IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.08.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.9217 of 2006

Jimmy Ferddon Pochkhanawalla
.. Petitioner

Vs

1.The Commercial Tax Officer,
T.Nagar [North] Assessment Circle,
46, Greenways Road,
Chennai-28.

2.The Deputy Commissioner [Commercial Tax],
Chennai [Central] Division,
Chennai-6.

3.The Tahsildar,
Official Due Recovery,
Mumbai.

4.The District Collector of Mumbai,
Having office at Old Custom House,
Chatrapati Shivaji Marg,
Mumbai 400 023. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 4th respondent culminating in the impugned notice dated 18.03.2005, Rev/GDR/Misc/04-05 and quash the same and consequently forbear the respondents from initiating any proceedings against the petitioner in respect of the sales tax arrears of Entel Ltd.

For Petitioner : Mr.Krishna Ravindran
for M/s.S.Ramasubramaniam & Associates

For R1 and R2 : Mr.S.Kanmani Annamalai,
Addl. Govt. Pleader

O R D E R

Heard Mr.Krishna Ravindran, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for respondents 1 and 2.

2. The petitioner is a senior Advocate practicing at the

Bombay High Court, is aggrieved by a demand notice issued for recovery of Sales Tax under the provisions of TNGST from a Company, namely, M/s.Entel Limited, which has its registered office at Bangalore, in which, he was a Director for a brief period. On 08.12.1998, the petitioner has resigned from his Directorship, which came to be accepted by the Board of Directors on 22.12.1998. It appears that M/s.Entel Limited were defaulters in payment of sales tax and the authority under the TNGST has directed the revenue recovery authorities to initiate proceedings for recovery of the arrears, which ultimately lead the petitioner to challenge the revenue recovery proceedings before the Bombay High Court, which was permitted to be withdrawn to be pursued before this Court as the demand was raised by the 1st respondent, who is within the territorial jurisdiction of this Court.

3. The legal issue as to whether arrears of sales tax can be demanded from a person who has resigned from the post of Director long before such recovery proceedings were initiated is no longer res integra, in the light of the decision of this Court in Sri George J.Mathew Vs The Commercial Tax Officer and Others 2002 [1] CTC 285, wherein, an identical question was considered by this Court and it was held as follows :

> "... 5. To appreciate the rival submissions, it is necessary to appreciate the scheme of the Act. Section 19-B of the Tamil Nadu General Sales Tax Act gives power to the authorities to recover the tax from the director of the company at the time of such winding up. Section 19-B of the Act reads as follows :
>
> > "19B. Liability to tax private company on winding up. - Where a dealer is a private company and such company is wound up, every person who was a director of such company at the time of such winding up shall, notwithstanding such winding up, be jointly and severally liable for the payment of tax, penalty or other amount payable under this Act by such company whether assessment is made prior to or after such winding up unless he proves that the non-payment of tax cannot be attributed to any gross neglect misfeasance or breach of duty on his part in relation to the affairs of the company."
>
> Even the said provision will apply only if a company had been wound up and to the directors who hold the said status at the time of winding up of the company. That is not the case here. So section 19-B does not empower the authorities to take recovery proceedings against the petitioner.
>
> 6. Section 19-A of the Act will apply regarding the liability of the partitioned Hindu family, dissolved firm, etc. The said provision also cannot

be made applicable to the petitioner's case.

7. The other provision to be considered is, section 18 of the Central Sales Tax Act. It deals with the liability of directors of private company in liquidation which reads as follows :

> "Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), when any private company is wound up after the commencement of this Act, 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 the 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."

So according to the said provision, even if any private company is wound up after the Act, the person who was a director, during the period for which the tax is due, is also jointly and severally liable to pay the amount. But since the company in question is not in liquidation or is not yet wound up, the impugned proceedings taken against the petitioner cannot be sustained.

8. A Division Bench of the High Court of Andhra Pradesh in Maddi Swarna v. Commercial Tax Officer, 124 STC 203 [A.P.] while dealing with scope of section 16-B of the Andhra Pradesh Sales Tax Act regarding the liability of the directors of a private limited company to pay the sales tax, has held as follows :

> "6. On the other hand, the learned Special Government Pleader for Taxes meekly attempts to
> support the impugned action.
>
> Section 16-B of the APGST Act reads :
>
> 'Liability of directors of a private company in liquidation. -
>
> 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 the 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'.

It is apparently clear from the provisions of section 16-B that, that section has no application at all unless the company is wound up. According to the provisions of section 16-B, the directors of a private limited company will become liable for any sales tax arrears only under the circumstances clearly contemplated in that section, viz., in the course of liquidation and if the tax assessed on the company is found not recoverable in the liquidation proceedings. It is relevant to note that in respect of the tax assessed and due from the assessee-company, no demand could be forwarded by the respondents to the petitioner-director for recovery of the arrears of tax except in the manner provided in section 16-B. In the instant case, the assessee-company is not in liquidation and it has not yet wound up under the provisions of the Companies Act and, therefore, the necessary conditions to invoke the provisions of section 16-B do not exist and consequently the impugned notice could not be treated to have been issued in exercise of the power conferred on the second respondent by section 16-B of the APGST Act. In the case of Ramnarayan Shahu v. Commercial Tax Officer (FAC) 1990 [78] STC 97 [AP] ; 1990[10] APSTJ 197, it was held that the directors of a private limited company cannot be proceeded against personally in recovery of the amounts due from the company except in the manner provided under section 16B of the APGST Act and the impugned notice issued to one of the directors was quashed."

9. The provision which has been dealt with in the above decision is similar to section 18 of the Central Sales Tax Act and the said judgment is applicable to the facts of the case in all force.

10. In view of the above-said principles of law and section 18 of the Central Sales Tax Act, the proceedings taken by the respondents against the petitioner are without jurisdiction and authority of law. So the same is set aside. The writ petition is allowed. No costs. Consequently, W.P.M.P.No. 33128 of 2001 is closed."

4. Further, in Jacob Vs The Commercial Tax Officer and

Others (Order dated 12.9.2002 in W.P.No.35268 of 2002), this Court held on the same lines.

5. The fact that the petitioner had resigned from the Directorship of Entel Limited on 08.12.1998 and the same was accepted by the Board of Directors of Entel Limited on 22.12.1998 has not been disputed by the 1st respondent, as it has been admitted by him in the written instructions to the learned Additional Government Pleader.

6. Furthermore, learned counsel for the petitioner produced before this Court the extract from the official website of the Ministry of Corporate Affairs to show that as on 03.02.2015, M/s.Entel Limited has not been liquidated and it is shown to be a dormant company.

7. Thus, for all the above reasons, the Writ Petition is allowed and the impugned notice dated 18.03.2005 issued by the 4th respondent in Rev/GDR/Misc/04-05 is set aside. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The Commercial Tax Officer,
T.Nagar [North] Assessment Circle,
46, Greenways Road,
Chennai-28.

2.The Deputy Commissioner [Commercial Tax],
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4.The District Collector of Mumbai,
Having office at Old Custom House,
Chatrapati Shivaji Marg,
Mumbai 400 023.

+1cc to M/s.S.Ramasubramaniam,Associates sr.55400

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ss(21/8/2017)