THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.12534 of 2005

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The action of the respondent, in issuing demand notice dated 15.05.2005 for recovery of the alleged arrears of sales tax, relating to the A.P.Bagassee Products Limited, from the petitioner is questioned in this Writ Petition as being arbitrary and illegal.

A notice dated 28.12.2003 was issued to M/s. A.P.Bagassee Products Limited, (addressed to the petitioner as its Managing Director), informing that the tax arrears under the Andhra Pradesh General Sales Tax Act, 1957 (for brevity, 'the Act'), for the years 1991-92 to 1993-94, and under the Central Sales Tax Act, 1956 for the assessment year 1992-93, were still due; and he should pay the said amount.

By his letter dated 08.01.2004, the petitioner informed the respondent that M/s. A.P.Bagassee Products Limited was a public limited company, and a joint venture with A.P.State Agro Industries Development Corporation with equity participation by I.D.B.I., I.F.C.I. and I.C.I.C.I; on account of severe losses, the company could not repay the loans taken from the A.P.State Financial Corporation and A.P.Industries Development Corporation; their paper plant was auctioned by A.P.S.F.C. and A.P.I.D.C and the unit was handed over to the purchasers; Section 16 B of the Act was applicable only to a private limited company, and had no application to their company which was a public limited company. Thereafter by letter dated 16.05.2005 the petitioner, as the Managing Director of A.P.Bagassee Products Limited, was called upon to pay arrears of tax of Rs.4,74,488/-.

Section 16B relates to the liability of the directors of a private limited company in liquidation and, thereunder, when any private company is wound up and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for payment of such tax, unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Section 16B applies only to a private company, that too only when it has been wound up. If a private limited company is wound up, and tax under the APGST Act is due from the said company, then Section 16B enables the authorities concerned to jointly and severally recover the tax dues from the directors of the said private company. Even when such recovery proceedings are launched, Section 16-B enables the director to prove that failure to recover the said amount cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. These safeguards, prescribed in Section 16-B, are applicable even in the case of a private company which has been wound up.

It is the petitioner's case, as is evident from his letter dated 08.01.2004, that the company, of which he is the Managing Director, is a public limited company and a joint venture with the A.P. State Agro Industries Development Corporation. Section 16B has no application to public limited companies and, as such, the Managing Director or the Directors of such a public limited company cannot be proceeded against, for recovery of the tax dues of the said company, under the provisions of the APGST Act. The impugned notices are without jurisdiction and are, accordingly, set aside. Needless to state that this order shall not preclude the respondent from taking action, for recovery of the tax dues, in accordance with law.

The Writ Petition is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

14th March, 2016.
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