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W.P.No.21141 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21141 of 2022

D.V.Rao

: Petitioner

Vs.

The Deputy Director General of Foreign Trade,
Office of the Additional Director General
of Foreign Trade,
Ministry of Commerce and Industry,
Shastri Bhavan,
Haddows Road,
Chennai-600 006.

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the entire records of the respondent herein leading to the issuance of the impugned order in original F.No.04/21/021/00882/AM11, dated 29.07.2020 by the respondent and quash the same.

For Petitioner : Mr.J.Subash

For Respondents : Mr.T.V.Krishnamachari
Senior Panel Counsel



W.P.No.21141 of 2022

WEB COPY

ORDER

The present writ petition is filed challenging the order in original F.No.04/21/021/00882/AM11, dated 29.07.2020 passed by the respondent.

2. The case of the petitioner is that petitioner was one of the Director of the Company namely M/s.KFPL Drum Private Limited. He was director of the said company for a period of one year and two months from 09.07.2010 to 01.09.2011. The petitioner tendered his resignation in writing to the Board of Directors by a letter dated 01.09.2011 of the company and also submitted Form 32 as per the Companies Act, 1956 to the Registrar of Companies. The petitioner have not been involved in the affairs of the company in any capacity after the date of his resignation. Despite the fact that the petitioner was no longer a Director of the company, show cause notice dated 15.04.2019 was issued to him asking as to why action should not be taken for placing the company under Denied Entity List, refusing issuance of further authorizations. Thereafter, the impugned order dated 29.07.2020 was issued, wherein it was held that the company has not complied the export obligations and a penalty of Rs.41,00,000/- was imposed. Challenging the same, the present writ petition is filed.



W.P.No.21141 of 2022

WEB COPY

3. The learned counsel for the petitioner would submit that the issue involved in this writ petition is no longer res integra and it has already been decided by this Court in W.P.No.10108 of 2022 dated 02.04.2024. The relevant portion is extracted hereunder:

*"4. However, the petitioner did not inform the respondents with regards to his resignation from the post of Director nor updated the Imported Exporter Code (IEC) database in the DGFT website. The learned counsel for the petitioner relied upon the judgment of the Hon'ble High Court of Delhi in which similar matter was dealt with and held in the case of **Anita Grover vs Commissioner of Central Excise** reported in **2013 (288) E.L.T. 63 (Del)**. The relevant portion of the order is extracted hereunder :*

....."6. The above provisions make it clear beyond doubt that it is only the defaulter against whom steps may be taken under Rules. The defaulter is the person from whom dues are recoverable under the Act, which in the present case undoubtedly is the company. There is no averment that the company has been or is being wound up. in that case, there cannot be any question about the separate juristic personality of an existing company and its former director, the dues recoverable from the former cannot, in the absence of a statutory provision, be recovered from the latter. There is no provision in the Customs Act, 1962 corresponding to Section 179 of the Income Tax Act. 1961 or Section 18 of the Central Sales Tax, 1956 which enable the revenue authorities to proceed against directors of companies or such like third parties who are not defaulters.



WEB COPY



W.P.No.21141 of 2022

7. In *Union of India v. MD. Lofikar* (1988) 172 ITR 1 (Bom), the Bombay High Court held that the directors of any company, whether public limited or private, are not personally liable for the debts of the company unless the Company Court finds them guilty of any mis-feasance or wrongs. In *G C. Malhotra v. Deputy Collector*-(1998) 110 STC 406 (All). the Court held that in case of a private company, recovery of tax dues from it cannot be made from its directors, unless permitted by specific provisions of the law or by an agreement between the parties. In *Mukesh Gupta v. State of Haryana*-(1996) & PHT 326 (P&H), the Punjab and Haryana High Court examined and held that a director was not liable personally for the amount due towards arrears of sales tax from the company. This view was reiterated by this Court in *Suneet Khurana v. Assistant Collector*-(1997) 10 PHT 495 (P&H).

8. In *Om Prakash Waleche v. State of Haryana*, 2009 (238) ELT. 215(PBH) the Punjab and Haryana High Court upheld the assessee's contention that no recovery either of Haryana General Sales Tax or Central Sales Tax could be effected personally from the Director in respect of the liability of the Company, Again, this view was followed in *A.P. Raheja and Another v. State of Haryana and Others* (2010) 29 VST 103 (P&H). To end the discussion, the decision of the Kerala High Court, in *Nishad Patel & Anr. v. State of Kerala & Ors* (1999) 96 Comp Case 861 (Ker.) requires to be noticed. In that case, it was held that :

"In the present case what respondents Nos 3 to 5 seek to recover is arrears of sales tax allegedly due from



W.P.No.21141 of 2022

Alliance Leathers (P) Ltd. The petitioners are only the directors of the said company as already noted. They have in their possession no assets of the company whatsoever. As such, they have no personal liability in respect of the dues allegedly due from the company it is by now well settled that a director of a company cannot be proceeded against for recovery of arrears of any amount due from the company as already noticed Therefore the present proceedings ritard apanst the petitioners for recovery of sales tax arrears allegedly due from the company is totally without jurisdiction Moreover, the present proceedings of respondents Nos 3 to 5 are volative of the principles of natural justice and the tundamental nights of the petitioners guaranteed under articles 14 and 21 of the Constitution of India. No notice whatsoever has been issued to the petitioners before coercive action was initiated which will result in arrest and detenton of the petitioners under Section 23(2)(b) of the Kerala General Sales Tax Act, 1963. As such, the said action of respondents fos 3 to 5 are totally unsustainable"

9. The Court is of opinion that the impugned notices and action of the Customs authorities is at once in utter violation of Article 265 of the Constitution, as it seeks to recover tax dues of one from another, without authority of law also amounts to illegal deprivation of the petitioner's property, without authority of law, under Article 300-A of the Constitution of India"

*Hon'ble High Court of Delhi in which similar matter was dealt with and held in another case of **Ved Kapoor vs Union of India** reported in **2014 (299) E.L.T. 385 (Del)**. The relevant portion of the order is extracted hereunder :*



WEB COPY



W.P.No.21141 of 2022

....."6. A perusal of the adjudication order dated 31.05.2010 would show that penalty under Section 11(2) of the said Act has been imposed upon the petitioner, the same having been imposed only upon the Company. Even otherwise, no penalty could have been imposed upon the petitioner, without serving him with a mandatory notice in terms of Section 14 of the Act and no such notice was ever given to the petitioner. A perusal of the show cause notices dated 17.03.2004, 21.07.2005 and 12.02.2008 would show that all of them are addressed only to the Company. The notice issued to the Company can by no stretch be construed as notice to its directors, since it contained no proposal to impose penalty on the directors of company. Even if it is presumed, for the sake of arguments, that the aforesaid notices were in the knowledge of the petitioner, though his case is that the said notices were not served even on the company, the same having been dispatched to a place where the Company was no more functioning at the time the notices were dispatched, he could not have anticipated to a place where the Company was no more functioning at the time the notices were dispatched, he could not have anticipated from the said notice that penalty in terms of Section 11(2) of the Act was sought to be imposed upon him as well. In any case, as noted earlier, no penalty was ever imposed upon the petitioner. During the course of hearing, the learned counsel for the petitioner brought it to my notice that from the letter dated 23.03.2008, which is a document filed by the respondents, it is evident that one



WEB COPY



W.P.No.21141 of 2022

Mr.Satish Malhotra, who appeared in the office Joint Director General of Foreign Trade on 12.03.2008,had informed him that the company was lying closed since 1998 and the said office had sent various letters at Toistoy Marg, New Delhi and Faridabad which had ceased to be the office of the company since January, 1998. However, since the Company is not a petitioner in these matters, I need not go into the question as to whether the said notices were duly served upon the company or not.

7. The next question which then arises for consideration is as to whether the penalty imposed upon the Company can be recovered from its Directors of the Company.

8. A company is a Legal entity independent of its directors and/or shareholders. The company enjoys its own legal right and can also be subjected to duties, statutory or otherwise. The business carried out by a company belongs to it as a juridical person and it is the company alone which is duty-bound to discharge its debts and liabilities. In the absence of a statutory provision, the directors of a company cannot be made liable to discharge its liabilities unless they have stood as guarantors for discharge of such a liability. Therefore, unless a Statute so provides, the penalty imposed upon a company cannot be recovered from the personal assets of its directors. Reference may be made to Division Bench judgment of Punjab & Haryana High Court in A.P. Raheja and Arr. v. State of Haryana and Ors-[2010] 154CompCas449 (P&H). In the aforesaid case, the petitioner was served with a notice



W.P.No.21141 of 2022

for recovery of sales tax due from the company on the ground that he had been a director of the company. He filed a writ petition, challenging the said notice and contended that the company being a separate entity, recovery cannot be effected from him. Accepting the contention the High Court held that a company is a complete separate entity and its corporate veil can be lifted only for limited purposes. The directors of the company cannot be a substitute of the company in their individual capacity. Reference may also be made to the decision of this Court in Capital Cargo Carriers v. Assistant Collector Grade-I and Ors, WP (C) No.10676 of 2009, decided on 4-8-2009, where this Court took an identical view and held that the directors of the company are not personally liable for the liability owned by the company, It was clearly held that the directors cannot be held personally liable in financial matters relating to affairs of the company. A similar view taken by the Division Bench of this Court in Anita Grover v. Commissioner of Central Excise and Ors.196 (2013) DLT 596-2013 (288) [E.L.T.](#) 63(Def). when it was held that the dues recoverable from the company cannot be, in the absence of a statutory provision, be recovered from the directors. There is no provision in the Act for recovery of the penalty imposed upon a company from its directors, even in the event the said penalty cannot be recovered from the Company, Therefore, the penalty imposed upon the company cannot be enforced against the petitioner.

9. Another question which incidentally



WEB COPY



W.P.No.21141 of 2022

arises in this case is as to whether, in a case where import license is issued to a company and there is a default in carrying out the export obligation attached to the license, penalty in terms of Section 11(2) of the Act can be imposed upon the director of the company or not. The contention of the learned senior counsel was that since the expression "Person" used in subsection (2) of Section 11 refers only to the person who makes or abets or attempts to make any export or import and admittedly import in this case was made by the company which is a legal personality independent of its directors, no penalty against the directors can be imposed on failure of the company to carry out the export obligation attached to the import license. Per contra, the learned counsel for the respondents contended that in the event of such a default, penalty can be imposed on all the persons, who were directors of the company at the time the default took place as well as the persons who were directors during the period the default persisted.

10. No doubt, a company being an independent entity ordinarily, the directors of the company are not able to discharge the liabilities of the company. However, in certain cases, the Courts can sit the corporate veil, inter alia, in the cases where a) the Statute itself contemplates such lifting. b) fraud or improper conduct is intended to be prevented and c) where a taxing statute or a beneficial statute is sought to be evaded. The nature of the impugned conduct, the extent of public interest involved and effect on the effected parties would be amongst the relevant



WEB COPY



W.P.No.21141 of 2022

considerations, while deciding whether to lift the corporate veil or not.

In Santanu Ray v. Union of India-1908 (20) ELT. 264 (Del.), the petitioners were served with notice under Section 11A of Central Excises and Salt Act, 1944, which provides that where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded by reasons of fraud, collusion or willful misstatement or suppression of facts, or contravention of any of the provisions of the Act or the Rules with intent to evade payment of duty by such person or his agent, then proceedings can be initiated by issue of a show cause notice. The notice was challenged, inter alia, on the ground that the Statute imposed no liability, obligation and responsibility upon the directors of the company to pay the excise duty in a case where manufacturer is a company and, therefore, the show cause notice issued to the directors were without jurisdiction. Dealing with the contention, a Division Bench of this Court held as under :

11. It is true that from the juristic point of view, the company is a legal personality entirely distinct from its members and the company is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members. But, in certain exceptional cases, the court is entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade. So it is permissible to lift the corporate veil of Duncans to determine whether a particular



WEB COPY



W.P.No.21141 of 2022

director could be proceeded against in pursuance to the impugned show cause notices or whether he is liable for the payment of all duties charged and to all penalties incurred.

12. We can only say this that after the veill of the corporate entity is lifted, the adjudicating authorities will determine as to which of the directors is concerned with the evasion of the excise duty by reason of fraud, collusion or willful misstatement or suppression of facts, or contravention of the provisions of the Act and the Rules made thereunder. 50 far as Individual liability of o a director to the payment of excise duty and penalty is concerned, no liability can be fastened on him unless the department is able to show as to how and to what extent a particular director is liable. We wish to say no more at this stage."

In Krishan Kumar Bangur v. Director General of Foreign Trade-2006 (88) DRJ 680, a company had obtained EPCG license which carried a condition to export to the extent of four times of CIF value, within a period of five years. The said obligation, however, was not fulfilled. On detecting the failure, notices were issued to the company as well as its directors. It was contended by the appellant that he was not a whole time director and had nothing to do with the day-to-day working. The legal question which arise before the Court was whether solely on the strength of the petitioner being a director of the company, he can be held individually liable for the prosecution/punishment for non-fulfillment of the obligation. Relying upon Santanu Ray



WEB COPY



W.P.No.21141 of 2022

(supra), this Court, inter alia, held as under-

14. In order to sustain the imposition of a punishment on an individual Director it was incumbent on the Respondents to allege and assert the existence of a duty or obligation cast on one or all the Directors of the defaulting Company and the contumacious failure to fulfill it. The show cause notice does not mention the grounds on which individual liability is sought to be fastened on the Director. Neither of the Orders, that is, the Order-in-Original or the Appellate Order, disclose reasons which have persuaded those Authorities to come to the conclusion that the Petitioner had assumed an obligation or duty in ensuring that exports corresponding to four times the CIF value would be undertaken within the prescribed period. To assume or foist such a liability on the Directors would run counter to the basic tenets of Company law

11. In view of the legal proposition enunciated in the aboveresferred cases, the respondents would be competent to proceed against the petitioner under Section 11(2) of the Act, if they are of the opinion that he was under a duty or obligation to fulfill the export obligation of the company and consciously failed to do so. Of course, in such case, it would be incumbent upon the respondents to issue a notice under Section 14 of the Act to him, stating therein the ground on which such a liability is sought to be fastened on him. Such an obligation cannot be assumed merely on account of the petitioner being or having been a director of the company"



W.P.No.21141 of 2022

5. Thus it is clear that the Directors of the company cannot be substituted of the company in their individual capacity. There is no provision of the Act for recovery of the penalty imposed from its Directors even the said penalty cannot be recovered from the company. Therefore, penalty imposed against the petitioner cannot be enforced as against the petitioner. That apart, the petitioner had already resigned from his Directorship as early as on 01.09.2011 and the same was also accepted and Form 32 was also filled and filed with the Registrar of Companies in accordance with the provisions of the Companies Act, 1956.

6. In view of the above, the impugned order passed by the 2nd respondent dated 24.12.2021 cannot be sustained and liable to be quashed. The respondents are directed to implement the order dated 24.12.2021 as against others except this petitioner in the manner known

7. With the above direction, this writ petition is allowed. Consequently connected miscellaneous petitions are closed. No costs".

4. In the present case from 01.09.2011, the petitioner was no longer Director of the company . However, in the year 2019, a show cause notice was issued to the petitioner. Hence, he seek appropriate orders.

5. Per contra, the learned Senior Panel Counsel would submit that at the time of issuing show cause notice, petitioner's name was reflected as Director in



W.P.No.21141 of 2022

the company website, thereby show cause notice was issued to the company as well as all the Directors, including the petitioner. He would further submit that after providing an opportunity to the company as well as to the Director, the impugned order is passed. As against the impugned order, there is effective remedy available before the Additional Director General of Foreign Trade within a period of 45 days, instead of approaching the appropriate authority, filing a writ petition before this Court is not permissible. Hence seeks dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and learned Senior Panel Counsel for respondents.

6. The issue arises in the present writ petition is that whether the petitioner continued as a Director of the company at the time of issuing show cause notice. On perusal of the entire records, this Court finds that petitioner entered as a Director on 09.07.2010 and the petitioner tendered his resignation in writing to the Board of Directors by a letter dated 01.09.2011 and the same was accepted by the Board of Directors. Further form 32, was also filed by the company with the



W.P.No.21141 of 2022

Registrar of Companies wherein the date of resignation was fixed as 01.09.2011.

When such being the position, issuing show cause notice on 15.04.2019 to the non director and passed the impugned as against the person who is no longer Director of the Company is impressible and this Court has decided the similar issue in W.P.No.10108 of 2022 dated 02.04.2024.

7. In view of the above, the impugned order dated 29.07.2020 is set aside. The writ petition stands allowed. No costs. Consequently, WMP Nos.20137, 20139 and 20140 of 2022 are closed

08.10.2025

Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
mrn

To
The Deputy Director General of Foreign Trade,
Office of the Additional Director General
of Foreign Trade,
Ministry of Commerce and Industry,
Shastri Bhavan,
Haddows Road,
Chennai-600 006



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W.P.No.21141 of 2022

M.DHANDAPANI, J.

(mrn)

W.P.No.21141 of 2022

08.10.2025