IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2016

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.31959 of 2015
and
M.P.Nos.1 and 2 of 2015

Groupe SEB India Pvt. Ltd.,
(earlier known as M/s.Maharaja Whiteline)
Industries Pvt.Ltd.,
rep. by Power of Attorney,
Mr.K.Hariraja ... Petitioner

Vs.

1. The Commercial Taxes Department,
Assistant Commissioner CT
Ayanavaram Assessment Circle
Seventh Floor, Dowlath Towers,
Taylors Road, Kilpauk,
Chennai - 10.

2. ING Vysya Bank Ltd.,
having its head office at ING Vysya House
22, M.G. Road, Bangalore- 560 001, India,
and a Branch Office at 16/11 First Floor,
R.D.Chamber, Arya Samaj Road, Karol Bagh,
New Delhi – 110 005,
Through its Branch Manager. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent culminated in the impugned order by the first respondent, dated 26.07.2013, having reference No.774050 / 2012/A3 and notice, dated 08.09.2015, and to quash the same.

For Petitioner : Mr.P.S.Raman, S.C.,
for Mr.P.V.Balasubramaniam

For Respondent -1 : Mr.S.Kannmani Annamalai
Additional Government Pleader
(Tax)

ORDER

Heard Mr.P.V.Balasubramaniam, the learned counsel for the petitioner and Mr.S.Kannmani Annamalai, learned Additional Government Pleader (Tax) for first respondent.

2. In this Writ Petition, the petitioner has challenged the impugned the notice in Form U issued to them, for the assessment of sales tax payable by M/s.Maharaja Appliances Limited.

3. Though elaborate submissions have been made by the learned counsels on either side and voluminous documents were placed in the typed set of papers as well as additional typed set of papers, the dispute involved in this Writ Petition lies in a narrow compass.

4. The undisputed facts are that, M/s.Maharaja Appliances Limited is a Company, registered under the Companies Act, 1956, which has failed to pay the sales tax. This Company is stated to have been in existence in Tamil Nadu since 1990 onwards. Another Company was incorporated, under the name and style M/s.Maharaja Whiteline Industries Pvt. Limited., before the Registrar of Companies, Delhi on 20.09.2011. Thus, it cannot be disputed by respondents that at the time, when defaults were committed by M/s.Maharaja Appliances Limited, M/s.Maharaja Whiteline Industries Pvt. Limited., was not a registered Company, within the State of Tamil Nadu and appears to have not done any business activities here. This M/s.Maharaja Whiteline Industries Private Limited Company has been taken over by the petitioner Company and the name has been changed into Groupe SEB India Private Limited.

5. Now, the issue is as to whether the bank account of the petitioner-Company could be attached for the default committed by M/s.Maharaja Appliances Limited.

6. It is not in dispute that the petitioner did not take over M/s.Maharaja Appliances Limited, and they had taken over only M/s.Maharaja Whiteline Industries Pvt. Limited., which is not a defaulter. Therefore, it has to be seen as to whether the petitioner could be made liable for the default committed by another Company, viz., .M/s.Maharaja Appliances Limited, though there may be some common set of Directors in M/s.Maharaja Appliances Limited and M/s.Maharaja Whiteline Industries Private Limited.,

7. The stand taken in the counter affidavit and the impugned order is that, the Board of Directors of the

petitioner-Company and M/s.Maharaja Whiteline Industries Pvt. Limited are one and the same. This is refuted by the learned counsel for the petitioner, and in this regard, Form 32 issued by the Registrar of Company has been relied on to show that the said allegation is factually incorrect. On perusal of the averments made in para No.7 of the counter affidavit, it is seen that the first respondent has taken note of the undertaking obtained by the petitioner from M/s.Maharaja Whiteline Industries Pvt. Limited., wherein, M/s.Maharaja Whiteline Industries Pvt. Limited., have undertaken to state that, they will not be liable for any dues of M/s.Maharaja Appliances Limited. If such be the case, then, the question of attaching the bank account of the petitioner does not arise, and the petitioner cannot be treated as defaulter.

8. An argument was advanced by the learned counsel for the petitioner that, assuming that, if the petitioner is treated as garnishee, to be treated as garnishee, first, the first respondent should have issued proper proceeding and the petitioner should have been heard in the matter. However, the first respondent, without hearing the petitioner, attached their bank accounts. In para No. 7 of the counter affidavit, the first respondent has referred to the observations made by the Hon'ble High Court of Delhi, in the Writ Petition filed by the petitioner earlier, in W.P.No.9068 of 2015. However, the said Writ Petition was dismissed, on account of want of territorial jurisdiction, and the observation contained in the order, were vacated by the Hon'ble Division Bench of High Court of Delhi. Therefore, the first respondent cannot rely upon the same. When the petitioner-Company and M/s.Maharaja Appliances Pvt. Limited., are two distinct legal entities, unless, the respondents are able to show that the petitioner is liable for the dues of the other Company by valid records, by presumption, action cannot be initiated against the petitioner.

9. For the reasons stated hereinabove, the Writ Petition is allowed, the impugned order stands quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Taxes Department,
Assistant Commissioner CT
Ayanavaram Assessment Circle
Seventh Floor, Dowlath Towers,
Taylors Road, Kilpauk,
Chennai - 10.

+1cc to the Special Government Pleader(T), S.R.No.53865

Writ Petition No.31959 of 2015

VGI(CO)
CA(30/09/2016)