IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.18506 and 18507 of 2004

Sushil Kumar Garg ...Petitioner in W.P.No.18506 of 2004

Ved Prakash Agarwal ...Petitioner in W.P.No.18507 of 2004

Vs

1. The Commercial Tax Officer,
   Kilpauk Assessment Circle,
   Chennai 600 094.

2. The Deputy Commercial Tax Officer,
   Thiruvallur Assessment Circle,
   Thiruvallur.

Respondents in both Writ Petitions.

Prayer in both Writ Petitions:

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the files of the first respondent herein on the Distraint Orders in Form No.1 under Section 8 of the Tamilnadu Act II of 1864, issued by the First Respondent herein in Rc.3994/2003 A3, dated 31.5.2004 respectively and quash the said Distraint order in Form No.1 under section 8 of the Tamilnadu Act II of 1864, issued by the First Respondent herein in Rc.3994/2003 A3, dated 31.5.2004 respectivley, while forbearing the first respondent herein not to proceed against the petitioners herein for the alleged due of Metpro Industries Pvt. Ltd., D.P.No.101-A & 101-B, SIDCO Industrial Estate, Kakkalur (Thiruvallur Taluk and District).

For Petitioner in both Wps. : Mr. N. Inbarajan

For Respondent in both Wps. : Mr.S.Manoharan Sundaram, AGP

COMMON ORDER

The Recovery Notices against the former Directors of the Private Company Limited are challenged in these Writ Petitions relying upon Section 18 of Central Sales Tax Act 1956 and Section 19(b) of the erst while Tamilnadu General Sales Tax Act, 1959.

2. Heard the learned counsel for the petitioner and Mr. S.Manoharan Sundaram, learned Additional Government Pleader for the respondents.

3. Learned counsel appearing for the petitioners submitted that when the Private Limited Company is in existence, no recovery be initiated against the Directors of the Company. In support of his contention, he relied upon the decision of this Court reported in (2009) 23 VST 82 (Mad) (R. Vasinathan and others Vs. Commercial Tax Officer (FAC), Ambattur Assessment Circle, Villiwakkam, Chennai and another), wherein, the Honourable Division Bench has held as follows;

> "So far as lifting of corporate veil is concerned, in the absence of any material fact before us, no finding can be given. Further, as no winding up order or any other order has been passed under the Companies Act, it cannot be presumed that the company has been wound up. Even if it is accepted that one or other petitioners are related to each other, in the capacity as ex-directors or shareholder, no notice can be issued against them under section 19B of the TNGST Act.
>
> In Union of India v. Manik Dattatreya Lotlikar (1988) 172 ITR 1 (Bom), the court held that the directors of any company, whether public limited or private, are not personally liable for the debts of the company unless the company court found them guilty of any misfeasance or wrong-doing.
>
> In G.C.Mehrotra v. Deputy Collector (Collections), Sales Tax (1998) 110 STC 406 (All), the court held that in case of a private company, recovery of tax dues from it cannot be made from its directors, unless permitted by specific provision of the law or by an agreement between the parties."

4. It is brought to the notice of this Court that subsequent to the filing of the Writ Petition, a communication dated 16.4.2010 in Na.Ka.14/2003/A3, to the effect that the

entire arrears of the Private Limited Company has got already settled, has been issued, a copy of which, is produced by the learned counsel for petitioners before this Court. The said communication is not disputed by the learned counsel for the respondents. Hence recording the same, since the entire arrears were recovered and nothing survives in the Writ Petitions to be adjudicated, the Writ Petitions are closed. No costs. Consequently, the connected miscellaneous petitions are closed.

sd/-
Assistant Registrar(Cs-III)

/TRUE COPY/

Sub-Assistant Registrar

msr

To

1. The Commercial Tax Officer,
   Kilpauk Assessment Circle,
   Chennai 600 094.

2. The Deputy Commercial Tax Officer,
   Thiruvallur Assessment Circle,
   Thiruvallur.

   +1 CC to Special Govt.Pleader. SR.NO.66447

W.P.Nos.18506 and 18507 of 2004

CO-BVR
JD 19/01/2016