

## Kanwar Hasan Vs State of U.P.

**Court:** Allahabad High Court

**Date of Decision:** March 13, 2014

**Acts Referred:** Uttar Pradesh Value Added Tax Act, 2008 " Section 2(h), 38

**Citation:** (2014) 3 ALJ 501 : (2014) 74 VST 88

**Hon'ble Judges:** Dhananjaya Yashwant Chandrachud, C.J; Dilip Gupta, J

**Bench:** Division Bench

**Advocate:** Bidhan Chandra Rai, Advocate for the Appellant

### Judgement

1. The petitioner has sought to challenge a recovery citation dated 24 December 2013 (Annexure-8) issued by the Tehsildar, Kairana who is

impleaded as the third respondent to these proceedings. The assessee is a private limited company, incorporated under the Companies Act, 1956

by the name of Hasan Steels & Alloys (Pvt.) Limited, Orders of assessment have been passed for assessment years 2006-07 and 2007-08 by the

Deputy Commissioner, Commercial Tax on 5 August 2010 and 26 February 2010 under the U.P. Value Added Tax Act, 2008. The Company

has filed appeals before the Joint Commissioner (Appeals), Commercial Tax, Sahranpur Region, Muzaffarnagar which are pending since 7

October 2013. The petitioner who was a Director of the Company claims to have resigned on 20 May 2013.

2. The writ petition under Article 226 has been filed on the ground that there is no provision under which the tax dues of the Company, which is a

dealer within the meaning of the Act and the assessee, can be recovered from the personal assets of the Director of the Company.

3. The issue which is raised in these proceedings is covered by a judgment of a Division Bench of this Court in Meekin Transmission Ltd. and

Purushottam Sootwala Vs. State of Uttar Pradesh and Others, where the Division Bench held that a Company, following the well settled principles

of law, has a separate juristic personality and there is no provision in the U.P. Trade Tax Act (which was the legislation in that case) under which

the dues of the dealer Company could be recovered from the personal assets of a Director.

4. Learned Standing Counsel appearing on behalf of the respondents does not dispute the legal position but submits that the recovery citation has

been issued only against the Company.

5. Section 2(h) of the U.P. Value Added Tax Act, 2008 defines the expression "dealer" to mean any person who carries on in Uttar Pradesh the

business of buying, selling, supplying or distributing goods directly or indirectly, for cash or deferred payment or for commission, remuneration or

other valuable consideration. The definition also includes a company or body corporate.

6. In the present case, it is not in dispute that the Company is the dealer registered under the provisions of the Act.

7. Section 38 of the Act refers to a situation where a limited company is wound up and any tax assessed on the company under this Act for any

period, whether before or in the course of or after its liquidation, cannot be recovered. In such an event, every person who was a Director of the

limited company at any time during the period for which the tax is due shall be jointly and severally liable for the payment of such tax 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

Company.

8. Admittedly, the Company is not in liquidation and hence Section 38 has no application.

9. However, a reading of the recovery citation would indicate that it has been issued against the Company, showing the name inter alia of the

petitioner as a proprietor. We clarify that we are not in any manner interfering with the enforcement of the recovery citation against the Company

and are confining this judgment only in respect of the enforcement of the recovery citation against the personal assets of the petitioner.

10. We, accordingly, allow the petition and set aside the recovery citation (Annexure-8) only insofar as it operates against the personal assets of

the petitioner. The petition is, accordingly, disposed of. There shall be no order as to costs.