IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:04.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29051 of 2015 and

MP.No.1 of 2015

Sarita Mittal .. Petitioner

Vs.

The Assistant Commissioner (CT)
Harbour - I Assessment Circle,
Chennai - 600 001. .. Respondent

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records of the respondent Notice of Sale of Land in Form - 7 dated 31.08.2015 and to quash the same as illegal, unconstitutional and having been issued without authority of law by attaching the personal property of the petitioner and consequently forbear the respondent from initiating any proceedings against the petitioner in respect of the tax arrears of Rs.5,65,84,711/- of M/s.Metro Castings Ltd. under the Tamil Nadu General Sales Tax Act 1959.

For Petitioner : Mr.A.Ravichandran
For Respondent : Mr.Manokaran Sundaram
Additional Government Pleader

ORDER

Heard Mr.A.Ravichandran, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondent and with their consent, the Writ Petition is taken up for final disposal.

2.The petitioner has filed this writ petition challenging a notice issued under Section 36 brining the petitioner's property for sale for recovery of arrears of sales tax payable by M/s.Metro Castings Private Limited. Admittedly, the petitioner is a Director of the said company which is a defaulter. However, it is seen that the property which is the subject matter of attachment and sale has been purchased much prior to the incorporation of the petitioner company.

3.The law on the subject is well settled that unless and until misfeasance and malfeasance is established and the Directors are held to be liable, the personal properties of the Directors cannot be proceeded with for recovery of sales tax dues payable by the company. The company is said to be a sick industry undertaking and a case has been registered before the BIFR vide Case No.430/1999 and it appears that a draft rehabilitation scheme was approved, but, however, the company could not be revived and it has resulted in liquidation. If it is established that there is misfeasance and malfeasance committed by the Directors, then, obviously, the respondent Department would be entitled to proceed against the petitioner's property for recovery of the sales tax arrears.

4.Accordingly, the Writ Petition is allowed and the impugned order is quashed with the observation that it is open to the Sales Tax Department to implead themselves in the Liquidation Proceedings and if it is established that the Directors were responsible for the present financial condition of the company, then, the respondent is at liberty to proceed against the petitioner's property for recovery of the sales tax dues payable by the company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

sgl

To

The Assistant Commissioner (CT)
Harbour - I Assessment Circle,
Chennai - 600 001.

+1 CC to Mr.A. Ravichandran, Advocate SR.No.37826

+1 CC to The Special Government Pleader (Taxes) SR.No.37816