IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9363 of 2015

Date of decision: 18.11.2015

Krishan Kumar

…Petitioner

Union of India and another

….Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Jagmohan Bansal, Advocate (in CWP No.9363 of 2015), Mr. Roopak Bansal, Advocate (in CWP No.11364 of 2015) for the petitioners.

Mr. Kamal Sehgal, Advocate for the respondents.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP Nos.9363 and 11364 of 2015 as learned counsel for the parties are agreed that the issue involved in both the petitions is identical. However, the facts are being taken from CWP No.9363 of 2015.

2. In CWP No.9363 of 2015, the petitioner prays for issuance of a writ in the nature of mandamus restraining the respondents from taking coercive recovery measures against the petitioner.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is resident of Faridabad. He is at present non working Director of M/s Spectec Building Products Pvt. Limited. The company is engaged in the manufacture of false roofing sheet/metal sheets falling under Chapter heading 72104100 of the Central Excise Tariff Act, 1985. It is having two directors namely Palvinder Singh and Krishan Kumar - petitioner. Due to dispute between the directors, Palvinder Singh tempted the respondent department to initiate investigation against the company. Accordingly, investigation was conducted. Respondent No.2 issued show cause notice to the company calling upon it as to why duty amounting to ₹ 33.5 lacs should not be demanded and recovered from it. Penalty under Rule 26 of the Central Excise Rules, 2002 (in short, "the Rules") was also proposed against both the directors of the company as well as accountant of the company. The company as well as the directors including the petitioner submitted their reply to the show cause notice. The adjudicating authority held that the company was liable to pay duty alongwith penalty and its directors were liable to pay penalty under Rule 26 of the Rules. Duty of ₹ 33.50 lacs was confirmed against the company apart from equal amount of penalty. Penalty of ₹ 3 lacs each on both the directors was also imposed. Thereafter, vide letter dated 11.11.2009, the petitioner informed the department that the business of the company stood closed and it had stocks and machineries to discharge the excise duty liability and that the amount may be recovered by attachment of properties. On the other hand, the petitioner filed his personal appeal before the Commissioner (Appeals). Vide order dated 22.6.2010,

Annexure P.3, the appeal of the petitioner and also of the other concerned parties was dismissed. Feeling aggrieved, the company and the petitioner filed appeals before the Tribunal. Vide order dated 17.11.2011, the Tribunal directed the petitioner to deposit a sum of ₹ 1 lac towards penalty and further directed the company to make deposit of entire amount of duty alongwith 25% penalty within a period of eight weeks. The petitioner deposited ₹ 1 lac as per the order but the company did not comply with the order. Vide order dated 24.2.2012, the Tribunal dismissed the appeal filed by the company. Thereafter, vide letter dated 7.02.2013, Respondent No.2 directed the company and its directors to deposit entire amount of duty alongwith 25% of duty as penalty. The petitioner vide letter dated 28.3.2013, Annexure P.7 informed respondent No.2 that all the plants and machineries were under the charge of Palvinder Singh. Respondent No.2 remained silent from 2013 to 2015 and vide letter dated 24.3.2015 asked the petitioner to deposit dues of the company i.e. duty amounting to ₹ 33.50 lacs plus interest and penalty of ₹ 33.50 lacs. The petitioner in reply submitted that he had already requested to recover the dues by attachment of stocks and plant and machinery in the premises of the company. Respondent No.2 is compelling the petitioner to pay the outstanding dues of the company. Hence the instant petition by the petitioner.

4. In the reply filed on behalf of respondent No.2, it has been inter alia stated that during investigation, it was found that the unit was indulging in clandestine removal and undervaluation of goods manufactured by it. After investigation, demand of ₹ 33.50 lacs with equal amount of penalty was imposed on the company by the adjudicating authority. Since a huge

amount of public money was to be recovered from the company, accordingly, notice was given to the company with a copy to its directors to deposit the amount. The petitioner being the director of the company had been asked to deposit the amount recoverable from the company.

5. We have heard learned counsel for the parties.

6. Admittedly, the company was found to be indulging in clandestine removal and undervaluation of goods manufactured by it. Accordingly, a show cause notice dated 22.7.2008 was issued to it. The case was adjudicated by the respondent authority and vide order dated 30.9.2009, demand of ₹ 33.50 lacs was confirmed against the company with equal amount of penalty. The company as well as its director i.e. the petitioner challenged the order by filing appeals before the Commissioner (Appeals) which were dismissed on 22.6.2010. Aggrieved by the order, they filed appeals before the Tribunal. Vide order dated 24.2.2012, the Tribunal dismissed the appeal of the company as it failed to deposit the entire duty alongwith 25% of penalty within a period of eight weeks from the date of hearing i.e. 17.11.2011. In the appeal filed by the petitioner, the Tribunal directed the petitioner to deposit a sum of ₹ 1 lacs towards penalty. The petitioner deposited the said amount. The petitioner further requested the respondent vide letter dated 28.3.2013 to recover the dues through attachment of stocks and machines. Respondent No.2 is now compelling the petitioner to clear the dues of the company being its director.

7. It is well settled that in the absence of any specific provision in the statute, the duty/penalty liability of the company cannot be recovered from the assets of its director. The Director is not personally liable towards

liability of the company. This court while delving into an identical issue in ***Subhash Goyal vs. State of Haryana and others***, 2014(4) PLR 343 held that in the absence of taking any specific recourse to proceedings under Section 18 of the Central Sales Tax Act, 1956 and any valid order for effecting recovery of arrears of sales tax from the directors of a private limited company in liquidation, the proceedings relating to recovery of arrears of tax from the petitioner being a director were not permissible in law. The relevant findings read thus:-

> "11. Taking up issue No. (ii), examining the argument of learned counsel for the respondents regarding Section 18 of the CST Act, it may be noticed that under Section 18 of the CST Act, when any private company is wound up and any tax assessed on the company under the said Act cannot be recovered, then every person, who was a director of the private company at any time during the period on which tax is due, shall be jointly and severally liable for the payment of tax unless he proved that the non-recovery cannot be attributed to any gross negligence, misfeasance or breach of duty on his part in relation to the affairs of the company. In the absence of taking any specific recourse to proceedings under Section 18 of the CST Act and passing of any valid order for effecting recovery of CST from the directors of the private limited company in liquidation, the proceedings relating to recovery of arrears of CST from the petitioner is held to be not permissible in law. Further, the respondents have not shown that the amount of tax recoverable under the CST Act cannot be recovered from the company. It is also not shown as to what efforts were made to recover the arrears of CST from the assets of the company. Thus, recovery of CST from the petitioner is unsustainable. However, it shall be open for the respondents to proceed to recover the amount on account of CST after taking proper

> action under Section 18 of the CST Act and considering the notification dated 4.9.1995 (Annexure P-11) issued under Section 8(5) of the CST Act."

Thus, the action of the respondents in compelling the petitioner to clear the dues of the company cannot be sustained. However, the respondents shall be at liberty to proceed against the company for clearance of its dues in accordance with law. With these observations, the writ petition stands disposed of.

(Ajay Kumar Mittal)
Judge

November 18, 2015 **(Ramendra Jain)**
'gs' **Judge**