls for consideration in this writ petition is as to whether the respondent-Department could proceed against the petitioner, who was the Director, to recover the arrears payable by the company, which is a registered dealer on the file of the respondent. This issue is no longer res integra and has been decided by this Court in the case of Chamundeeswari and P.R. Sridharan Vs. The Commercial Tax Officer, . In the said case a somewhat similar issue arose for consideration, where the former directors of the company against whom recovery proceedings were initiated for recovery of the arrears of sales tax payable by the company, and this Court, taking note of the decisions of the other High Courts, held that there is no provision whatsoever in the TNGST Act to recover the sales tax dues in respect of the company from its directors and it is well recognised that a company is a separate legal entity by itself and if any recovery has to be made from the company, that has to be done against the properties of the company and not against the properties of the director. In the light of the above decision, the impugned demand as against the petitioner is held to be unsustainable. Accordingly, the impugned demand as against the petitioner is quashed. However, this will not prevent the department from recovering the sales tax arrears from the defaulting dealer, the company. The writ petition is disposed of accordingly. Consequently, M.P.No. 1 of 2008 is closed. No costs.

