IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.4273 of 2009 and
M.P.Nos.2 & 3 of 2009

Sumant Sharma

..Petitioner

vs.

1. M/s.Amman Trading Company,
   Rep.by its Proprietor
   Bajranglal Sharma,
   No.5, O.A.Ramasamy Street,
   Gandhi Nagar Colony,
   Erode.

2. The Commercial Tax Officer
   The Assistant Commissioner (CT)
   Brongh Road Circle,
   Erode.

..Respondents

Prayer : Writ petition is filed under Article 227 of the Constitution of India, praying for a writ of Certiorari calling for the records on the file of the 2nd respondent in his letter dated 31.12.2005 along with a certificate for the recovery of arrears sent to the District Collector, Narnadi District and quash the same.

For petitioner : Mr.S.Rajasekar
For R2 : Mr.M.Harikaran

ORDER

Today, i.e. 07.01.2021 when the writ petition was taken up for hearing, the learned counsel for the petitioner drew my attention to typed set of papers dated 22.04.2009 and 26.10.2010 respectively enclosing a copy of a certificate dated 04.10.1993, signed by the 2nd respondent, Commercial Tax Officer, Erode wherein it has been certified that Mr.B.Bajrangalal Sharma was the sole proprietor Amman Trading Co-5, O.A.Ramasamy Street, Erode and was doing business and he was having a branch at 106/C, Park Road, Erode. The learned Government Pleader (Tax) also confirms the same.

2. After the petitioner exited from the partnership concern, the said Bajrangalal Sharma, 1st respondent represented

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by carried on business as proprietor of the 1st respondent. He had informed the 2nd respondent that the petitioner was no longer a partner of 1st respondent, Amman Trading company with effect from 01.04.1992 and that necessary declaration in Form X was being filed therewith. Records of the 1st respondent Amman Trading Company were also called for. They indicate returns of the 1st respondent, Amman Trading Company were filed as proprietary concern right from 1993-94 onwards. and accordingly quashed. A copy of D-3 proposal of the DCTO (Enf.I) Erode dated 24.01.1996 issued to the 1st respondent also records that the 1st respondent is a proprietary concern. The demand/arrears vide impugned recovery notice is from the period between 1994-95 to 1999-2000 after the petitioner exited the 1st respondent trading concern.

3. Thus, the proposal to recover the arrears of tax for the Assessment Year 1993 - 1994 onwards vide impugned notice dated 31.12.2005 of the 2nd respondent to the District Collector, Narnadi District, Hariyana State is after the petitioner ceased to be the partner of 1st respondent Amman Trading company. It is therefore liable to be quashed.

4. Though the impugned letter dated 31.12.2005 stands quashed as far as the petitioner is concerned, the 2nd respondent is entitled to recover the arrears of tax from the said Mr.B.Bajrangalal Sharma and his legal heirs as it was informed that he has since deceased during the pendency of the present writ petition.

5. The writ petition is allowed with the above observation. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

KKD

Sub Assistant Registrar

To

1. The Commercial Tax Officer
The Assistant Commissioner (CT)
Brongh Road Circle,
Erode.

2. The District Collector,
Narmadi District, Haryana State.

+1cc to M/s.R.Hemalatha, Advocate in SR.NO..1569

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+1cc to the Special Government Pleader(CS), in SR.NO..1356

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mgr(CO)
rv(11/02/2021)

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