**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 20120 of 2023 (O&M)

Reserved on : 13.11.2024
Date of Pronouncement : 14.11.2024

Sandeep Sood …Petitioner

Versus

Assistant Collector 1st Grade-cum-Excise & Taxation Officer,
U. T. Chandigarh …Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Ms. Radhika Suri, Senior Advocate assisted by
Mr. Abhinav Narang, Advocate and
Ms. Parnika Singla, Advocate, for the petitioner.

Mr. Ajay Jagga, Additional Standing Counsel,
U. T. Chandigarh, for the respondent.

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SANJEEV PRAKASH SHARMA, J.

This writ petition has been preferred by the petitioner assailing the action of the respondents in freezing his saving bank accounts maintained with Bank of Baroda, Manali Branch, Punjab National Bank, Chandigarh Branch, UCO Bank, Manali Branch with the purpose to recover the VAT dues of M/s East Bourne World Cuisine Private Limited, where the petitioner was a former director and prays for quashing the attachment notice dated 12.02.2021.

2. Learned counsel for the petitioner submits that recovery proceedings can be initiated in terms of specific provisions of the statute. There exists no particular provisions under the Punjab Value Added Tax

Act, 2005 as extended to Chandigarh (hereinafter to be referred as 'the Act') whereby the liability of the private limited company can be fastened on the director of the company, especially when the company is functional. Also submits that the director would be liable for recovery only under Section 18 of the Central Sales Tax Act, 1956 in cases where the private limited company has gone into liquidation and has been wound up.

3. Learned Senior counsel has invited our attention to a recent judgment of Hon'ble the Supreme Court in Civil Appeal No. 10433 of 2024 (arising out of SLP (Civil) No. 20534 of 2019) – ***Shankar Rudra vs The State of Uttarakhand and others,*** decided on 10.09.2024, wherein the provisions of Section 12(1) of the Uttarakhand Value Added Tax Act, 2005 were examined by the Court and it was held as under:-

> "*7. On a plain reading of sub-Section (1) of Section 12 of the Act, the liability of the Directors of a private company will arise when a private company is wound up after the commencement of the Act. Therefore, Section 12(1) will have no application as an order of winding up has not been produced.*
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> *8. Therefore, when there was no provision under the Act under which dues of a limited company could have been recovered from its Directors, the third respondent was not justified in issuing the recovery certificate and demand notice against the appellant. These crucial factors have been ignored by the High Court. It ought to have been noted by the High Court that an attempt to recover tax payable by the Company from the appellant from its inception was illegal and, therefore, the appellant ought not to have been driven to the remedy of preferring an appeal.*

> *9. Accordingly, the Appeal succeeds. The impugned judgments and orders of the learned Single Judge and the Division Bench are set aside. The notice of recovery dated 6th June, 2019 issued by the third respondent is hereby quash and set aside."*

4. Learned counsel for the petitioner further submits that Section 83 (3) of the Act also similarly provides for liability of a director in case a company which is wound up and is *pari materia* to Section 12 of the Uttarakhand Value Added Tax Act, 2005, as noticed by the Supreme Court (supra).

5. Learned counsel for the respondent submits that the petition is pre-mature and the proceedings are to be taken against the company.

6. We have considered the pleadings and find that as per the reply filed by the respondent, the company has itself filed an appeal before the appellate authority, which is still pending. It is also noticed that the company is functional and the petitioner is no more a director of the said company. In the circumstances, there was no occasion for the respondent to attach the bank accounts of the petitioner for recovery of its dues as against the concerned company. The provisions of Section 83(3) of the Act reads as under:-

> *"83 (3) Notwithstanding anything contained in the Companies Act, 1956, when any private company is wound up and any tax, interest or penalty assessed under this Act on the company 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, interest or penalty, unless such*

> *person proves to the satisfaction of the Commissioner or the designated officer that 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.*
>
> *Explanation.-For the purpose of this section, the expression 'private company' shall have the meaning, assigned to it under section 3 of the Companies Act, 1956 (1 of 1956)".*

A perusal of the said provisions also reflect that the recovery from the director of a company can only be made when such a company has been wound up. Even under the Companies Act, 1956, the provision for recovery from the director is not available at the stage prior to winding up of the company.

7. There is also no case of allegation of mismanagement of the company and in such circumstances also, the order would have to be obtained from the concerned NCLT.

8. Even earlier on 05.09.2024, we have directed the respondent to decide the appeal of the company which has not been decided even till date. Be that as it may, the aforesaid fact should not detain us from declaring the attachment of the saving accounts of the petitioner as bad in law as we find that it is a clear case of arbitrary exercise of power by the respondent and is wholly without any authority.

9. The order of attachment of the saving accounts of the petitioner and the notice dated 12.02.2021 are quashed and set aside. The petitioner is held to be entitled to receive a sum of ₹ 1 lac as penal cost for wrongful attachment of his bank accounts putting him in unnecessary financial distress. The amount of ₹ 1 lac shall be paid by the respondent authorities

and deposited in his bank account within two months, failing which interest @ 18% shall also be paid, which may be recovered from the concerned delinquent officer, who has arbitrarily issued attachment order without authority.

11. Accordingly, the writ petition is allowed with cost as above.

12. All pending applications stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

14.11.2024
vs

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No