

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR**

**D.B. CIVIL SPECIAL APPEAL (WRIT) NO.200/2003**

**M/S. VRAJ TRACTORS INDUSTRIES  
VS.  
STATE OF RAJASTHAN & ANR.**

Date of judgment : 23.9.2010

**HON'BLE MR.JUSTICE A.M.SAPRE  
HON'BLE MR.JUSTICE DINESH MAHESHWARI**

Mr. Vinay Kothari, for the appellant.  
Mr. Sundeep Bhandawat, Govt. Counsel, for the respondents.

**BY THE COURT: (PER HON'BLE A.M. SAPRE, J)**

This is an intra court appeal filed by writ petitioner of W.P.No.917/1992 under Section 18 of the Rajasthan High Court Ordinance, 1949 against an order dated 13.12.2002 passed by Single Judge in aforementioned writ petition.

2. By the impugned order, the learned Single Judge dismissed the writ petition and in consequence declined to grant the reliefs claimed by the writ petitioner in their writ petition.

3. So the question that arises for consideration in this intra-court appeal is whether Single Judge was right in dismissing the appellant's writ petition?

4. At the outset, we may state that both learned counsel appearing for parties conceded that the controversy involved in the writ petition and now carried in this appeal at the instance of writ petitioner remains no more res integra and answered in writ petitioner's (appellant) favour by the decision of Supreme Court reported in *JT 2006 (1) SC -180 (State of Karnataka vs. Shreya*

Papers) and a decision of this Court rendered on the strength of law laid down in Shreya Papers case (supra) in the case reported in Tax-Up-Date Vol.26 Part 6 – March 16-31 (2010) page 188 (Commercial Taxes Officer vs. Mecson Marbles (P) Ltd.). It was stated that this Court following the law laid down in these two decisions, which has full application to the undisputed facts of this case should allow the appeal by setting aside of the impugned order and in consequence allow the writ petition by issuing the necessary writ as claimed by the writ petitioner in their writ petition.

5. Since there is no dispute on facts so also the legal position which governs the issue between the parties, we do not consider it necessary to burden our judgment by taking note of any submissions and the factual issues arising in the case except those necessary for disposal of appeal.

6. The question arose before the Supreme Court in Shreya Papers case (supra) as to whether a purchaser of the assets from a defaulting person is liable to pay his outstanding dues (Sales Tax) under the provisions of Karnataka Sales Tax Act in relation to his business which he was carrying with such assets? Their Lordships inter alia ruled that before any liability is fastened upon the transferee of such defaulting person, it has to be seen as to what is actually transferred by such defaulting person to the transferee namely “**fixed assets**” or “**running business**”. It was held that if it is found that what is transferred is only the “**fixed assets**” such as land, building, plant and machinery, then in such case, the transferee i.e. successor- in-interest of such fixed assets would not be held liable to pay the old outstanding dues of such defaulting person (seller) in respect of his business, but if it is

found that what is transferred is in effect a “**running business**” along with the assets by such defaulting person, then the transferee i.e. Purchaser of such business would incur the liability to satisfy the old outstanding dues of such defaulting person (seller) as if he himself is a defaulter. This issue was then examined by this Court in the case of ***Commercial Taxes Officer vs. Mecson Marbles (P) Ltd. (DBSAW No.611/2001)*** in the context of Rajasthan Sales Tax Act and finding that provisions of Karnataka Sales Tax Act as interpreted by Supreme Court in Shreya Papers case (supra) and that of Rajasthan Sales Tax Act are in peri materia, held:

**“10. Perusal of Section 9(1) of RST Act and Section 15(1) of KST Act in juxtaposition would clearly go to show that both are in peri materia with each other. In other words, Section 9 of RST Act is akin to Section 15(1) of the KST Act and are almost identically worded. In these circumstances, the interpretation made by Supreme Court in Shreyas Papers (supra) of Section 15(1) ibid would apply on all force while interpreting Section 9 of R.S.T.Act. It is also for the reason that both the Acts have a common object. Indeed one change which we have noticed in their wordings is the use of expression “entirely” added preceding the word “transferred” in Section 9 ibid which does not find place in Section 15 of KST Act. This expression suggests that so long as “entire business” of defaulting company is not transferred to the**

transferee, no liability can be fastened on him to pay the unpaid tax dues of defaulting company under Section 9 *ibid*. In other words, Section 9 lay emphasis on transfer of business in its “entirety” to attract the payment of tax liabilities of defaulting company by the transferee Company, whereas such requirement does not find place when we read Section 15 *ibid*.

11. In our opinion, there lies a subtle distinction between the expression “transfer of assets” and “transfer of business”. In the case of former, if the assets includes transfer of running business of defaulting Company, then Section 9 would come in operation. In other words, liability of transferee to pay any outstanding dues of defaulting company (dealer) under Section 9 *ibid* would arise only when it is found as a fact that transferee (purchaser) has purchased “entire business of the defaulting company”, from the defaulting company either directly or in proceedings for sale of such business under any Act.

12. Coming now to the facts of the case, it is clear from the agreement referred *supra* that what was transferred to respondent in the auction by corporation in Section 29 proceedings was only the “assets” belonging to defaulting company which included “land building, plant and machinery” and not the

**business of defaulting Company. It was, therefore, a clear case where “ownership of business” was not transferred so as to render the transferee as successor in interest of the transferor to pay the tax dues of transferor Company. Had it been a case of transfer of running business, then Section 9 of R.S.T. Act would have come in operation making the transferee company liable to discharge the transferor's sales tax liability standing on the date of transfer. Such was not the case here.”**

7. Coming now to the facts of this case. It is not in dispute that the writ petitioner purchased the assets of one defaulting unit M/s. Jodhpur Auto Agric Products Ltd. in an auction conducted by Rajasthan State Financial Corporation who took recourse to the provisions of Section 29 of State Financial Corporation Act, on 21.3.1990 for realisation of their dues from M/s. Jodhpur Auto Agric Products by sale of their unit. Consequent upon the purchase by a writ petitioner as an auction purchaser, a general demand was raised by Industries Department by their two letters dated 9.4.1991 (Annex.6) and 20.4.1991 (Annex.7) calling upon the writ petitioner to satisfy all kinds of old outstanding dues of M/s. Jodhpur Auto Agric Products. It is these two demands which were questioned in the writ petition, out of which this intra-court appeal arises by the writ petitioner (successor-in-interest), which on its dismissal gave rise to filing of this appeal.

8. In our considered opinion, when it is not disputed that what was transferred to the writ petitioner by the defaulting person

through Rajasthan State Financial Corporation in auction held on 21.3.1990 was only the “**fixed assets**”, then by necessary corollary, the law laid down in Shreya Papers and Mecson Marbles (P) Ltd. (supra) would apply to this case in their favour on all force. Since the law in these two cases was laid down subsequent to the decision rendered by Single Judge in this case and hence the learned Single Judge did not have any occasion to decide the issue in the light of these decisions.

9. We may make it clear that we have applied the principal of law laid down in aforementioned two cases to the undisputed facts of this case because of concession made by learned counsel for the parties and secondly learned counsel for respondent was unable to point out any distinguishable features on the facts.

10. It is for this reason and with this undisputed background, we are inclined to allow the appeal and while setting aside of the impugned demands, allow the writ petition and in consequence issue a writ of certiorari quashing **Annexure 6** dated 9.4.1991 and **Annexure 7** dated 20.4.1991 issued by the respondent No.2.

No cost.

**(DINESH MAHESHWARI),J.**

**( A.M.SAPRE ),J.**

/Anil/