IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 19065 of 2006 (T)

PETITIONER(S):

LORD KRISHNA BANK LTD.,
REPRESENTED BY ITS ASSISTANT GENERAL MANAGER,
P.BINOD, LORD KRISHNA BANK LTD., KALOOR
ERNAKULAM.*
[* PETITIONER SUBSTITUTED AS M/S.HDFC BANK LTD.
REPRESENTED BY SREEKALA.S
WIFE OF T.SANTHARAM SHENOY, AGED 42 YEARS
SENIOR MANAGER, HDFC BANK LTD.
REMEDIAL MANAGEMENT UNIT, CHOICE TOWERS
MANORAMA JUNCTION
KOCHI - 16 AS PER ORDER DATED 06.09.2011 I IA 14696/11]

BY ADVS.SRI.P.B.SURESH KUMAR (SR.)
SRI.K.P.SUJESH KUMAR
SRI.LEO GEORGE
SRI.M.SUNIL
SRI.K.N.SASIDHARAN NAIR
SMT.BABITHA THAMBI.

RESPONDENT(S):

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1. STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. COMMISSIONER OF LAND REVENUE,
   GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

3. DISTRICT COLLECTOR,
   ERNAKULAM.

4. TAHSILDAR,
   REVENUE RECOVERY, KOCHI.

5. GULAB CHAND KOTHARI,
   C.C.7/387, DARUSALAM ROAD, KOCHI-682 002.

6. STATE OF TAMIL NADU,
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
   STATE OF TAMIL NADU, CHENNAI.

**7. DISTRICT COLLECTOR,
THENI, TAMIL NADU.**

**8. COMMERCIAL TAX OFFICER,
BODINAYAKANUR, THENI DISTRICT, TAMIL NADU.**

**9. SURAYYA NIZAR,
14/1864/A & 14/1864/B,
A.P.JOSEPH ROAD, CHILLICKAL, KOCHI-5.**

**BY GOVERNMENT PLEADER SRI.R.RENJITH,
R9 BY ADV. SRI.A.BALAGOPALAN &
R9 BY ADV. SRI.A.RAJAGOPALAN**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE LETTER EVIDENCING CREATION OF MORTGAGE BY THE FIFTH RESPONDENT IN FAVOUR OF THE PETITIONER DATED 07/09/1994.

EXHIBIT P2:- TRUE COPY OF THE ORDER OF THE DEBTS RECOVERY TRIBUNAL, ERNAKULAM IN OA NO.22/2000 DATED 10/09/2003.

EXHIBIT P3:- TRUE COPY OF THE LETTER SENT BY THE COMMERCIAL TAX OFFICER, THENI DISTRICT, TAMIL NADU GOVERNMENT TO THE THIRD RESPONDENT DATED 21/11/2003.

EXHIBIT P4:- TRUE COPY OF THE ORDER NO.B10-49275/01/K.DIS. PASSED BY THE THIRD RESPONDENT DATED 09/09/2004.

EXHIBIT P5:- TRUE COPY OF THE JUDGMENT IN WA NO.141/2005 OF THIS HONOURABLE COURT, DATED 03/02/2005.

EXHIBIT P6:- TRUE COPY OF THE ORDER PASSED BY THE SECOND RESPONDENT IN PROCEEDINGS NO.LR.B7-59224/2004/K.DIS. DATED 10/08/2005.

EXHIBIT P7:- TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE GOVERNMENT DATED 01/09/2005.

EXHIBIT P8:- TRUE COPY OF THE ORDER PASSED BY THE GOVERNMENT ON EXHIBIT P7 REVISION DATED 24/03/2006.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.19065 of 2006

Dated this the 13th day of July, 2015

J U D G M E N T

The petitioner is a Bank. They have approached this Court challenging the sale to recover the Sale Tax due to Tamil Nadu State from the 5th respondent.

2. According to the Bank, the 5th respondent has created a mortgage in respect of the property which was sold in auction.

3. The petitioner exhausted all statutory remedies under the Revenue Recovery Act. The main ground of challenge is that, there are no provisions under Central Sales Tax Act which enables the State of Tamil Nadu to recover Central Sales Tax arrears from the property of the defaulter. Further ground of challenge is that, the transfer of property was for consideration and without notice of the pendency of proceedings under the Tamil Nadu General Sales Tax Act and transfer is protected in terms of Section 24 and 24(a) of the Tamil Nadu General Sales Tax Act.

4. In this matter, a detailed counter affidavit has been filed by the State. It is stated in the counter affidavit that the assessment of sales tax due is related to 1987-88 and the mortgage was created only on 07.09.1994. It is also pointed out that, the Bank approached the DRT and Bank obtained a decree for realisation of the amount on 10.09.2003. It is based on the above facts and

circumstances, the claim petition has been rejected by the authority under the Revenue Recovery Act.

5. In respect of the first contention that, there is no provision to recover the Central Sales Tax by invoking provisions under the Tamil Nadu GST Act, argument appears to be misconceived. It is apposite to refer to Section 9(2) of Central Sales Tax Act which reads as follows:

> *"9.xxxxx*
> *9(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess reassess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential,*

shall apply accordingly:

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, be rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section."

Thus in the light of Section 9(2), Central Sales Tax also can be assessed, collected and enforced as a liability under the GST of the State. Therefore, there is no impediment under law in invoking State General Sales Tax Act for the purpose of recovery of CST.

6. Next question is whether the petitioner being a bonafide transferee or being a mortgagee is entitled for protection. Section 24(a) of Tamil Nadu General Sales Tax Act protects certain kind of transfer. It is apposite to refer to Section 24A of Tamil Nadu Central Sales Tax Act which reads as follows :

"24-A. Transfers to defraud revenue void:- Where, during the pendency of any proceeding under this Act or after the completion thereof, any dealer creates a charge on, or part with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer a result of the completion of the said proceeding or otherwise:

Provided that, such charge or transfer shall not be void if it is made:-

(i) for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice as such tax or other sum payable by

> *the dealer; or*
> *(ii) with the previous permission of the assessing authority.*
> *Explanation:- In this section, 'assets' means land, building, machinery, plant, shares, securities and fixed assets in bank to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the dealer.”*

Proviso to Section 24A hold that, certain charge or transfer shall not be void, if it was made for adequate consideration and without notice of pendency of proceedings of the Act or transfer has been effected with previous permission of the assessing authority. In this case, of course the question of permission does not arise. Therefore, the only first part of the provision can be considered.

7. The question is whether the Bank has a notice of pendency of the proceedings. It is to be noted that the borrower from the Bank is an assessee under the Sales Tax Act. The Bank has no case that they have verified any liability of the petitioner from the Sales Tax Department or Government Officials. The due diligence of the Bank is not a mere perusal of title deeds or the verification of the encumbrance certificate in relation to the property. On the other hand when a trader, assessee or dealer creates a mortgage by immovable property, necessarily it demands to verify any liability on account of operation of his trade or business. It is to be noted that, the mortgage was created only in the year 1994. The demand was related to the period 1987-88 and if the Bank had made an attempt

to get the details of any liability which were available in public domain, necessarily it could have avoided transactions which resulted in creation of mortgage. The bonafides as contemplated under Section 24A proviso mandates that, 'without notice to the pendency of such proceedings', implying that the Bank had avoided all possible adversities in granting loan to the assessee or dealer. It prefixes bonafides on the part of the Bank in lending advance to the such dealer.

In the light of the above facts and circumstances, I do not find any merit in the writ petition. Accordingly the same is dismissed.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV