IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.07.2020
Pronounced on	03.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.22902 to 22904 of 2004
and
W.M.P.Nos.27690 to 27692 of 2004

Shyam Bhupatirai Ghia ...Petitioner in W.P.No.22902/2004

Asit Chandmal ...Petitioner in W.P.No.22903/2004

Vikram R.Chinai ...Petitioner in W.P.No.22904/2004

Vs

1. The Deputy Commissioner (CT),
Chennai Central Division,
Chennai.

2. The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
626, Anna Salai, Chennai - 600006.

3. The District Collector,
Mumbai.

4. The Tahsildar,
Government Recovery,
Mumbai City, Mumbai.

5. M/s. Mothercare India Ltd.,
"Mothercare House",
58, Residency Road,
Bangalore - 560025. ...Respondents in all cases

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Prohibition, prohibiting the respondents, their agents, men or servants from taking any proceedings against the petitioners herein for recovery of the sales tax arrears of M/s.Mothercare India Ltd., the fifth respondent herein.

For Petitioner : Mr.R.L.Ramani, Sr. Counsel
(in all WPs) for Mr.Chandran

For Respondents: Mrs.Dhana Madhri
(in all WPs) Government Advocate
for R1 & R2

COMMON ORDER

Today, the matter is called through video conferencing. By consent of both the parties, these writ petitions are taken up for final disposal.

2. All the petitioners herein had held the post of Directors under the fifth respondent, which is a Public Limited Company, during the period from 25.02.1987 to 21.08.1988. All the petitioners had resigned from the Board of Directors from the fifth respondent Company with effect from 22.08.1988. Subsequently, the fifth respondent Company was ordered to be wound up by an order of the High Court of Karnataka on 15.11.1999.

3. The learned Senior Counsel appearing for the petitioners would submit that since the petitioners were not the Directors of the fifth respondent Company, either during the assessment years or at the time of winding up of the Company, the action of the first respondent to recover the tax arrears of the fifth respondent, from the petitioners, is not justifiable.

4. Section 19(b) of the Tamil Nadu General Sales Tax Act as well as Section 18 of the Central Sales Tax Act makes, such of those Directors of the Company at the time of winding up, liable for the tax imposed. The said provisions would apply only if a Company had wound up and the Directors, who held the status during the time of winding up of the Company, could be held liable for the tax liability.

5. In the present case, all the petitioners, who held the status of a Director of the fifth respondent Company, had resigned much prior to the assessment years, when the Sales Tax arrears were due or the winding up of the Company. As such, by no stretch of imagination, can the petitioners herein be deemed to be the Directors of the fifth respondent Company at the relevant point of time, when the tax liability arose. There is absolutely no justification in the tax recovery proceedings initiated by

the first respondent as to how these petitioners are otherwise liable.

6. A learned single Judge of this Court, in the case of Sri George J.Mathew vs. The Commercial Tax Officer reported in 2002 (1) CTC 285, had relied upon a Division Bench Judgement of the High Court of Andhra Pradesh in Maddi Swarna vs. Commercial Tax Officer reported in 124 STC 203 (A.P.) and held that the persons, who were Directors only during the period for which the tax liability arose, could be jointly and severally made liable. In the absence of any provision enabling the first respondent to proceed against the petitioners herein and taking into account that the petitioners herein were not the Directors of the Company during the relevant assessment years or at the time of winding up of the Company, no proceedings can be initiated as against the petitioners herein.

7. Accordingly, a Writ of Prohibition is hereby issued, prohibiting the respondents from taking any proceedings against the petitioners herein for recovery of the sales tax arrears of M/s.Mothercare India Ltd., / fifth respondent herein.

8. In the result, all the Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Spl. Government Pleader(Taxes), S.R.No.25984

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AD(CO)
CB(20/08/2020)