IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25513 of 2008
and
W.M.P.No.1 of 2008

A.Venkatachalam Chettiar ... Petitioner

Vs

1. The Assistant Commissioner
   Commercial Taxes
   Singanallur Circle
   Coimbatore.

2. The Commercial Tax Officer
   Avarampalayam Circle
   Corporation Commercial Complex
   Dr.Nanjappa Road
   Coimbatore - 641 018.

3. M/s.Butterfly Stainless Castables Pvt Ltd
   Rep by Managing Director
   V.Murugesan Chettiar
   No.27A, Rajaji Nagar
   Singanallur, Coimbatore. ... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India for issuance a Writ of Certiorari, calling for the records of the first respondent pertaining to the impugned auction notice in Na.Ka.No.2406/2002/A3 dated 29.08.2008 and quash the same.

For Petitioner : Mr.C.V.Vijayakumar
for M/s.T.R.Rajaraman

For Respondents: Mr.S.Kanmani Annamalai [For R1 & R2]
Additional Government Pleader
No appearance [For R3]

O R D E R

Heard Mr.C.V.Vijayakumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing on behalf of respondents 1 and 2.

2.The short issue which falls for consideration is whether respondents 1 and 2 can proceed against the personal property of the petitioner for recovery of the sales tax arrears payable by the 3rd respondent/company. The respondent has invoked Section 19 (B) of the Tamil Nadu General Sales Tax Act. The said provision would have no application to the facts of the case, because, there is no record to show that the company has been wound up by following the procedure under the Companies Act, 1956.

3.In the parawise instructions given by the first respondent to the learned Special Government Pleader, vide letter dated 17.12.2008, it has been stated that the company has stopped business or wound up during December 1999.

4.However, there is no record to show that an order of winding up was passed qua the company. Therefore, the company is still a Registered Entity on the file of the Registrar of Companies.

5.The first respondent would admit that they had obtained the address of the petitioner by approaching the Registrar of Companies, Coimbatore. This is sufficient indication to show that the company is still on the roll of the Registrar of Companies, Chennai.

6.Further, in the parawise comments, the respondent has stated that notice was issued to the company as well as the Directors proposing to attach the company's properties at No.50, Elango Nagar, Avarampalayam, Coimbatore. Thus, even as per the statement made by the first respondent, the company owns properties. Therefore, the impugned notice proposing an auction of the petitioner's personal property is wholly without jurisdiction.

7.The above view is supported by the decision of this Court, in the case of Chamundeeswari (W.P.No.3085 of 2000) P.R.Sridharan (W.P.No.3086 of 2000) reported in [2007] 6 VST 399 (Mad). The operative portion of the order reads as follows:-

> "On hearing counsel on either side, I am afraid, the argument advanced on behalf of the respondent by the learned Government Advocate can be accepted. It is well-settled that a company is

a legal entity by itself and it can sue or can be sued as a legal entity and any dues from the company have to be recovered only from the company and not from its directors. Section 19A of the Act cannot be taken assistance of by the respondent for sustaining the order, which provides for the liability to tax of a partitioned Hindu family or dissolved firm. Even Section 19B of the Act, which provides for liability to tax of a private company on winding up, cannot be invoked.

In this regard, useful reference can be had to the decisions of various High Court, which are as follows:

In the case of Desiraju Venkatakrishna Sarma, In re [1955] 25 Comp Cas 32, the Andhra Pradesh High Court has, in similar circumstance, held that a company is a body corporate and can be made liable for payment of taxes in respect of taxes payable by it. There is no personal obligation on the shareholders or the directors of a limited company in respect of the debts, or the taxes, revenue, etc., due from the company. The managing director or other directors of a limited liability company cannot be proceeded against as regards recovery of arrears of sales tax payable by the company.

In the case of Lalita Shivaram Ubhaykar v. Commercial Tax Officer XII Circle, Bangalore [1975] 35 STC 267 (Karn), in which the company committed default in payments of sales tax due from it and the authorities proceeded against the petitioner who was its director, for recovery of the sales tax dues, the High Court of Karnataka had held that there is no provision in the statute which authorises recovery of arrears due from a company by proceeding against its director.

In the case of Ramachandran v. State of Kerala [1984] 55 STC 209, the High Court of Kerala held that there is no provision of law which enables the Revenue to proceed against a director of a company, personally for the arrears of sales tax dues from the company, which is a distinct and different legal entity, but if it is shown or substantiated that the director has got the properties of the company, the Revenue would not be prevented from proceeding against him.

In the case of Punalur Paper Mills Ltd., v. District Collector, Quilon [1985] 60 STC 193, the Kerala High Court held that in the absence of a specific provision in the Kerala General Sales Tax

Act fastening liability on the director or the managing director of a company for the tax due by the company, no proceedings can be initiated against the director or the managing director for recovery of such dues.

In Nishad Patel v. State of Kerala [1999] 113 STC 395, the High Court of Kerala held that a company is a legal entity distinct from its shareholders as well as its directors, and as such no proceedings can be taken against the directors of a company for recovery of any amounts whatsoever due from the company. The directors cannot be made personally liable to pay arrears of sales tax due from the company under the Kerala General Sales Tax Act, 1963.

In Subhash Chandra Kankaria v. State of Rajasthan [1999] 114 STC 413, the Jodhpur Bench of the Rajasthan Taxation Tribunal held the provisions of section 9D of the Rajasthan Sales Tax Act, 1954, cannot be invoked against a director of a public company for effecting the recovery of the amount of tax, interest and penalty outstanding against the company.

For the reasons stated in the foregoing paragraphs and in the light of the decisions referred to above and in the absence of any statutory provision, I am of the view that the impugned order is liable to be set aside and it is accordingly set aside. The writ petitions are allowed. No costs."

8.In the case of R.Vasinathan and Ors. Vs. Commercial Tax Officer and another reported in [2009] 23 VST 82 (Mad). The operative portion of the order reads as follows:-

" In Union of India v. Manik Dattatreya Lotlikar [1988] 172 ITR 1 (Bom), the court held that the directors of any company, whether public limited or private, are not personally liable for the debts of the company unless the company court found them guilty of any misfeasance or wrong-doing.

In G.C.Mehrotra v. Deputy Collector (Collections), Sales Tax [1998] 110 STC 406 (All), the court held that in case of a private company, recovery of tax dues from it cannot be made from its directors, unless permitted by specific provision of the law or by an agreement between the parties.

There are other decisions in this regard referred to by learned counsel for the petitioners, but in view of our finding that in absence of any order of winding up, section 19B is not attracted in the present case of petitioners, it is not necessary to discus other case laws."

9.For the above reasons and relying on the decisions referred above, the impugned notice is held to be unsustainable in law. In the result, the writ petition is allowed and the impugned notice is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

maya

To

1. The Assistant Commissioner
   Commercial Taxes
   Singanallur Circle
   Coimbatore.

2. The Commercial Tax Officer
   Avarampalayam Circle
   Corporation Commercial Complex
   Dr.Nanjappa Road
   Coimbatore - 641 018.

+1cc to the Government Pleader, S.R.No. 77276

W.P.No.25513 of 2008

TR(22/11/2017)