

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.988 OF 2020

Shri. Girdhari Lal Lath ..Petitioner
Versus
State of Maharashtra & Ors. ..Respondents

Mr. Bharat Raichandani i/by UBR Legal, Advocate for the Petitioner.
Mr. L. T. Satelkar a/w Ms. Jyoti Chavan, AGP for Respondent Nos.1 to 4.
Ms. Suvarna Joshi, Advocate for Respondent Nos.5 & 6.

CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ.
DATE : 15th SEPTEMBER, 2020

P.C. (Per Ujjal Bhuyan, J.)

1] Heard Mr. Bharat Raichandani, learned counsel for the Petitioner ; Ms. Jyoti Chavan, learned AGP for Respondent Nos.1 to 4 ; and Ms. Suvarna Joshi, learned counsel for Respondent Nos.5 & 6.

2] By filing this Petition under Article 226 of the Constitution of India, Petitioner seeks a direction to the Respondents to unfreeze his bank account bearing No.02121000006167 in HDFC Bank, Goregaon (E), Mumbai.

3] Case of the Petitioner is that M/s. Birla Electricals Ltd. is a public company dealing in purchase and sale of electrical items. Petitioner was non-executive director of the said company for the period from 25.07.2002 to 27.08.2014. Thereafter he resigned from the said company vide resignation letter dated 27.08.2014.

4] Petitioner is holding savings account with Respondent No.5 i.e. HDFC Bank, Goregaon (E), Mumbai, bearing account No.02121000006167. On 02.02.2020, Petitioner had issued a cheque in favour of one Mr. Santosh Devrao Thorat for an amount of Rs.14,030/-. However Petitioner was surprised when he was informed that the said cheque was dishonoured. When Petitioner inquired with Respondent No.5 as to why the cheque was dishonoured, he was informed that Respondent No.5 had received directions from Respondent Nos.2, 3 and 4 to attach the bank account of the Petitioner.

5] Contending that Petitioner did not receive any prior notice from GST authorities in Maharashtra, he requested Respondent Nos.3 and 4 vide letter dated 14.02.2020 to unfreeze the said bank account as he was no longer director of the company and was not associated or responsible for any outstanding dues of the company. Besides, attachment of the bank account was causing hardship to him. However, by email dated 02.03.2020 Petitioner was informed by Respondent No.3 that all assessment orders and demand notices for the period under consideration were served in the registered place of business of M/s. Birla Electricals Limited. As per VAT registered record of M/s. Birla Electricals Limited, Petitioner was found to be the director and authorized person of the company. Referring to Section 44(6) of the Maharashtra Value Added Tax Act, 2002, Respondent No.3 held that Petitioner was jointly and severally liable to pay the dues of M/s. Birla Electricals Limited. Thus, action initiated was held to be just and proper.

6] Petitioner pointed out to the said Respondent vide email dated

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29.06.2020 that Section 44(6) of the Maharashtra Value Added Tax Act, 2002 (briefly “MVAT Act” hereinafter) was not applicable in the case of the Petitioner : firstly, because M/s. Birla Electricals Limited is a public company ; and secondly, because Petitioner was a non-executive director of the said company from which he had resigned way back on 27.08.2014. However, no remedial step was taken on the said request of the Petitioner.

7] Aggrieved, present Writ Petition has been filed seeking the relief as indicated above.

8] In the course of the hearing on 10.09.2020, Ms. Jyoti Chavan, learned AGP had submitted that she would have a word with the concerned departmental authority so that the matter could be sorted out and grievance of the Petitioner redressed.

9] However, today when the matter is called upon, she submits that stand of the department as per written para-wise comments received is that attachment of the bank account of the Petitioner is just and proper; during the relevant period Petitioner was the authorized signatory of the company. The fact that he had resigned from the company was not informed to the Respondents; related forms were not filed.

10] Learned counsel for the Petitioner submits that Section 44(6) of the MVAT Act is certainly not applicable in the case of public company of which he was non-executive director, though he subsequently resigned therefrom.

11] Submissions made by learned counsel for the parties have been

considered.

12] Since Respondent No.3 in his email dated 02.03.2020 has relied upon Section 44(6) of MVAT Act and which is the basis for attachment of the bank account of the Petitioner, it would be apposite to advert to the said provision at the outset. Section 44(6) of MVAT Act reads thus :-

“Subject to the provisions of the Companies Act, 2013, where any tax or other amount recoverable under this Act from a private company, whether existing or wound up or under liquidation, for any period, cannot be recovered, for any reason whatsoever, then, every person who was a director of the private company during such period shall be jointly and severally liable for the payment of such tax or other amount unless, he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the said company.”

13] A careful perusal of the said Section as extracted above, would go to show that first of all the said section is subject to the provisions of the Companies Act, 2013. Secondly, the provision says that if any tax or other amount recoverable under MVAT Act from a private company, whether existing or wound up or under liquidation, for any period cannot be recovered, then the same can be recovered from every person who was a director of the private company during such period ; such person being jointly and severally liable for the payment of dues of the company.

14] From the above, it is evident that Sub Section (6) of Section 44 of MVAT Act is subject to the provisions of Companies Act, 2013. When a provision is made subject to another provision or another statute, it

would mean that the other provision or the other statute would prevail over the provision in question, in case of any conflict or inconsistency between the two. When the draftsman uses the expression “subject to” in a statute in contradistinction to the expression “notwithstanding”, it means that the other provision or the other statute would have an overriding effect over the provision under consideration.

14.1] Ordinarily the expression “subject to” conveys the idea of a provision yielding place to another provision or other provisions subject to which it is made. In other words, when a provision starts with the expression “subject to”, it means that the provision will be governed by such provision or statute to which it has been made subject to.

15] Section 44(6) of the MVAT Act talks about a private company. This reference by Section 44(6) of the MVAT Act to a private company would be subject to the provisions contained in the Companies Act, 2013 because in the MVAT Act private company is not a defined expression. Section 2 of the Companies Act, 2013 is the definition clause. Sub Section (20) defines a “company” to mean a company incorporated under the Companies Act, 2013 or under any previous company law. “Private Company” is defined under Sub Section (68) to mean a company having a minimum paid up share capital as may be prescribed, and which by its articles, restricts the right to transfer its shares; except in case of One Person Company, limits the number of its members to two hundred; and prohibits any invitation to the public to subscribe for any securities of the company. On the other hand, “public company” has been defined under Sub Section (71) to mean a company which is not a private company and has a

minimum paid up share capital as may be prescribed.

15.1] Section 3 deals with formation of company. As per Sub Section (1) a company may be formed for any lawful purpose by seven or more persons, where the company to be formed is to be a public company; two or more persons, where the company to be formed is to be a private company; or one person, where the company to be formed is to be One Person Company that is to say a private company. Incorporation of One Person Company and conversion of One Person Company into a public company or a private company are dealt with under Rules 3 and 6 of the Companies (Incorporation) Rules, 2014 framed under the Companies Act, 2013.

15.2] From a conjoint reading of the aforesaid provisions of the Companies Act, 2013 and the related Rules, what is discernible is that there is a clear distinction between public company and private company in law. Companies Act, 2013 makes this distinction explicit.

16] Since Sub Section (6) of Section 44 of the MVAT Act is subject to the Companies Act, 2013 the definitions and distinctions laid down in the Companies Act, 2013 *vis-a-vis* public company and private company would be applicable to Section 44(6) of the MVAT Act as if by way of incorporation.

17] It is an admitted position, at least no dispute has been raised, that M/s. Birla Electricals Limited is a public company. If that be so, the fact that Petitioner was a director of the said company for the relevant period, though in a non-executive character and stated to have resigned,

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would have no bearing on fastening of liability on the Petitioner for the alleged default of M/s. Birla Electricals Limited. In such circumstances, attachment of the bank account of the Petitioner does not appear to be justified and is without any legal sanction.

18] In that view of the matter, we direct Respondent Nos.5 and 6 to unfreeze the bank account of the Petitioner bearing No.02121000006167 in HDFC Bank, Goregaon (E), Mumbai forthwith.

19] Writ Petition is accordingly allowed. However, there shall be no order as to costs.

20] This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

ABHAY AHUJA, J

UJJAL BHUYAN, J