Om Prakash and anr. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-17-1995

Reported in : 1996WLC(Raj)UC627; 1995(1)WLN487

Judge : N.K. Jain, J.

Appeal No. : S.B. Civil Writ Petition Nos. 5652 and 5653 of 1994

Appellant : Om Prakash and anr.

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

N.K. Jain, J.

1. Since both these writ petitions raise common question of law and fact they are being disposed of by this common order.

2. By these writ Petitions, the petitioners seek to quash the notice Anx. 2 dt. 1.10.1994 as time barred and the order dt. 26.10.1994 (Annex.4) and to hold that the petitioners are not liable to pay sales tax due to M/S Durga Trading Company and further to quash the complaint No. 203/89 (Anx.7) pending in the Court of Additional Chief Judicial Magistrate, First Class, Hanumangarh Junction. It has been prayed that Anx. 6 dt. 23.11.94 may kindly be quashed and direction may be

issued to transfer the case from the respondent No. 2 to any other Assessing Authority.

3. It is alleged that the petitioner Om Prakash (S.B.C.W. Petition No. 5653/94) and the petitioner Lal Chand (S.B.C.W. Petition No. 5652/94), father of Om Prakash are being called upon to pay sales tax amounting to Rs. 7.32 lacs due from one M/s Durga Trading Co. under the sole proprietorship of Om Prakash S/o Jagdish Ral @ Hansraj Sharma who is duly registered under the Rajasthan Sales Tax Act and Central Sales Tax Act. Being aggrieved with the proceedings initiated after availing the remedies available to them, these writ petitions have been filed on 13.12.1994 seeking aforesaid reliefs and filed documents Anx. 1 to 7 with the writ petitions.

4. On 16.12.1994, this Court while issuing notice'in both these petitions ordered that no coercive method be employed against the petitioners. The ad-interim order dt. 16.12.94 came to be modified vide order dt. 27.1.1995 and the petitioner was directed to appear before the assessing authority in pursuance of the notice and to cooperate with the proceedings. As agreed by the learned Counsel for the parties, the matter is heard finally.

5. The main argument of the counsel for the petitioner is that the proceedings initiated by issuing impugned notice dt. 1.10.1994 to the petitioners in pursuance of the order of the Tribunal dt. 22.2.1992 whereby the order of the Dy. Commissioner (Appeals) was set aside and the case was remanded back, are illegal and the notices deserve to be quashed as time barred in view of Section 10 B (2) of the Rajasthan Sales Tax Act. It has been contended that the notices have been issued on wrong identity whereas the petitioners have no relation with M/s. Durga Trading Company. He has also contended that the Tribunal has rightly set aside the order of the Dy. Commissioner (Appeals).

6. Learned Counsel for the respondents filed reply along with the documents Anx. R-l to R-6 raising preliminary objections about the maintainability of the writ petitions on the ground that they are filed only against the notices and that the petitioners can raise all their points before the Commercial Taxes Officer and thereafter they have statutory remedy of appeal/revision. It has been submitted

that there is no confusion in the mind of the authorities and as a matter of fact the petitioners have manipulated the papers and conducting business in the garb of this Benami firm Just to evade the tax liability. He has contended that the judgment of the Tribunal is clear whereby prima facie the order of the Dy. Commissioner (Appeals) has been set aside on the ground of principles of natural justice. He has also contended that the business place of M/s Durga Trading Company and the petitioners' business place is same and telephone number is also same. The bills are issued under the signature of the petitioners Omprakash & Lalchand. He has further contended that the bank account of M/s. Durga Trading Company is being operated by the petitioners. He has urged that the notice issued is neither illegal nor time barred and the Tribunal has not quashed the assessment order but remanded the case back to decide the case after hearing the petitioners and, therefore, Section 10 B(2) is not applicable. He has lastly contended that M/s. Durga Trading Company is a Benami firm which is clear from the material on record and no indulgence should be granted to such evaders of tax.

7. Having heard learned Counsel for the parties and after perusing the material on record, in my opinion, it cannot be said that the notices have been issued only to harass the petitioners or they have been issued on wrong identity as the tax will be recovered only after determining with certainty the liability of the petitioners. On the contrary, the respondents have produced material to show that the bank account of M/s. Durga Trading Company was operated by the petitioners and bills were also issued under the signatures of the petitioners. The place of business and telephone number printed on sale bills are said to be the same. The petitioners have not been able to satisfy this court in this respect. Under these circumstances, without expressing any opinion on the merits of the case, so that the case of the parties may not prejudice particularly when the Tribunal has not quashed the assessment order and remanded the matter, I deem it just and proper to direct the petitioners to appear before the authorities in pursuance of the notice. The parties will be free to raise all their points. Thereafter, the authorities will decide the case, according to law. In view of this no interference is called for in these writ petitions and no relief can be granted to the petitioners.

8. Accordingly, both these writ petitions have no force and they are hereby dismissed. The ad-interim order dt. 16.12.94 stands discharged. A copy of the order be placed in identical matter, also.