

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.29211 of 2020

Shri Atul Kumar Saxsena

.... Petitioner

Mr. C.R. Das, Advocate

-versus-

***Commissioner of Sales Tax, Odisha, Opposite Parties
Cuttack and others***

Mr. Sunil Mishra, Additional Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
19.12.2022**

Order No.

07. 1. The challenge in the present petition is to an order dated 16th April 2019 passed by the Commissioner of Commercial Taxes, Odisha, Cuttack confirming the attachment of the bank account of the Petitioner which was earlier ordered on 16th March, 2017.
2. The present petition is by an individual who happened to be an erstwhile Director of M/s. Amcon Engineers Private Limited (AEPL), the Assessee. For the period 1st April 2011 to 31st March 2012, a demand of Rs.77,350/- was raised under the Odisha Value Added Tax Act, 2005 (OVAT Act) and for the period 1st April 2013 to 31st March 2015, a demand of Rs.17,61,789/- under the Central Sales Tax Act, 1956 (CST Act) was raised against AEPL.
3. On 16th March 2017, the Sales Tax Officer (STO), Cuttack-1 City Circle issued Form VAT-316 to the Branch Manager, Vijaya Bank,

New Delhi for recovery of the aforementioned sum. Instead of issuing notice to the Bank account of AEPL, the STO appears to have issued notice to the Branch Manager of Vijaya Bank against the Bank account of the Petitioner who happened to be the former Director of AEPL for the period between 16th September 1997 to 15th February, 2014.

4. The Petitioner on 7th April 2017 informed the Bank Manager that he had already resigned from the Board of Directors of AEPL on 15th February 2014 and therefore could not be made liable for the dues of AEPL.

5. A similar letter was issued by the Petitioner on 13th April 2017 to the Deputy Commissioner of Sales Tax, Cuttack-I, Cuttack. On its part, AEPL informed by a letter dated 25th May 2017 that the Petitioner had resigned from its services on 15th February 2014 and that thereafter he had no link with the company.

6. Against the attachment of his Bank account, the Petitioner filed a revision petition before the Commissioner on 18th January, 2018. By an order dated 16th April 2019, the revision petition was rejected by the Commissioner of Sales Tax, Odisha. The order of attachment was confirmed.

7. In the impugned order, reference has been made to Section 71 of the OVAT Act which does not talk of dues of a company being recovered from its Directors, but the dues of a partnership firm being recovered from the individual partners. Section 71 of the

OVAT Act is therefore of no assistance to the Department in the present case.

8. A perusal of the counter affidavit filed by the Opposite Parties reveals that there is no mention of any source of power under the OVAT Act enabling the Department to proceed, for the dues of a company, against its Directors. In other words, there is no provision of the OVAT Act under which the Department can seek to attach the Bank account of an individual Director only because he happens to be associated with the Company which is in default. The Company is a separate legal entity which can sue and is capable of being sued. Admittedly, the assessment in the present case is in the name of the Company and throughout, it is the Company which has been treated as the Assessee and demands raised against it. While the impugned order notices that there is nothing wrong in the attachment of the Company's account, the grievance of the Petitioner that as an individual Director who has already resigned much prior to the impugned attachment, his individual account could not have been attached was not even addressed in the impugned order.

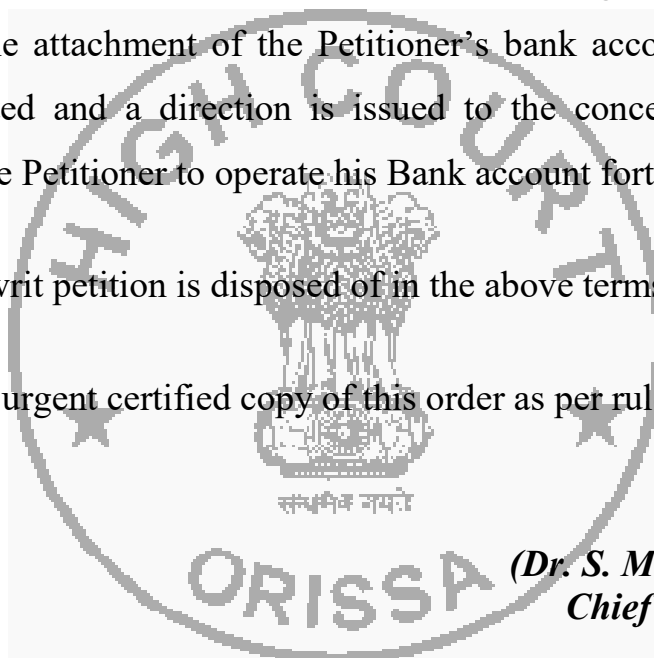
9. Section 51 of the OVAT Act read with Rule 55 of the OVAT Rules provides a special mode of recovery of outstanding amount of tax, interest and penalty. Even these provisions do not authorize recovery of outstanding taxes of a Company from the accounts of its individual Directors.

10. For the aforementioned reasons, this Court is unable to sustain the impugned order dated 16th April 2019 of the Commissioner of Sales Tax, Odisha in so far as the said order confirms the attachment of the Petitioner's individual Bank account notwithstanding his having ceased to be a Director of AEPL whose tax dues were sought to be recovered.

11. The impugned attachment order and the corresponding order of the Commissioner of Sales Tax, Odisha affirming it are hereby set aside. The attachment of the Petitioner's bank account shall now stand lifted and a direction is issued to the concerned Bank to permit the Petitioner to operate his Bank account forthwith.

12. The writ petition is disposed of in the above terms.

13. Issue urgent certified copy of this order as per rules.



(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin