IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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201 | **CWP-4719-2005**

Date of Decision: 17.11.2025

SURINDER KUMAR GUPTA ...Petitioner

Vs.

STATE OF HARYANA AND ORS …Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL
HON'BLE MS. HARPREET KAUR JEEWAN

Present:- Mr. Rishab Singla, Advocate and
Ms. Urvi Khanna, Advocate
for the petitioner

Ms. Mamta Singla Talwar, DAG Haryana

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<u>JAGMOHAN BANSAL, J. (ORAL)</u>

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of notice dated 24.09.2004 (Annexure P-4) whereby he has been directed to deposit Rs.61,55,507/- towards Haryana General Sales Tax (for short 'HGST') and Central Sales Tax (for short 'CST').

2. The petitioner was one of the Directors of a private limited company namely M/s Pataudigold Cement Private Limited. Said company was promoted by Mr. Parveen Kumar Garg in January' 1995 who was Managing Director. The petitioner was 20 years old and was a college-going student. He made investment on the advice of Mr. Parveen Kumar Garg. The company applied for eligibility certificate under Rule

28A for exemption from payment of sales tax. The company started commercial production on 03.08.1996. The respondent did not decide exemption application and it became impossible for the company to run business without exemption. The promoters and directors made a substantial investment in land, building and plant and machinery. The company incurred losses and out of frustration, Mr. Parveen Kumar Garg committed suicide on 14.01.1998. After the death of Mr. Parveen Kumar Garg, eligibility certificate was issued w.e.f. 03.08.1996. The company on account of closure of business did not press for exemption certificate. The Assessing Authority made *ex parte* assessment as non-exempted dealer for 3 assessment years i.e. 1996-97 1997-88 1998-99. The Assessing Authority issued certificate to Assistant Collector, New Delhi for recovery of assessed tax, interest and penalty. The petitioner filed reply on 11.10.2004 disclosing that no money can be recovered from shareholders/directors. The respondent issued letter dated 11.10.2004 stating that as per Section 18 of CST Act, demand pertaining to 1996-97 to 1998-99 can be recovered from him. Demand is attributable to his gross negligence. The petitioner filed reply dated 16.11.2004 disclosing that tax cannot be attributed to gross negligence, misfeasance or breach of duty on his party in relation to affairs of the company. Despite replies of the petitioner, the Assessing Authority issued notice dated 14.01.2005 and 18.02.2005 directing the petitioner to make payment failing which proceedings under Land Revenue Act will be initiated.

3. Learned counsel for the petitioner submits that respondent created liability against the company under HGST Act as well as CST

Act. There is no provision under HGST Act to recover liability of a private company from its Directors. In case of CST Act, liability of a private limited company can be recovered from its Directors if company is wound up. In the instant case, the company was not wound up at the time of issuing impugned notices, thus, Section 18 of CST Act was inapplicable. This Court by order dated 05.09.2005 permitted department to afford opportunity to petitioner before making an order under Section 18 of CST Act. The respondent never issued notice under Section 18 of CST Act. As per data available on the official website of Delhi High Court, winding up petition was filed against the company in 2005 which was disposed of vide order dated 13.09.2005.

4. Learned State counsel expressed her inability to point out any statutory provision under HGST Act empowering assessing authority to recover dues of a private limited company from its Directors. She submits that as per Section 18 of CST Act dues of a private limited company may be recovered from its Directors. There were two directors of the company. The Managing Director passed away and petitioner was the sole surviving director, thus, he was liable to pay dues of the company.

5. We have heard learned counsel for the parties and perused the record with their able assistance.

6. On 23.03.2005, while issuing notice of motion, operation of impugned notices was stayed. Order dated 23.03.2005 reads as:-

> *"Let notice of motion be issued to the respondent.*
>
> *Mr. Jaswant Singh, Senior Deputy Advocate General, Haryana accepts notice. A complete set of the paper-book has been supplied to him in Court today.*
>
> *Written statement on behalf of the respondents shall be filed within 4 weeks. Replication, if necessary, may be filed within 2 weeks thereafter.*
>
> *In support of the proposition that there is no provision under the Haryana General Sales Tax Act, 1973 for making a Director personally liable for the arrears of sales tax due from the company. Mr. Goyal, learned counsel for the petitioner, has placed reliance on the decisions of this Court in* ***Mukesh Gupta v. State of Haryana and others, STI 1996 P&H 94*** *and* ***Suneet khurana v. Assistant Collector etc., STI 1997 P&H 231.***
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> *In view of the said decisions, we stay the operation of the impugned notices seeking to recover the arrears of sales tax due from M/s Pataudi Gold Cement (P) Ltd., Jatauli, Haily Mandi, Gurgaon in respect of financial years 1996-97 to 1998-99.*
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> *List for hearing on 18.5.2005.*
>
> *Copy of the order be given dasti on payment of usual charges."*

7. The petitioner was Director of M/s Pataudigold Cement Private Limited against which Assessing Authority created liability under HGST Act, 1973 and CST Act, 1957. The liability included tax, interest and penalty. There is nothing on record disclosing that petitioner despite being 20 years old was managing affairs of the company. The petitioner has repeatedly averred that it was Mr. Parveen Kumar Garg who was promoter and active director of the company. On account of unexpected losses, Mr. Parveen Kumar Garg committed suicide. The respondent is

relying upon section 18 of CST Act. The respondent has not pointed out any Section of HGST Act which permits recovery of outstanding dues from Director of a private limited company. Therefore, the respondent has no authority to recover dues under HGST of the private limited company from the petitioner.

8. Section 18 CST Act, in case of winding up order permits recovery from Directors of the company. Said Section reads as:-

> *"**18. Liability of directors of private company in liquidation**.- Notwithstanding anything contained in the Companies Act, 1956, when any private company is wound up after the commencement of this Act, and any tax assessed on the company under this 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 of the affairs of the company."*

9. On the date of impugned notices, the company was not wound up. At a subsequent stage, winding up petition against the company was filed which was allowed by Delhi High Court vide order dated 13.09.2005. The said order is reproduced as below:-

> *"After recording the prima facie view that the respondent company is indebted to the petitioner and is unable to pay the debt, on 25th May, 2005, this petition was admitted to hearing and the petitioner was directed to take steps for publication of citations in Statesman (English) and Jansatta (Hindi) for today. The OL attached to this court*

was also appointed as the provisional liquidator. As per the report filed by the OL, the possession of the registered office has been taken by the OL and no record was found lying therein. These citations have since been duly published in the newspapers. There is no opposition to this petition from any other quarter as well. It may be noted that even at the time of admission of the petition, nobody has appeared on behalf of the respondent company. In view of the un-rebutted and unchallenged averments made in this petition, I am satisfied that the respondent company is indebted to the petitioner and is unable to pay the debts. It would, therefore, be just and equitable to wind up the respondent company. The respondent company is accordingly ordered to be wound up. The OL is now appointed as the Liquidator who shall take into his possession the assets and records of the company. In the facts of the present case, it is not necessary to issue any further citations. Intimation in this behalf be sent to the Registrar of Companies for deletion of name of the respondent company. The petition stands disposed of. The OL shall file his report within eight weeks. He may, in the meantime, deploy the security to protect the assets."

10. The parties have expressed their inability to produce any other order with respect to status of the company, thus, this Court is bound to rely upon said order.

11. As per Section 18 of CST Act, in case of winding up of the company, dues of a private limited company can be recovered from its Directors if conditions contemplated in the said Section are complied with. This Court by order dated 05.09.2005 permitted respondent to pass order after granting opportunity of hearing to the petitioners. Order dated 05.09.2005 of this Court reads as:-

> *"Admit.*
>
> *Interim order, dated23.3.2005, is made absolute till the disposal of the writ petition. We, however, direct that till the disposal of the writ petition, the petitioner shall not part with or otherwise dispose of any of his fixed assets without the leave of the Court. It is also clarified that if the department proposes to afford an opportunity to the petitioner before making an order under Section 18 of the Central Sales Tax Act, 1956, it will be open to it to do so."*

12. Neither notice was issued to petitioner nor order complying conditions of Section 18 was passed. As per above quoted Delhi High Court order, the company has been wound up. Status of assets of the company is not known. The official liquidator might have taken over possession of the assets. Company stands wound up, thus, first condition of Section 18 is complied with. The petitioner has repeatedly claimed that he was 20 years old and a college going student at the time of arising of alleged liability. He has further claimed that there was no negligence misfeasance or breach of duty on his part. In the absence of specific order to the effect that non-recovery was attributed to any gross neglect, misfeasance or breach of duty on the part of petitioner in relation of the affairs of the company, it cannot be concluded that there was compliance of Section 18 on the part of respondents. A period of more than 20 years from the date of assessment orders has passed away. New taxation regime has come into force. In view of interim orders, the respondent could not recover anything from the petitioner. The respondent despite order dated 05.09.2005 of this Court did not initiate process under Section 18 of CST Act.

13. In the wake of above discussion and findings, this Court is of the considered opinion that the instant petition deserves to be allowed and accordingly allowed with liberty to respondent to lodge its claim before official liquidator, if any, appointed by Delhi High Court. The respondent would also be free to take steps with respect to CST dues as per Section 18 of CST Act after complying provision of said Section.

14. Pending application(s), if any, stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

November 17, 2025
Deepak DPA

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No