

Munna Lal Shukla and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Apr-19-1982

Reported in : [1983]53STC151(All)

Judge : K.N. Seth and ;R.R. Rastogi, JJ.

Appeal No. : Civil Miscellaneous Writ No. 739 of 1976

Appellant : Munna Lal Shukla and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : M.B. Lal, Adv.

Disposition : Petition dismissed

Judgement :

R.R. Rastogi, J.

1. By means of this petition under Article 226 of the Constitution the petitioners challenge the enforcement of demand regarding certain sales tax dues for the assessment years 1965-66 to 1970-71. The petitioners are Munna Lal Shukla and Kamal Kishore Shukla, sons, and Smt. Bitto Kunwar, widow of Pt. Laxmi Narain Shukla. It appears that the first two petitioners carried on the business in

manufacture and sale of pan-ka-masala under the name and style of 'Badshah Pasand Karyalaya'. Chunni Lal Shukla, another son of Laxmi Narain Shukla, filed a suit, being suit No. 61 of 1963, in the court of the 1st Civil Judge, Kanpur, against these petitioners. He impleaded his sons Rajendra Prasad Shukla and Surendra Kunwar Shukla as pro forma defendants. His case was that the aforesaid business was being carried on by a partnership consisting of himself, the three petitioners and his two sons and that he was entitled to have the charge and management of the business. He, therefore, prayed for a decree for permanent mandatory injunction directing defendants 1 to 3 to the suit, that is, the petitioners, to deliver charge and management of the business to him as also to render the accounts. There was a prayer for appointment of receiver also. The petitioners filed their written statement in that case wherein they averred that the aforesaid business was not a partnership business but was their proprietary business. It is not necessary to mention the other averments made by them in their written statement filed in that case. During the pendency of the case the court appointed Sri. R. N. Dar, an Advocate, as receiver by its order dated 24th February, 1966. Sri Dar could not run the business and so Sri. A. N. Srivastava, Advocate, who is respondent No. 3 in the present writ petition, was appointed as receiver by order dated 21st May, 1966. Ultimately the suit was dismissed as withdrawn, on the plaintiffs application by order dated 24th April, 1972. In the meantime assessments under the Sales Tax Act were made in respect of the aforesaid business for the assessment years 1965-66 to 1970-71. It appears that neither the receiver nor the parties to the civil suit attended those proceedings resulting in best judgment assessments. A total demand of Rs. 45,000.75 was created for these years. Over and above that, interest at the statutory rate was also payable. Since the demand was not satisfied, steps were taken to realise the amount due from the petitioners.

2. The case set out by the petitioners in their petition is that after the appointment of Sri. A. N. Srivastava as receiver he obtained complete charge of the entire business of the firm Badshah Pasand Pan-ka-masala and it was his responsibility to discharge the income-tax and sales tax liabilities. It has also been alleged that the position of the receiver was that of a 'dealer' under the U. P. Sales Tax Act, and therefore, it was he who was responsible to discharge the sales tax liabilities. The tax authorities in collusion with the receiver did not proceed against him to

realise the outstanding dues but proceeded against the petitioners which action was wholly illegal and uncalled for. The petitioners hence pray for the issue of a writ, order or direction restraining the respondents Nos. 1 and 2 from enforcing the liability in respect of sales tax for the aforesaid period against the petitioners and for proceeding to realise the same from respondent No. 3.

3. Counter-affidavits have been filed on behalf of the respondents. The stand taken on behalf of the State of Uttar Pradesh and the Deputy Collector, Sales Tax, Kanpur, is that the assessments were properly done and since they were not challenged by way of appeal or revision they became final; that the demand created as a result of those assessments is liable to be enforced against the proprietors of the business, that is, the petitioners. Further, the position of the receiver was not that of a dealer. He was only managing the business on behalf of the proprietors of the business, and therefore, the liability to pay sales tax dues was that of the petitioners. It is denied that there was any collusion between the tax authorities and the receiver.

4. It was admitted before us on behalf of the petitioners that the impugned demand could not be enforced against the petitioners because it was in respect of the period during which the business was under the management of the receiver and it was his liability to discharge the sales tax dues. According to the learned counsel the definition of 'dealer' as contained in Section 2(c) of the U. P. Sales Tax Act would embrace within its scope a receiver appointed by the court and that being so it was his liability to pay the sales tax dues and it could not be enforced against the petitioners. We do not agree with this submission. The relevant provision as applicable for the years under consideration is as under :

2. (c) 'dealer' means any person or association of persons carrying on the business of buying or selling goods in Uttar Pradesh whether for commission, remuneration or otherwise and includes any firm or Hindu joint family and any society, club or association, which sells goods to its members and also includes any department of the State Government or the Central Government which carries on such business; and any undertaking engaged in the generation or distribution of electrical energy or any other form of power.

Explanation.-A factor, a broker, a commission agent or arhati, a del credere agent, an auctioneer, or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying or selling goods on behalf of his principals or through whom the goods are sold or purchased shall be deemed to be a dealer for the purpose of this Act.

5. We do not think that a receiver appointed by a court in respect of property in dispute would be covered by this definition of a dealer. He would not be a person carrying on the business of buying or selling goods for commission, remuneration or otherwise. He would not be an agent within the meaning of the explanation to this clause also. He would only be a manager looking after the business. The activity of carrying on business of buying or selling goods implies that it is being carried on with a motive to make profit. Of course it is not relevant that any profit actually accrues from such activity or not. Even if for the time being it be assumed that his position is that of an agent, then on the principle that the liability of an agent is co-extensive with that of the principal, after his appointment as receiver comes to an end, all the liabilities which he leaves would pass on to the principal. Therefore, on this principle also, when ultimately the civil suit was dismissed as withdrawn and the appointment of the receiver came to an end, the liabilities left undischarged by him would have to be discharged by the principal. The petitioners claimed themselves to be proprietors of this business and certainly the liability could be enforced against them. We are not concerned here to see as to what remedy they would have against the receiver if as a result of any act of omission or commission the receiver did not discharge this liability. On the undisputed facts of the case, therefore, when the assessments became final, a demand created as a result of the same is enforceable against the proprietors of the business, that is, the petitioners. The action taken by the tax authorities, therefore, in attaching the properties of the petitioners could not be said to be illegal or unjustified.

6. In the result, the petition fails and is dismissed. In the circumstances, the parties are directed to bear their own costs.