IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTY FIRST DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION NO: 6298 OF 2018

Between:

1. C. V. Vijaya Bhaskar, Managing Director, M/s.Bhaskar Fertilizers private Limited, 1B-1-343, Venugopal Nagar, Ananthaparamu District
2. M/s. Bhaskara Fertilizers private Limited, Lelour Village, Singhanamala Mandal, Ananthaparamu District, represented by its Managing Director, Sri C.Vijaya Bhaskar.

...PETITIONER(S)

AND

1. Commercial Tax Officer, Anathapuram
2. Commercial Tax Officer (Audit) (FAC), O/o. The Deputy Commissioner (CT), Ananthapuramu
3. Appellate Deputy Commissioner (CT), Tirupathi
4. Deputy Commercial Tax Officer - III, O/o. The Commercial Tax Officer - I, Ananthapuramu.

5. The State of Andhra Pradesh, Represented by its principal Secretary, Revenue (CT) Department A.P. Secretariat, Velagapudi, Amaravathi, Guntur District
6. Deputy Commercial Taxx Officer-II, Anantapur I Circle, Anantapur.

...RESPONDENTS

(Respondent No.6 impleaded as per C.O. dt. 31.07.2024 vide I.A. No.1 of 2023 in W.P.No.6298 of 2018)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction particularly one in the nature of writ of Mandamus setting aside the notice of attachment issued by the fourth respondent in Form No.5, dated 19.02.2018 issued under section 27 of the Revenue Recovery Act, 1864, for the recovery of the arrears of tax of the second petitioner company amounting to Rs.6,78,83,000/- for the years 2013-14 and 2014-15 by attaching the personal properties of the first petitioner herein contained in Survey No.113/4B, 113/5B, 113/6B admeasuring 5.48 acers of land situated in Loluru Village, Singhanamala Mandal, Ananthapuramu, as illegal, arbitrary, without jurisdiction, and unsustainable in law.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pending disposal of writ petition grant stay of all further proceedings arising in pursuance of From No.5 dated 19.02.2018 issued by the fourth respondent herein under Section 27 of the Revenue Recovery Act, 1864 for the recovery of the arrears of tax of the second petitioner company amounting to Rs.6,78,83,000/- for the years 2013-14 and 2014-15.

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings arising in pursuance of the notices issued by the Deputy Commercial Tax Officer - II Anantapur I Circle, Anantapur, in Form No. 7 dated 22-02-2023 and 7A dated 22-02-2023 under section 36 A.P. Revenue Recovery Act. 1864, attaching the personal properties company.

IA NO: 3 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit the petitioner to bring on record the above facts and material papers.

Counsel for the Petitioner(s): SRI S SURI BABU

Counsel for the Respondents 1 to 6 : GP FOR COMMERCIAL TAX

The Court made the following: ORDER

APHC010142362018

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3488]

WEDNESDAY, THE THIRTY FIRST DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION NO: 6298/2018

Between:

C. V. Vijaya Bhaskar and Others ...**PETITIONER(S)**

AND

Commercial Tax Officer and Others ...**RESPONDENT(S)**

Counsel for the Petitioner(S):

1....

2.S SURI BABU

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX (AP)

2..

The Court made the following Order:

(Per Hon'ble Sri Justice R. Raghunandan Rao)

Heard Sri S. Suri Babu, learned counsel appearing for the petitioners and the learned Government Pleader for Commercial Taxes.

2. The 2nd petitioner herein is a private limited company, which was registered as a dealer under the provisions of the A.P. Value Added Tax, Act, 2005 (for short 'the Act'). The 2nd petitioner was assessed for tax for the period 2013-14 and 2014-15 by way of an assessment order dated 22.06.2016. Thereafter, a penalty order was also passed on 09.02.2017 levying a penalty of Rs.6,71,86,364/-. This penalty order was challenged by way of a writ petition, before this court, and is pending adjudication before this Court. However, there was no stay of recovery of tax dues. A notice of attachment dated 19.02.2018 under the Revenue Recovery Act, 1864 was issued by the 4th respondent, attaching the personal properties of the 1st petitioner herein for recovery of arrears of tax amounting to Rs.6,78,83,000/-. The aforesaid action was initiated against the 1st petitioner on the ground that he is the Managing Director of the 2nd petitioner and the respondents are entitled to recover this money from the 1st petitioner on account of Section 24(5) of the Act.

3. Section 24(5) of the A.P. VAT Act, 2005 reads as under:

> 24(5) When any private company is wound up and any tax assessed on the company under the 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.

4. Aggrieved by the said action of the 4th respondent, in attaching the property of the 1st petitioner, the present writ petition has been filed.

5. Sri S. Suri Babu, learned counsel appearing for the petitioners would contend that, the provisions of Section 24(5) of the Act would fasten the liability of tax dues of a private limited company on the director only when the said private limited company is wound up and the tax assessed for any period before or in the course of or after its liquidation cannot be recovered. He would submit that the 2nd petitioner is still an active company and has not been wound up nor any liquidation proceedings had been initiated against the 2nd petitioner, and as such, the 1st petitioner would not be liable for any tax of the 2nd petitioner.

6. Section 24(5) of the Act stipulates that all directors of a private limited company would become jointly and severally liable for payment of a tax for a private limited company subject to two conditions. Firstly, the said private limited company should be wound up and secondly, the director of the private limited company to whom such notices are issued is entitled to prove that non-recovery of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on the part of the said director in relation to the affairs of the company.

7. In the present case, the petitioners state that there is no winding up order passed against the 2nd petitioner. The respondents have not produced any material before this Court to demonstrate that such an order of

winding up had been passed. In the absence of any such order, the primary requirement of Section 24(5) of the Act has not been complied with. Consequently, the proceedings initiated against the 1st petitioner for recovery of taxes due from the 2nd petitioner is without jurisdiction and would have to fail.

8. Accordingly, this writ petition is allowed setting aside the notice of attachment issued by the 4th respondent in Form No.5 dated 19.02.2018 leaving it open to the respondents to seek recovery in the event of the 2nd petitioner being wound up. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

Sd/- SHAIK MOHD. RAFI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Commercial Tax Officer, Anathapuram
2. The Commercial Tax Officer (Audit) (FAC), O/o. The Deputy Commissioner (CT), Ananthapuramu
3. The Appellate Deputy Commissioner (CT), Tirupathi
4. The Deputy Commercial Tax Officer - III, O/o. The Commercial Tax Officer - I, Ananthapuramu.

5. The Principal Secretary, Revenue (CT) Department, State of Andhra Pradesh, A.P. Secretariat, Velagapudi, Amaravathi, Guntur District
6. Deputy Commercial Tax Officer – II, Anantapur I Circle, Anantapur
7. One CC to SRI S SURI BABU Advocate [OPUC]
8. Two CCs to GP for COMMERCIAL TAX, High Court of Andhra Pradesh [OUT]
9. Three CD Copies

Madhu

HIGH COURT

DATED:31/07/2024

ORDER

WP.No.6298 of 2018

ALLOWING THE WP
WITHOUT COSTS