

Maddi Swarna Vs Commercial Tax Officer and Another

Court: Andhra Pradesh High Court

Date of Decision: June 14, 2001

Acts Referred: Andhra Pradesh General Sales Tax Act, 1957 "Section 16B

Citation: (2001) 4 ALD 540 : (2004) 7 ALT 397 : (2001) 124 STC 203

Hon'ble Judges: S.R. Nayak, J; S. Ananda Reddy, J

Bench: Division Bench

Advocate: Dr. M.V.K. Murthy, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Judgement

S.R. Nayak, J.

The petitioner is one of the directors, of M/s. Maddi Swarna Agro Enterprises Private Limited, a private limited company incorporated under the Companies Act, 1956. The said company is formed for the purpose of carrying on business in agro products. In this writ

petition, the petitioner has assailed the notice dated February 21, 1992 in R. C. No. 276/89-D issued by the Deputy Commercial Tax Officer,

Ganapavaram, Guntur district, the second respondent herein, in exercise of the power conferred upon him u/s 8 of the A. P. Revenue Recovery

Act read with Section 17C of the Andhra Pradesh General Sales Tax Act, 1957, for short, "the APGST Act.

2. The short question that falls for our consideration and decision in this case is whether the respondent-authorities can validly proceed against the

private properties of the petitioner and recover the outstanding tax due from a private limited company in which the petitioner is a director without

winding up that company in accordance with law.

3. The background facts leading to the filing of the writ petition be noted briefly as under : M/s. Maddi Swarna Agro Enterprises Private Limited is

a dealer registered on the rolls of the Commercial Tax Officer, Chilakaluripet, the first respondent herein, under the provisions of the APGST Act.

It appears the said company was incorporated on September 10, 1982. It is submitted by the petitioner that because of the slump in the market

and other prevailing conditions, the company sustained losses continuously. The company was assessed to sales tax for the years 1985-86 and

1986-87 under the APGST Act and for the assessment year 1988-89 under the Central Sales Tax Act, 1956, for short "the CST Act" and it

appears the company paid the tax in respect of those years and thereafter it fell in arrears of tax both under the APGST Act and the CST Act due

to continuous losses and non-recovery of the outstanding debts due from the customers. When the matter stood thus, the impugned notice was

issued by the second respondent.

4. The second respondent by issuing the impugned notice in form No. 1 u/s 8 of the Revenue Recovery Act to the petitioner has demanded

outstanding dues from the company towards the tax liability immediately while administering the threat that in the event of default, the personal

properties of the petitioner-director would be attached.

5. Dr. M.V.K. Murthy, learned counsel for the petitioner, while assailing the validity and legality of the impugned notice would strenuously contend

that the impugned notice is illegal and without authority of law apart from being violative of Section 16B of the APGST Act and also the provisions

of the Companies Act, 1956. Learned counsel would urge that under the provisions of the Companies Act, the liability of the shareholders is

limited to the shares held by them and therefore the shareholders of the company are governed by the provisions of the Companies Act, 1956. In

that view of the matter, recovery of the outstanding dues from the company from out of the personal assets of the shareholders is one without

authority of law and therefore the impugned notice should be declared as illegal and invalid. Learned counsel would also contend that since the

company is not yet wound up, the provisions of Section 16B of the APGST Act are not attracted and therefore the impugned notice should be

held to be one without authority of law.

6. On the other hand, the learned Special Government Pleader for Taxes meekly attempts to support the impugned action.

Section 16B of the APGST Act reads :

Liability of directors of a private company in liquidation.-""When any private 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, then every person who was a director of

the private 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.

7. It is apparently clear from the provisions of Section 16B that, that section has no application at all unless the company is wound up. According

to the provisions of Section 16B, the directors of a private limited company will become liable for any sales tax arrears only under the

circumstances clearly contemplated in that section, viz., in the course of liquidation and if the tax assessed on the company is found not recoverable

in the liquidation proceedings. It is relevant to note that in respect of the tax assessed and due from the assessee-company, no demand could be

forwarded by the respondents to the petitioner-director for recovery of the arrears of tax except in the manner provided in Section 16B. In the

instant case, the assessee-company is not in liquidation and it has not yet wound up under the provisions of the Companies Act and therefore the

necessary conditions to invoke the provisions of Section 16B do not exist and consequently the impugned notice could not be treated to have been

issued in exercise of the power conferred on the second respondent by Section 16B of the APGST Act. In the case of Ramnarayan Shahu v.

Commercial Tax Officer (FAQ [1990] 78 STC 97 : [1990] 10 APSTJ 197, it was held that the directors of a private limited company cannot be

proceeded against personally in recovery of the amounts due from the company except in the manner provided u/s 16B of the APGST Act and the

impugned notice issued to one of the directors was quashed.

8. From the counter filed before us by the respondents, it is seen from para. 3 thereof that the second respondent has not yet attached the personal

properties of the petitioner. However, it is stated in para. 3 of the counter that if the petitioner does not clear outstanding balance on behalf of the

company from the assets of the company together with penal interest u/s 16(3) of the APGST Act, the respondent would not be having any option

except to proceed against the petitioner personally in accordance with law. In the result and for the foregoing reasons, we hold that the impugned

notice issued by the second respondent is one without authority of law and consequently invalid. Since M/s. Maddi Swarna Agro Enterprises is not

in liquidation and is not yet wound up, the second respondent invoking his power u/s 16B of the APGST Act does not arise. In the result we allow

the writ petition with no order as to costs.