IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12788 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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SHRI SHAKTI COTTON PVT. LTD.
Versus
THE COMMERCIAL TAX OFFICER

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Appearance:
MR. HARDIK V. VORA, ADVOCATE for the Petitioner(s) No. 1,2,3
MR. UTKARSH SHARMA, AGP for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 23/03/2022

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ-application under Article 226 of the Constitution of India, the writ-applicants have prayed for the following reliefs :

"(a) A writ of Certiorari or any other Writ, order or direction in the nature of Certiorari quashing the impugned notice dated 21.08.2021 issued under the Value Added Tax, 2003 for the payment of outstanding tax of Rs.1,68,02,573/- and consequent attachment on personal properties of director and brother of director;

(b) Pending further hearing and disposal of the petition, to stay the notice dated 21.08.2021 for the payment of outstanding tax of Rs.1,68,02,573/- and attachment order dated 19.12.2020 on personal properties of director and brother of director.

(c) Pass any other order(s) as this Hon'ble Court may deem fit and more appropriate in order to grant interim relief to the Petitioner;

(d) Any other and further relief deemed just and proper be granted in the interest of justice;

(e) To provide for the cost of this petition."

2. The writ-applicant no.1 is a company registered under the provisions of the Gujarat Value Added Tax, 2003 (for short, the 'GVAT Act'). The writ-applicant no.2 is the Director of the company and the writ-applicant no.3 happens to be the brother of the writ-applicant no.2. The writ-applicant no.3 has nothing to do with the company.

3. It appears from the materials on record that the company, as a taxable entity, has incurred liability towards the payment of tax under the provisions of the GVAT Act. The company incurred a liability of Rs.56,05,146=00 sometime in the year 2013. The company preferred an application under the '*Vera Samadhan Yojana, 2019*'. Such application was filed on 6th November 2019. In accordance with the said Scheme, the company was required to pay an amount of Rs.56,05,146=00, and upon deposit of such amount, the interest to the tune of Rs.60,53,560=00 would be waived.

4. It is the case of the company that it deposited the amount of Rs.56,05,146=00 under the Scheme and thereby discharged its total liability.

5. The writ applicants are here before this Court as it appears that the respondent No.1 has raised a fresh levy of Rs.1,68,02,573/- and has attached the personal immovable properties of the writ applicants No.2 and 3 respectively for the purpose of discharge of such liability in exercise of powers under Section 44 of the GVAT Act.

SUBMISSIONS ON BEHALF OF THE WRIT-APPLICANTS:

6. Mr.Hardik Vora, the learned counsel appearing for the writ-applicants, vehemently submitted that despite depositing the amount of Rs.56,05,146=00, the respondent no.1 has raised a demand of Rs.1,68,02,573=00 and has also proceeded to attach the personal properties of the writ-applicant no.2 (Director of the Company) and the writ-

applicant no.3 (the brother of the Director).

7. Mr.Vora would submit that Section 44 of the GVAT Act has no application to the case on hand. He would submit that Section 44 of the GVAT Act is being misused by the authorities under the GVAT Act.

8. In such circumstances referred to above, Mr.Vora prays that there being merit in his writ-application, the same be allowed and the impugned order of attachment be quashed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS :

9. On the other hand, this writ-application has been vehemently opposed by Mr.Utkarsh Sharma, the learned AGP appearing for the respondents. Mr.Sharma invited the attention of this Court to the following averments made in the affidavit-in-reply duly affirmed by the State Tax Officer :

> *"5. I say and submit that the petitioner by way of petition has sought a writ of certiorari and or any other writ in the nature of certiorari or any other appropriate writ, order or direction for quashing and setting aside the impugned order notice dated 21.08.2021 issued under Gujarat Value Added Tax Act, 2003 for the payment of outstanding tax liability of Rs.1,12,10,280/- and attachment of personal properties of both the directors.*
>
> *6. I say and submit that the present petitioner is*

registered under provisions of GVAT, 2003, The petitioner's outstanding tax liability of Rs.1,12,10,280/- for which the respondent authorities has issued the said impugned notices. The authorities have also demanded to pay the outstanding tax liability.

7. I say and submit that on 06.11.2019 the present petitioner had filed an application under "Vera Samadhan Yojna" for the year 2012-2013 and 2013-2014 and paid tax totaling to Rs.56,05,160/- for which as per the "Vera Samadhan Scheme" the interest and penalty of Rs.60,53,560/- for the said amount has already been waived. However the petitioners was liable to pay principle amount of tax amounting to Rs.1,68,02,573/- minus Rs.56,05,160/- which now comes to Rs.1,12,10,280/-.

8. I say and submit that by virtue of the Government Resolution dated 06.12.2019, the present petitioner is liable to pay total amount of tax to the tune of Rs.1,12,10,280/-, for the year 2010 to 2015 as the petitioners had availed the deferment scheme, whereby the petitioner has already collected the said amount of tax. The said amount so collected was Rs.1,68,02,573/- which was initially used as working capital. The petitioner was supposed to make the payment of tax from 31.05.2010 in six equal installments of Rs.28,02,573/- but the present petitioner had only paid an amount of Rs.56,05,146/- for Assessment Year 2012-13, 2013-14. The petitioner is liable to pay the remaining amount to

the tune of Rs.1,12,10,280/- for the year 2010-2011, 2011-2012, 2014-2015 and 2015-2016. As the petitioner has collected the said tax amount non-payment of the same would lead to unjust enrichment.

9. I say and submit that on 09.04.2021 vide application the petitioner asked the respondent authorities if there is any other outstanding liability under the GVAT, 2003. The petitioner showed its willingness to pay the remaining tax amount vide its reply to the said application dated 09.04.2021. The said assurance was given by the petitioner at the time of attachment of his property in 2011.

10. I further say and submit that the petitioner has 4 firms wherein he had availed the benefit of "Samadhan Yojna", hence he is aware that under the scheme he is to pay the total tax amount, waiver is of interest and penalty.

11. I further say and submit that since petitioner has not paid total tax amount the property of the petitioner was attached by respondent authorities in the year 2011. Thereafter the Mamlatdar inadvertently lifted the attachment under the impression that the petitioner had paid his entire tax liabilities. As and when it came in the knowledge of the department that the said attachment was lifted by Mamlatdar, the Department again issued fresh/revised notice dated 19.12.2020 for attachment of the said property for remaining dues of Rs.1,12,12,280/-.

12. I say and submit that there is no separate property of the company in fact the property of the petitioner and Shri Uma Ginning is a combined property mortgaged with Mehasana Urban Co-Operative Bank. It is further required to be noted that the directors of the said firms are common. Considering this fact the personal properties of the directors is attach."

10. In such circumstances referred to above, Mr.Sharma prays that there being no merit in this writ-application, the same be rejected.

ANALYSIS :

11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether the personal properties of the writ-applicants nos.2 and 3 respectively could have been attached in exercise of powers under Section 44 of the GVAT Act for the purpose of discharge of the liability incurred by the writ-applicant no.1 company.

12. Section 44 of the GVAT Act reads thus :

"44. (1) Notwithstanding anything contained in any law or contract to the contrary, the Commissioner may at any time or from time to time , by notice in writing, a copy of which shall be forwarded to the dealer at his last known address, require, —

(a) any person from whom any amount of monies is

due, or may become due, to a dealer on whom notice has been served under sub-section (1), or

(b) any person who holds or may subsequently hold monies for or on account of such dealer, to pay the Commissioner, either forthwith upon the monies becoming due or being held or within the time specified in the notice (but not before the monies becomes due or is held as aforesaid) so much of the monies as is sufficient to pay the amount due by the dealer in respect of the arrears of tax, penalty or interest under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation.- For the purposes of this subsection, the amount of monies due to a dealer from, or monies held for or on account of a dealer by any person, shall be calculated by the Commissioner after deducting there from such claims, if any, lawfully subsisting, as may have fallen due for payment by such dealer to such person.

(2) The Commissioner may amend or revoke any such notice or extended the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer, and the receipt thereof by the Commissioner shall continue a good and sufficient discharge of the liability of such person to the extent of the amount specified in the

receipt.

(4) Any person discharging any liability to the dealer after receipt of the notice referred to in this section, shall be personally liable to the Commissioner to the extent of the liability discharged or to the extent of the liability of the dealer for tax, penalty and interest, whichever is less.

(5) Where a person to whom a notice under this section is sent objects to it by a statement in writing that the sum demanded or any part thereof is not due or payable to the dealer or that he does not hold any monies for or account of the dealer, the Commissioner shall hold an inquiry and after giving to such person or dealer a reasonable opportunity of being heard, make such order as he thinks fit.

(6) Any amount of monies which the aforesaid person is required to pay to the Commissioner, or for which he is personally liable to the Commissioner under this section shall, if it remains unpaid, be recoverable as an arrears of land revenue.

(7) The Commissioner may apply to the court in whose custody there is monies belonging to the dealer for payment of the amount of such monies towards the outstanding amount of tax, interest and penalty payable by the dealer."

13. The aforesaid provisions of Section 44 of the GVAT Act are almost *pari materia* to Section 226(3) of the Income Tax

Act, 1961 (for short, "the Act, 1961"). Section 226(3) reads thus:

> *"226. Other modes of recovery:*
>
> *...*
>
> *...*
>
> *(3) (i) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Assessing Officer or Tax Recovery Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.*
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> *(ii) A notice under this sub- section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub- section, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.*
>
> *(iii) A copy of the notice shall be forwarded to the assessee at his last address known to the Assessing Officer or Tax Recovery Officer], and in the case of a joint account to all the joint holders at their last addresses known to the Assessing Officer or Tax Recovery Officer.*

(iv) Save as otherwise provided in this sub- section, every person to whom a notice is issued under this sub-section, shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub- section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee on the date of the notice or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(vii) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, amend or revoke any notice issued under this sub- section or extend the time for making any payment in pursuance of such notice.

(viii) The Assessing Officer or Tax Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub- section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(ix) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub- section is sent fails to make payment in pursuance thereof to the Assessing Officer or Tax Recovery Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222."

14. The above referred Section 226(3) of the Act, 1961 is modelled upon the provision of the Australian Act, Section 218. It is need less to reproduce the corresponding provision in the Australian Act. At page 1099 of "Income-tax Law and Practice (Commonwealth)" by Challener and Greenwood, second edition, it is observed as follows in discussing the scope of the Australian enact merit:

> "*The purpose of Section 218 is to enable the Commissioner to collect unpaid taxes from persons owing money to the tax-payer without having to proceed to judgment and issue execution. Thus, sub-section (1) authorises the Commissioner to give notice to any person mentioned in (a), (b), (c) on (d) of the sub-section to pay to the Commissioner either forthwith or at or within a time specified in the notice, not being a time before the money becomes due or is held, such amount as is sufficient to pay the tax due and any financial costs. or the whole of the money if it is not greater than (he amount due. A copy of the notice is to be forwarded to the tax-payer. Any person making payment pursuant to such a notice is deemed to have been acting under the authority of the taxpayer and is indemnified in respect of the payment (sub-section 4), whilst any person failing to comply with such a notice is guilty of an offence (sub-section 2).*
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> *For a case in which Section 218 was considered, Re, Whiting 1951 VLR 205 has been referred to. We have not been able to get at this report and we do not know the decision therein.*"

15. The plain reading of Section 44 of the GVAT Act would indicate that it provides a machinery for the VAT department to collect tax arrears from the debtors of the assessees (dealers). It is in substance the familiar garnishee proceedings under the Civil Procedure Code. The basic foundation would appear to be the substance of a relationship of a debtor and creditor, between the garnishee and the assessee.

16. Under clauses (a) and (b) of sub-section (1) of Section 44 of the GVAT Act, the Commissioner is empowered to issue notice requiring any person from whom any amount of money is due or may become due or who subsequently holds money on account of such dealer in respect of the arrears of tax, penalty or interest under the GVAT Act. A plain and simple reading of the aforesaid provisions will suggest that the power under the same is to be exercised when there is a person who has debtor-creditor relationship with the dealer and from whom his money is due or may become due to him or the person who holds or may subsequently hold money for or on account of such dealer.

17. Indisputably, in the case on hand, the company and the writ-applicants nos.2 and 3 respectively do not have any debtor-creditor relationship.

18. The scope of Section 46 (5-A) of the old Income Tax Act which is Section 226(3) of the 1961 Act fell for the consideration of the Madras High Court in the case of Adam vs.

Income Tax Officer, 1958 (33) ITR 26. In that case, an assessee was in arrears of tax He had an overdraft account with a banker. The limit of overdraft allowed by the banker was Rs.1,37,500/-, of which the assessee had drawn upto Rs.1,31,301/ . This latter amount was debited to the assessee in the banker's books of account. The Income-tax Officer served a notice on the banker to the effect that the banker should pay to the officer any amount due or becoming due from the banker to the assessee of any money which the banker may hold subsequently for or on account of the assesses, upto the amount of arrears. The banker then informed the officer that there was no amount which was payable to the assessee and that the assessee had pledged his goods and executed a mortgage of certain properties. The Income-tax Officer replied by letter dated 24-11-1955 that the notice will come into operation as and when the assessee make future payments. The Banker refused to pay the assessee any further sum on his overdraft account and the assessee filed a petition under Article 226 of the Constitution questioning the validity of the notice and the letter. The High Court held that an unutilised overdraft account does not render the banker a debtor in any sense and the banker is, therefore, not a person from whom money is due to the customer. It further held that the banker in such a case is not a "person from whom money became due". Accordingly a writ was issued. Rajagopala Aiyangar, J., as he then was, referring to the provision of Section 46(5-A), in 1958-33 ITR 26 (AIR 1958 Mad 181) observed thus at page 31.

> "*Unless the bank were a debtor there could be no attachment and an unutilised overdraft account does not*

render the bank a debtor in any sense, and, therefore, the bank is not a person from whom money is due to the customer. Nor does the bank in such a case fall within the expression 'person from whom money may become due."

Again, at page 32, he observes.

"*Section 46(5-A) of the Act cannot on any construction be intended as a credit-freeze, with this feature super-added, that if there was any thawing, the resultant credit released became immediately payable to the department. Of course, if at any stage the account of the customer is in credit, Section 46(5-A) would come into play and the sum so standing to the credit of the assessee might be directed to be paid over. The present is not such a case and this undoubted right of the department is not what is now sought to be asserted. What the impugned order of the Income-tax Officer directs is virtually that the bank should pay over to the department the difference between the limit of the overdraft allowed to the petitioner and the amount drawn by him upto the date of the notice Under Section 46(5-A) This in my judgment is not within the scope of the provision*".

19. In the aforesaid context, we may refer to the decision of the Supreme Court in the case of Hyderabad Coop. Commercial Corpn. Ltd. vs. Syed Mohiuddin Khadir, reported in (1975) 2 SCC 624, wherein the Supreme Court held thus :

"14. Attachment of debts is a process by means of which a judgment-creditor is enabled to reach money due to the judgment-debtor which is in the hands of a third person. These are garnishee proceedings. To be capable of attachment, there must be in existence at the date when the attachment becomes operative something which the law recognises as a debt. So long as there is a debt in existence, it is not necessary that it should be immediately payable. Where any existing debt is payable by future instalments, the garnishee order may be made to become operative as and when each instalment becomes due. The debt must be one which the judgment-debtor could himself enforce for his own benefit. A debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation." (see Webb v. Stenton, (1883) 11 QBD 518)

20. We may also refer to a Division Bench decision of this High Court in the case of Green Berry Foils India Limited vs. State of Gujarat (Special Civil Application No.15644 of 2018, decided on 17th October 2019), more particularly, paragraphs 18 and 19 respectively :

"18. On a plain reading of the provisions of section 44 of the GVAT Act, it is clear that the same are in the nature of garnishee proceedings and can be invoked against any person from whom any amount is due, or may become due, to a dealer. Such dealer should be a person to whom notice has been served under sub-section (1) of section 44 of the GVAT Act. The third respondent in the affidavit-

in-reply filed by it has not made reference to any such notice having been issued to it nor has any averment to that effect been made in the affidavit-in-reply filed on behalf of the first respondent. Therefore, the basic requirement for invoking the provisions of section 44 of the GVAT Act, viz. service of notice to the dealer under sub-section (1) thereof, has not been satisfied.

19. Another aspect of the matter is that a condition precedent for issuing notice under section 44 of the GVAT Act to the second respondent bank is that the said bank should be holding or may subsequently hold monies on account of such dealer. The expression "dealer" has been defined under section 2(10) of the GVAT Act to mean any person who, for the purpose of or consequential to his engagement in or, in connection with or incidental to or in the course of business buys, sells, manufactures, makes supplies or distributes goods directly or otherwise, whether for cash or deferred payment, or for commission, remuneration or otherwise and includes the categories of persons enumerated thereunder. In the present case, it is not the case of the first respondent that the bank was holding any monies on account of the dealer, viz. the third respondent herein. Therefore, the impugned order dated 26.9.2018 directing the second respondent bank to deposit a sum of Rs.17,67,45,934/- along with interest at the rate of 18% per annum, does not meet with the requirements of section 44 of the GVAT Act."

21. The debate before us has very largely centered upon the proper interpretation of the words "any person from whom money is due or may become due to the assessee." The most important word in the context is "due". The Concise Oxford Dictionary gives the following meaning to it: "owing, payable, as a debt or obligation (fall, become due, as bill reaching Maturity); that ought to be given to person". Earl Jowitt in his Dictionary of English law at page 682 annotates the expression as follows:

> "*Anything owing; that which one contracts to pay or perform to another; that which law or justice requires to be paid or done. As applied to a sum of money* '*due*' *means either that it is owing or that it is payable; in other words, it may mean that the debt is payable at once or at a future time.*"

22. There is one additional ground available to the writ-applicants on which the action on the part of the respondent no.1 in invoking Section 44 of the GVAT Act could be said to be without jurisdiction. As noted above, the proceedings under Section 44 of the GVAT Act are in the nature of garnishee proceedings, i.e. attachment of a debt by means of which judgment-creditor is enabled to reach the money due from the judgment-debtor, which is in the hands of a third person. Issuance of a notice in writing to the person from whom the money is due and may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay the same to the Assessing Officer is a *sine qua non* for initiating the proceedings under Section 44 of the GVAT Act. In the absence of the notice to the

concerned person, there is no valid initiation of the garnishee proceedings.

23. Under sub-section (5) of Section 44 of the GVAT Act, a person to whom a notice under this sub-section is sent has a right to object to the notice by a statement that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee and then nothing contained in this sub-section would require such person to pay any money or part thereof, as the case may be.

24. After the person concerned objects by filing a statement that the sum demanded or any part thereof is not due from him to the assessee, then recovery cannot be effected from him unless the Assessing Officer or the Tax Recovery Officer holds an inquiry in which the concerned person is associated. In the inquiry, such person or dealer shall have to be given an opportunity of being heard.

25. In the case on hand, no notice was sent to the writ-applicants nos.2 and 3 respectively in the manner prescribed and straightway the respondent no.1 proceeded to attach the personal properties of the two writ-applicants.

26. Had the notice been sent to the writ-applicants nos.2 and 3 respectively as contemplated under sub-section (5) of Section 44 of the GVAT Act, both would have had the liberty to file their objections denying their liability to pay the amount as they did not owe the money to the assessee in default.

27. The entire proceedings, being without any jurisdiction, have resulted in undue harassment to the writ-applicants nos.2 and 3 respectively as the recovery was sought to be made without issuing notice to the writ-applicants.

28. In Partington v. A. G., (1869) LR 4 HL 100 at 122, Lord Cairns stated :

> "*If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.*"

29. In Cape Brandy Syndicate v. IRC, (1921) 1 KB 64 at 71, Rowlatt J. laid down :

> "*In a taxing Act one has to look merely at what is clearly said.*
>
> *There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.*"

30. The Supreme Court in a plethora of judgements has referred to the aforesaid principles. In Commissioner of Sales Tax, Uttar Pradesh v. Modi Surgar Mills, 1961 (2) SCR 189 at 198, the Supreme Court held as under:

> "*In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.*"

31. Thus, from the aforesaid, it can be said that in interpreting a taxing statute, the equitable considerations are entirely out of place. The reasons of morality and fairness can have no application to bring a citizen who is not within the four corners of the taxing statute within its fold so as to make him liable to payment of tax. The entire approach of the department that as it is not in a position to recover anything from the company, it can run after the Director of the company and attach his personal properties. The writ applicant No.3 has even otherwise no legal connection with the company. He just happens to be the brother of the writ applicant No.2 before us.

32. Over a period of time, we have noticed that Section 44 of the GVAT Act is being misused to the maximum. Either the

authorities concerned have no idea about the scope and true purport of Section 44 of the GVAT Act or they just pretend to be ignorant of the correct interpretation of Section 44 of the GVAT Act.

33. In the result, this writ-application succeeds. The order of attachment in the case of both, the writ-applicant no.2 and the writ-applicant no.3, is hereby quashed and set-aside. The attachment stands removed.

34. So far as the liability of the company is concerned, it shall be open for the authorities to proceed further in accordance with law.

(J. B. PARDIWALA, J.)

(NISHA M. THAKORE, J.)

/MOINUDDIN