

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).10433 OF 2024
(ARISING OUT OF S.L.P (CIVIL) NO(S).20534/2019)

SHANKAR RUDRA

APPELLANT(S)

VERSUS

THE STATE OF UTTARAKHAND & ORS.

RESPONDENT(S)

O R D E R

1. Heard the learned counsel appearing for the parties.
2. Leave granted.
3. The orders of assessment were passed by the first respondent-State Government under the Uttarakhand Value Added Tax Act, 2005 (for short, "the Act") against M/s. SLR Impex Private Limited. The assessment made was pertaining to the years 2014-15, 2015-16 and 2016-17. It appears that the notice of demand and the tax assessment order were attempted to be served at the last known address of the said Company. The amount was not paid by the Company. Therefore, the first respondent took recourse to the recovery proceedings by treating the amount of tax and other dues payable by the Company as arrears of land revenue. Accordingly, it appears that the third respondent, who is an officer of the Government of NCT of Delhi, issued a recovery certificate and a recovery notice dated 6th June, 2019 addressed to the appellant on the basis of the certificate.
4. The appellant, therefore, filed a writ petition before the learned Single Judge challenging the recovery notice. At the admission stage, the learned Single Judge dismissed the petition by

holding that the appellant had a statutory remedy of preferring an appeal under Section 51 of the Act. A writ appeal was preferred by the appellant which has been dismissed by the Division Bench of the High Court. The Division Bench modified the order of the learned Single Judge by holding that the appellant had an alternative remedy under Section 287-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 to challenge the recovery certificate.

5. When we made a query to the learned counsel appearing for the first and second respondents (State of Uttarakhand) whether there is any provision under the Act for recovery of the dues of a Company from its Directors, the learned counsel appearing for the first and second respondents states that the first and second respondents had not initiated any proceedings against the appellant. She pointed out the stand taken in the counter affidavit that no recovery certificate or assessment of tax has been done by the first and second respondents against the appellant and the assessment has been made in respect of the Company. However, she relies upon Section 12(1) of the Act.

6. We have considered the submissions of both the parties.

7. On a plain reading of sub-Section (1) of Section 12 of the Act, the liability of the Directors of a private company will arise when a private company is wound up after the commencement of the Act. Therefore, Section 12(1) will have no application as an order of winding up has not been produced.

8. Therefore, when there was no provision under the Act under which dues of a limited company could have been recovered from its

Directors, the third respondent was not justified in issuing the recovery certificate and demand notice against the appellant. These crucial factors have been ignored by the High Court. It ought to have been noted by the High Court that an attempt to recover tax payable by the Company from the appellant from its inception was illegal and, therefore, the appellant ought not to have been driven to the remedy of preferring an appeal.

9. Accordingly, the Appeal succeeds. The impugned judgments and orders of the learned Single Judge and the Division Bench are set aside. The notice of recovery dated 6th June, 2019 issued by the third respondent is hereby quash and set aside.

10. The Appeal is, accordingly, allowed.

.....J.
(ABHAY S. OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
SEPTEMBER 10, 2024.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 20534/2019

(Arising out of impugned final judgment and order dated 15-07-2019 in SA No. 682/2019 passed by the High Court of Uttarakhand at Nainital)

SHANKAR RUDRA

Petitioner(s)

VERSUS

THE STATE OF UTTARAKHAND & ORS.

Respondent(s)

(IA NO.129559/2019 - FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED JUDGMENT AND IA NO.159561/2019 - EXEMPTION FROM FILING O.T.)

Date : 10-09-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Mr. Abhay Kumar, AOR
Mr. Shagun Ruhil, Adv.
Mr. Tirupati Gaurav Shahi, Adv.
Ms. Kusum Pandey, Adv.
Mr. Karan Chopra, Adv.

For Respondent(s) Mr. Akshat Kumar, AOR
Ms. Anubha Dhulia, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The Appeal is allowed in terms of the signed order.

Pending applications stand disposed of accordingly.

(ASHISH KONDLE)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)

[THE SIGNED ORDER IS PLACED ON THE FILE]