SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

B. Kumar and Company Vs. State of Jharkhand and ors.

B. Kumar and Company Vs. State of Jharkhand and ors.

SooperKanoon Citation : sooperkanoon.com/521721

Court : Jharkhand

Decided On : Dec-14-2004

Reported in : II(2005)BC319; [2005(2)JCR578(Jhr)]

Judge : S.J. Mukhopadhaya, A.C.J. and; N.N. Tiwari, J.

Acts : (B and O) Public Demand Recovery Act, 1914 - Sections 9; Constitution of India - Article 226

Appeal No. : L.P.A. No. 229 of 2004

Appellant : B. Kumar and Company

Respondent : State of Jharkhand and ors.

Advocate for Def. : K.K. Jhunjhunwala, Adv.

Advocate for Pet/Ap. : Rajiv Ranjan and; Sunil Kumar Dubey, Advs.

Judgement :

S.J. Mukhopadhaya, A.C.J.

1. This appeal has been preferred by the appellant against the order dated 9th March, 2004 passed by the learned single Judge in W.P. (C) No. 1280 of 2004, whereby and where under, the learned single Judge dismissed the writ petition on the ground that the certificate debtor (appellant) had already admitted its liability and has agreed to pay the certificate dues in instalments and, thereby the question

of determination of liability under Section 9 of the Public Demand Recovery Act (hereinafter referred to as PDR Act) does not arise. However, the appellant has been allowed to prefer the appeal.

2. The brief fact of the case suggests that the Sales Tax for certain period relating to assessment become disputed between the appellant-Company and the Respondent state (Department of Sales Tax) due to which appeal was preferred by the appellant. In the meantime, the Sales Tax Department of the State made requisition for amount of Rs. 5,72,373.00 ps. To the Certificate Officer. A Certificate Case No. 27/1999-2000/28/2002 was instituted against the appellant. The Certificate Officer, thereafter, issued notice under Section 7 of the PDR Act for a total certificate amount of Rs. 5,72,372.00 ps.

3. In the meantime, according to the appellant, he had deposited more that Rs. 2.5 lacks of the certificate amount. Upon the request of the appellant, the requisitioning authority informed the District Certificate Officer, vide his letter dated 3rd April, 2000 that about Rs. 2.05 lacks of the certificate amount has been deposited by the appellant for that enquiry was being made by the requisitioning authority. The Officer requested the Certificate Officer to keep the matter in abeyance till such enquiry. In pursuance of above, another certificate notice was received by the appellant for reduced amount of Rs. 3,72,795.00 ps., followed by an amended requisition sent to the certificate debtor on 28th July, 2001,

4. According to the appellant, it filed an objection under Section 9 of the PDR Act bringing to the notice of the Certificate Officer that less amount was payable, the Company having deposited certain amount with the Department.

5. Counsel for the appellant submitted that the following amount has been deposited by the appellant by different challans, which has not been accounted for.

'(i) That the certificate debtor has deposited Rs. 25.000/- vide TC No. 11 dated 11.3.1.996 in a/c of C.S.T. for the period 1994-95 which has not beech accounted for,

(ii) That certificate debtor has deposited Rs. 15.000/- vide TC No. 9 dated 31.3.1996 a/c C.S.T. for the period 1995-96, which has also not been accounted for.

(iii) That the certificate debtor has deposited Rs. 24, 613/- vide TC No. 180-A dated 31.3.1997 a/c C.S.T. for the period 1996-97, which has also not been accounted for.

(iv) That the CD has paid excess Tax of 19, 407 in C.S.T. for the period 1992 and 1993, which has also not been adjusted.

(v) That the certificate holder has impose of Tax on the amount of our bills, which included the Royalty which is not correct and imposition of Tax for the period 1994-95, 1995-96, 1996-97 amounting to Rs. 1.25 Lakhs is also not adjusted and figure shown in the requisition is totally wrong and the certificate debtor deny the amount.

(vi) That Rs. 41,175 for the period 1985-86 against C.S.T. is amount against the penalty and for which the certificate debtor has preferred appeal before the appellate authority on 27.3.1995.'

6. Counsel appearing on behalf of the State submitted that the appellant has already admitted that the amount was due with the State and thereby the learned single Judge correctly held that the certificate debtor having admitted its liability and having agreed to pay certain dues in instalments, the question of determination of liability under Section 9 of the PDR Act does not arise. But such submission cannot be accepted.

7. Acceptance of liability is one thing and computation of certain amount and for that filing of objection under Section 9 of PDR Act is another thing. A certificate debtor may accept that he is liable to pay back the dues, but may point out that certain amount has already been paid and thereby the certificate amount as shown to be modified.

8. In the present case, the appellant though accepted the liability, but filed objection under Section 9 to reduce the certificate amount, as it claimed to have

already deposited certain amount of which reference has already been given. In such a case, without determining the question as raised by the certificate debtor, in its objection filed under Section 9 of PDR Act, it was not open to the Certificate Officer to direct the certificate debtor to pay back the entire certificate dues.

9. For the reasons aforesaid, the order passed by the learned Single Judge or the order passed by the Certificate Officer dated 4th December, 2003 in Certificate Case No. 27/1999-2000 cannot be upheld. They are, accordingly, set aside. The case is remitted with direction to the Certificate Officer to decide the objection preferred by the appellant under Section 9 of the PDR Act and to pass orders in accordance with law.

10 The appeal is allowed with aforesaid observations and directions.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com