

TAX INFO

Dated 29/10/2021

Latest update on GST Law: Information regarding **Personal property belonging to the Managing Director cannot be attached for recovery of sales tax dues of a Private Limited Company** as given in **Judgement by Gujarat High Court.**

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Name of Petitioner	Manharlal HirjibhaiViridiya
Name of Respondent	Assistant Commissioner of Commercial Tax
Court	Gujarat High Court
Date of Judgement	08/10/2021
Appeal No.	R/Special Civil Application No. 12733 of 2021

Facts of the Case:

The Petitioner is a director of the Patel Rolling Mills Pvt. Ltd. who was in the business of rolling steel bars. The department raised demand of outstanding dues of sales tax of Rs.2.37 crores against the said Company for the years 1998-99 to 2000-01. In Year 2015, The Department called upon the petitioner to remain present before him twice and both the times all the facts in the knowledge of the petitioner were disclosed. Now, a notice dated 17.05.2019 was issued informing him about the outstanding dues of the said Company and the lien on the property belonging to the petitioner was earmarked. The petitioner submitted his written objections dated 11.06.2019 to the Department pointing out that the said property is the personal property of the petitioner and the same cannot be attached for the outstanding dues of a company which is a separate legal entity. The petitioner also referred to the judgements of this Hon'ble Court. Whether for the purpose of recovery of sales tax dues of a Private Limited Company, the personal property belonging to the Managing Director of such company can be attached?

Contention of Petitioner:

That the said Company is a Private Limited Company registered under the Companies Act, 1956 and for this reason alone, the Petitioner's property cannot be attached for the dues of the said Company. That it is an admitted case that the demand of Rs.2.37 crores is against the said Company which is a separate legal entity and the property of the Petitioner cannot be attached for the dues of the said Company. That this Hon'ble Court in various judgments has held that the liability of a company cannot be fastened on its directors in the matter of payment of sales tax dues and therefore also, the property belonging to the petitioner cannot be attached. Moreover, there is no order whereby the liability of the said amount has been fastened on the petitioner personally and there is no foundation to invoke the doctrine of lifting the corporate veil and therefore the impugned action of the Department is contrary to law.

Decision of the Court:

In the earlier cases of C.V. Cherian (Supra) and in the case of Mr.Choksi (supra), this issue has already been decided that holding the auction of the residential property is illegal and bad in law and the Department was restrained from attaching or selling any private property of the Managing Director of the Company for realization of any dues of the Private Limited Co. It was held that attaching director's personal property for recovery of sales tax dues is illegal and thus the impugned order passed by the Department was quashed and set aside.

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