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Court : Patna

Decided On : Aug-22-2006

Judge : Navaniti Prasad Singh, J.

Appellant : Ashok Kumar

Respondent : State of Bihar

Disposition : Application allowed

Judgement :

Navaniti Prasad Singh, J.

1. Heard the parties.

2. The two writ applications are as between the same parties and a common question of law arises, as such, with consent of parties, both are taken up together. In the first writ application, a counter-affidavit has been filed on behalf of respondent No. 3, the Assistant Commissioner of Commercial Taxes, Biharsharif Circle, Biharsharif (Nalanda) who is the Requisitioning Officer in both the cases in respect of two separate certificate proceedings being Certificate Case No. 51 of 2001-02 and Certificate Case No. 50 of 2001 -02 which are pending before the Certificate Officer, Nalanda at Biharsharif.

3. Learned Counsel for the petitioners submits that the present certificate proceedings have been initiated for realisation of certain sales tax dues in respect of M/s. Nalandalpat Udyog Private Limited, Meharpar, Biharsharif, which is a private limited company incorporated under the provisions of the Companies Act, 1956 and is a juristic entity in itself. It is the said company that is the registered dealer for the purposes of sales tax in the State of Bihar and has a valid certificate of registration for the said purpose issued under the Bihar Finance Act, 1981 Part I. Without going into the question of validity or otherwise of the demand as against the company aforesaid it is submitted on behalf of the petitioners that they are merely Directors and shareholders of the said company. It is submitted that for the dues of the company, the petitioners cannot be proceeded against. With reference to requisitions in both the cases, it is submitted that the requisitions were in name of the company. The certificate-debtors were shown as the Company but later on in the said requisition, the name of the two petitioners were shown as Directors. The proceedings having been instituted, notices were issued to the company and the two petitioners. Objections were filed specifically raising the issue that the petitioners cannot be proceeded against whatever may be done so far as the company is concerned. Notwithstanding the aforesaid, the Certificate Officer has proceeded to take coercive steps and issued non-bailable warrants against the petitioners for enforcing the certificate issued on basis of the aforesaid requisitions. It is submitted that the entire proceedings as against the petitioners are void ab initio being wholly without jurisdiction.

4. Having heard the parties and perusing the counter-affidavit, I find that the submission of the petitioners is correct and has to be upheld. With reference to Section 5 and in particular 5(b) of the Companies Act, it is said on behalf of the State that a whole-time Director or Directors would be officers who are in default and would be liable as such. I have perused Section 5 of the Companies Act. The submission is absolutely misconceived and has no application. The opening words of Section 5 of the Companies Act are enough to establish this. It reads 'for the purpose of any provision in this Act....' This definition, as contained in Section 5 of the Companies Act, is limited in operation to the provisions of the Companies Act alone and cannot by any stretch of imagination be applied in other circumstances much less for realisation of dues of sales tax and much less for enforcement of the

same in a proceeding under the Public Demands Recovery Act.

5. It is well-established that a company incorporated under the provisions of the Companies Act is an independent juristic entity. It has its own independent legal existence. It can be sued in its name and it can sue in its own name. The liability of a company cannot become liability of the Directors and/or shareholders. On this point, I need not deliberate further as this issue has been comprehensively settled by a series of judgment of this Court starting from Harihar Prasad v. Bansi Missir AIR 1931 Pat. 321 to one of the last judgments on this issue being the Division Bench judgment of this Court in the case of Kanhaiya Lal v. State of Bihar 2002 (2) PLJR 553. In the said case, the earlier judgment in respect of the sales-tax dues and its recovery from Director has also been noticed in the case of Damodar Prasad Nathani v. State of Bihar 1999 (1) PLJR 522. In that view of the matter, I have no hesitation and/or reservation in cancelling all proceedings as against the two petitioners in both the cases. The two petitioners cannot be proceeded against in any manner in the aforesaid certificate proceedings save and except they would be the authorised representative to represent the company but bound that they are not in any manner to be personally liable for the affairs of the company as pending scrutiny before the Certificate Court.

6. In that view of the matter, the proceedings as against the petitioners are quashed and both the writ applications are allowed.

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