IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

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The Hon'ble Mr.Justice R.Mahadevan

Writ Petition No.14697 of 2015 and

M.P.Nos.1 and 2 of 2015

K.G.Thomas ... Petitioner

Vs.

1. The Commercial Tax Officer,
   Porur Assessment Circle,
   Chennai.

2. The District Collector,
   Quilon (Kollam) District,
   Kerala State.

3. The Tahsildar (Revenue Recovery)
   Office of Tahsildar (R.R.)
   Kollam, Kerala State. ... Respondents

Prayer:-

Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the first respondent in his proceedings in R.C.No.A3/3457/90, and to quash the order, dated 23.11.2004 and the consequential recovery proceedings initiated by the third respondent herein in his proceedings D12-832/05/ST/OS, dated 18.04.2015.

For Petitioner : Mr.R.Asokan

For Respondent : Mr. S.Manoharan Sundaram,
Additional Government Pleader

O R D E R

The prayer in the Writ Petition is for issuance of Writ of Certiorari to quash the proceedings in R.C.No.A3/3457/90, issued by the first respondent, dated 23.11.2004, and the consequential recovery proceedings initiated by the third respondent herein in his proceedings bearing D12-832/05/ST/OS, dated 18.04.2015.

2. The case of the petitioner is that he was a former Director of a Company, named "Tamil Nadu Antibiotics Private Limited, which was incorporated under the Companies Act, 1956. The said Company engaged in the business of manufacturing pharmaceuticals, drugs, medicines, dietary, cosmetic and other incidental/allied products. According to the petitioner, he was not directly connected with the business affairs of the said Company, and he remained as a Director only for a short period, and he resigned from Directorship long back. When that being so, the petitioner was issued with the impugned notice, dated 23.11.2004, whereby, he was asked to pay a sum of Rs.2,46,381/- which is payable by the aforesaid Company. Pursuant to the impugned notice, dated 23.11.2004, the third respondent has also initiated recovery proceedings against the petitioner. Being aggrieved by the recovery notice issued by the first respondent and the consequential recovery proceedings initiated by the third respondent, the petitioner has filed the present Writ Petition, seeking for the aforementioned relief.

3. The learned counsel appearing for the petitioner has submitted that no recovery proceedings shall be initiated against the former Directors of an existing company, whether it be Public limited or private, unless there are specific provision of the law or any agreement entered into between the parties, or the Company Court found them guilty of any misfeasance or wrongs. In support of the said contention, learned counsel has placed reliance on the judgment rendered by the Hon'ble Division Bench of this Court in W.A.No.1257 of 2006, dated 28.01.2009, in the case of (R.Vasinathan Vs. The Commercial Tax Officer (FAC) and others), wherein, the Division Bench has referred to the judgments rendered by Bombay and Allahabad High Courts respectively. In the judgment rendered by the High Court of Bombay in (Union of India Vs. M.D.Lotlikar), reported in (1988) 172 ITC, it is held as follows:-

> " The directors of any company, whether public or private, are not personally liable for the debts of the company unless the company court found them guilty of any misfeasance or wrongs."

Similarly, in the judgment rendered by the High Court of Allahabad in (Union of India Vs. M.D.Lotlikar), reported in (1988) 172 ITC, it is held as follows:-

> " In case of private company, recovery of tax dues from it cannot be made from its

Directors, unless permitted by specific provision of law or by an agreement between the parties"

4. Thus, the learned counsel for the petitioner, by placing reliance on the judgments, as cited supra, firmly submitted that the petitioner is not liable to pay any amount, for which the Company is liable. It is his further submission that even the provisions of Section 19-B of TNGST Act contemplates the said proposition of law.

5. Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader for the respondent, and gone through the materials available on records and the judgment relied upon by the learned counsel appearing for the petitioner.

6. Admittedly, the Company in arrears is still in existence and the same is not ordered to be wound up by any of the authorities or by the Court. When such being the position, the petitioner, who ceased to be a director is not liable to the liability as claimed by the first respondent. In the above circumstances, this Court is of the view that the judgments relied upon by the learned counsel for the petitioner are squarely applicable to the facts of the present case, as in this case also, the Company is a private limited company, and is in existence even today and the petitioner was one of its former Directors. Hence, this Court holds that the petitioner cannot be mulcted with any liability, for which, the existing Company alone is liable. Accordingly, the Writ Petition is allowed, and the impugned order dated 23.11.2004 is set aside. No costs. Consequently, connected M.Ps are closed.

sd/-
Assistant Registrar(Cs-V)

/TRUE COPY/

Sub-Assistant Registrar

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To

1. The Commercial Tax Officer,
Porur Assessment Circle, Chennai.

2. The District Collector,
Quilon (Kollam) District, Kerala State.

3. The Tahsildar (Revenue Recovery)
Office of Tahsildar (R.R.)
Kollam, Kerala State.

+1 CC to MR.R.Asokan Advocate. SR.NO. 68470
+1 CC to Govt.Pleader. SR.NO.68234

Writ Petition No.14697 of 2015

CO-SAI
JD 11/01/2016