IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.5685 of 2004

Tvl.Farida Leather Company rep by
Partner:A. Nazeer Khan,
No.71/A, Perianna Maistry Street
Periamet, Chennai - 3

.... Petitioner

vs

1. The Commercial Tax Officer,
   Periamet Assessment Circle,
   Chennai - 7

2. The Commercial Tax Officer - III,
   Dindigul

..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the files of the 1st respondent herein in his Demand Notice issued in TNGST No.0420686 dated 19.2.2004, quash the same as invalid, illegal and unsustainable and forbearing the respondents from demanding the petitioner to pay the arrears of tax and other amounts due from one Sarathy Tanners, Dingidul.

For petitioner : Mr.A. Chandrasekaran
For respondents : Mr.S. Kanmani Annamalai
AGP (T)

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records on the files of the 1st respondent herein in his Demand Notice issued in TNGST No.0420686 dated 19.2.2004, quash the same as invalid, illegal and unsustainable and forbearing the respondents from demanding the petitioner to pay the arrears of tax and other amounts due from one Sarathy Tanners, Dingidul.

2. Heard both sides.

3. Accordinig to the petitioners, they are the bonafide purchasers of a property from one Sarathy Tanners and the said Sarathy Tanners defaulted in paying the sales tax to the Department. The second respondent issued notice dated 19.03.2002 to one Mujeeb Khan, the bonafide purchaser of the property to pay the tax arrears. On receipt of the said notice from the second respondent, the said Mujeeb Khan caused legal notice on 16.4.2003 to the erstwhile partners of Tvl.Sarathy Tanners calling upon them to settle the arrears of tax and other amounts due to the second respondent forthwith. A copy of the said legal notice was also sent to the second respondent along with a list of properties owned by the partners of Tvl.Sarathy Tanners. Further, according to the petitioners, the erstwhile partners of Tvl.Sarathy Tanners are owning several properties and the second respondent can very well collect the arrears of Tvl.Sarathy Tanners.

4. According to the petitioners, the second respondent contended that the purchaser viz., Mujeeb Khan ought to have obtained a "Tax Clearance Certificate" from them. In the absence of any specific provision under the Sales Tax Act for getting the tax clearance certificate, the contention of the second respondent cannot be accepted. In these circumstances, the impugned notice dated 19.02.2004 was issued calling upon the petitioners to pay a sum of Rs.5,22,382/-.

5. When the petitioners have not defaulted any sales tax to the respondents, issuance of notice to the petitioners, instead of taking action against the defaulter viz., Tvl.Sarathy Tanners, cannot be appreciated. The respondents should have initiated proceedings against the dealer viz., Tvl.Sarathy Tanners and not against the petitioners, who had purchased the property from them. The petitioners, being the bonafide purchasers, without notice, cannot be proceeded for the default committed by the dealer viz., Tvl.Sarathy Tanners.

6. It is also pertianent to note that the respondents have not attached the properties, puchased by the petitioners, therefore, no entry was entered in the Encumbrance Certificate, obtained by the petitioners.

7. In these circumstances, the impugned order dated 19.02.2004 is liable to be set aside and accordingly, it is set aside and the writ petition stands allowed.

8. It is open to the respondents to take appropriate steps to recover the tax arrears from Tvl.Sarathy Tanners in accordance with law.

No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sr

To
1. The Commercial Tax Officer,
   Periamet Assessment Circle,
   Chennai - 7

2. The Commercial Tax Officer - III,
   Dindigul

+1cc to Mr.P. Radhakrishnan, Advocate, S.R.No.13545

CTK(CO)
EU(18/03/2016)

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