IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 29454 of 2013 (F)

PETITIONER(S):
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1. POCKER ULLATTIL
JASMIN VILLA, JAYANTHI ROAD, NALLALAM P.O.
KOZHIKODE-673 027.

2. ABOOBACKER MEENANIKKOTTIL
MEENANIKKOTTIL HOUSE, PERUMUDIYUR P.O., PATTAMBI
PALAKKAD DISTRICT-679 303.

3. MUHAMMED KUTTY
CHELAT HOUSE, NIRAMARUTHUR P.O., TIRUR
MALAPPURAM DISTRICT-676 109.

4. M.P.A.SALAM KURIKKAL
MALYALI MANZIL, MANJERI P.O., MALAPPURAM DISTRICT.

5. SALAHUDHIN
NALAKATH HOUSE, PARASSERY P.O., TIRUR
MALAPPURAM DISTRICT.

BY ADV. SRI.N.K.SANATH KUMAR

RESPONDENT(S):
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1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
DEPARTMENT OF COMMERCIAL TAXES
THIRUVANANTHAPURAM-695 001.

2. THE ASST. COMMISSIONER
SPECIAL CIRCLE-I, COMMERCIAL TAXES, KOZHIKODE-673 001.

3. DEPUTY TAHSILDAR (REVENUE RECOVERY)
KOZHIKODE-673 001.

4. M/S. MEEZAN JEWELLERS
MAVOOR ROAD, KOZHIKODE-673 001
REPRESENTED BY ITS MANAGING DIRECTOR.

BY GOVERNMENT PLEADER SMT.LILLY K.T

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 29454 of 2013 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : COPY OF CERTIFICATE OF INCORPORATION ON 09-13047/1999.

P2 : COPY OF ASSESSMENT ORDER NO.32110831484/2011-12 DT.

P3 : COPY OF DEMAND NOTICE DTD.2.12.2011.

P4 : COPY OF REVENUE RECOVERY NOTICE DTD.17.8.2012.

P5 : COPY OF THE REVENUE RECOVERY NOTICE DTD.17.8.2012.

RESPONDENT(S)' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.29454 of 2013

...

Dated this the 16th day of September, 2015

J U D G M E N T

The petitioners are the Managing Director and other Directors of a Public Limited Company. In the writ petition, they are aggrieved by the steps taken by the respondents for recovery from them, of alleged VAT dues of the company for the period from 01.04.2009 to 30.09.2011, pursuant to Exts.P4 and P5 revenue recovery notices. It is the contention of the petitioners in the writ petition that, insofar as they are the Managing Director and other Directors of a Public Limited Company, and the provisions of Section 39 of the Kerala Value Added Tax apply only in respect of the tax or other amounts recoverable from a private company, whether existing or wound up or under liquidation, the provisions of the said Section cannot come to the aid of the respondents in sustaining a demand against the petitioners for the liability of the Company. It is premised on the said contention that, the prayer in the writ petition is for a direction to quash Exts.P4 and P5 notices as illegal and unsustainable.

2. I have heard the learned Government Pleader appearing on behalf of the respondents. The learned Government Pleader on instructions would submit that the liability of the company is not in

dispute and insofar as the petitioners were Directors of the company in charge of the affairs of the company during the relevant time they would be liable for the dues of the company.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I am of the view that, in the absence of an express provision that entitles the respondents to recover the amounts due from a company from its directors, the liability of the company cannot be fastened on the directors. The said position in law is well settled and has been reiterated in the recent decision of the Supreme Court in **Shabina Abraham and Others v. Collector of Central Excise and Customs [2015 (83) VST 450 (SC)]** where, in the context of recovery proceedings under the Central Excise Act, it was held that, assessment proceedings under the Act cannot continue against the legal representatives/estate of a sole proprietor/manufacturer after his death, taking note of the provisions under the Central Excise Act as it stood during the relevant time. Applying the same analogy in the instant case, I am of the view that, in the absence of an express provision that entitles the respondents to do so, the respondents cannot proceed against the Directors of a Public Limited Company for the dues recoverable from

the company.

Resultantly, Exts.P4 and P5 notices in the present writ petition are quashed and the writ petition allowed by declaring that, the petitioners cannot be proceeded against for recovery of the dues stipulated in Exts.P4 and P5 notices. I make it clear that, nothing in this judgment will prevent the respondents from proceeding against the company for recovery of the said dues.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns