

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12216 OF 2017

Mukesh Mulji Shah, Retired Partner
of M/s.Mukesh Dye Works .. Petitioner
Versus
The Deputy Commissioner of
Central GST and ors .. Respondents

...

Mr.Hemant G. Dharmadhikari for the petitioner.
Mr.Pradeep S. Jetly for the respondents.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 5th JUNE 2018

P.C:-

1 The petitioner has approached this Court requesting that the attachment levied on his bank account, more particularly described in the prayer in the petition, be raised.

2 The petitioner has made a categorical statement on facts and that he was a partner earlier in a partnership firm. However, later on, he has retired therefrom. So long as he was

Tilak

associated with the firm and its business, any liability of the firm can be fastened on to him but the respondents/revenue are seeking to recover an amount of penalty of Rs.2,00,000/- (Rupees Two lakhs) levied on the petitioner as a partner of M/s.Mukesh Dye Works under the provisions of Section 209A of the Central Excise Rules 1944. Though no show cause notice was addressed to the petitioner in his capacity as a partner, no order of adjudication was passed and there was therefore, no question of filing an appeal.

3 Apart therefrom and assuming that in law, a partnership firm has no existence independent that of the partner and that the partner until his retirement or resignation continues to be liable, still, the firm challenged the order of adjudication in appeal. That order in original was set aside by the Tribunal. Thereafter, the demand of tax did not survive. If the demand of tax or the liability or debt in that behalf did not survive, there was no question of imposition of any penalty. Hence, the penalty also does not survive.

Tilak

4 As far as the past dues of the department is concerned from two bank accounts, a sum of Rs.4,74,000/- has already been appropriated or adjusted by the Revenue and the balance sum is of Rs.7,76,708/- which the petitioner will pay in a period of six months, but on payment, the attachment be raised.

5 On all these factual matters and aspects, we do not find that in the affidavit in reply, the respondents have brought material controverting it. In fact, it is stated that an order in original was passed confirming the demand against which an appeal was filed, but initially the Tribunal rejected this appeal. Undisputedly, this pertains to the demand of Rs.22 lakhs raised on the firm in terms of an order in original dated 21st June 1988 against which the Appeal was dismissed on 17th October 1996. Insofar as that is concerned, the affidavit in reply in para 6 says that an amount of Rs.7,25,000/- has been paid under various challans. Thereafter, the machineries of the firm were attached and auctioned by the Tahsildar, Thane, and from the proceeds, an amount of Rs.3,56,614/- was credited to the

Tilak

Government treasury on 31st March 2006. A total amount of Rs.10,84,614/- has been recovered and there is a balance outstanding of Rs.11,50,708/- and Rs.1,00,000/- penalty. Now, this is not an amount or sum disputed by the petitioner at all. The matter pertains to another case which was booked against the firm and thereafter, the demand in pursuance thereof raised by the order in original was set aside by the Tribunal.

6 Once that order is set aside and in which it included a personal penalty of Rs.2 lakhs, we do not see how the Department can pursue that demand by attaching the bank account of the petitioner. Moreso, the petitioner's retirement from the firm with effect from 27th April 1990 is undisputed. Therefore, the request to the petitioner to pay a sum which is of Rs.2 lakhs, but as a penalty under the order in original which was set aside does not arise at all. All that the petitioner is liable to pay is the balance sum stated before us by Mr.Dharmadhikari.

7 In the aforesaid circumstances, this writ petition is disposed of with a direction to the petitioner to pay the balance

Tilak

sum as computed above within a period of three months from today and report compliance to the Commissioner. In the event compliance is reported, the attachment of the bank account shall stand raised and thereafter, the petitioner shall operate the said bank account. In the event the petitioner fails to pay the same in addition to attaching the movables, even the immovable properties of the petitioner can be attached and sold in enforcement of the demand.

8 Writ Petition is disposed of in the above terms.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)

Tilak