THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No. 15406 OF 2007

ORDER: *{Per the Hon'ble Sri Justice Ramesh Ranganathan}*

The jurisdiction of this Court, under Article 226 of the Constitution of India, is invoked by the Commercial Tax Officer – I, Nellore to declare the order of the first respondent dated 10.08.2006, passed in I.R.No.76 of 2006 in R.P.No.91 of 2003 in O.A.No.234 of 2002, as illegal, void and inoperative; and also to declare that, under Section 16 (c) of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the APGST Act'), the petitioner has first charge over the property of the second respondent.

In the affidavit filed in support of the writ petition, the Commercial Tax Officer asserts that assessment of the second respondent, for the years 1989-90, 1992-93, 1993-94, 1994-95 and 1995-96, were completed on the basis of the returns filed by the dealer, and upon verification of the books of accounts; with respect to the Assessment Years 1998-99, 1999-00 and 2000-01, though the second respondent filed its returns, in the absence of books of accounts, the assessments were made on a best judgment assessment, and the following demands were raised.

Year	APGST	CST	TOTAL	
1989-90	--	Rs. 9,531=00	Rs. 9,531=00	
1992-93	--	Rs.7,056=00	Rs.7,056=00	
1993-94	--	Rs.8,200=00	Rs.8,200=00	
1994-95	--	Rs. 365=00	Rs.365=00	
1995-96	Rs.23,584=00	--	Rs.23,584=00	
1998-99	-	Rs.1,03,971=00	Rs.1,03,971=00	Best judgment
1999-00	Rs.19,926=00	Rs.1,43,501=00	Rs.1,63,427=00	
2000-01	Rs.1,41,423=00	Rs.18,369=00	Rs.1,59,792=00	
Total	1,84,933=00	Rs.2,90,993=00	Rs.4,75,926=00	

It is further stated that the third respondent - Bank filed O.A.No.234 of 2002 before the first respondent for recovery of the term loan given to the second respondent; along with the O.A, the Bank also filed R.P.No.91 of 2003 seeking permission of the first respondent to auction the property of the second respondent in an open auction for recovery of the term loan; and the R.P was ordered by the first respondent, and a Recovery Officer was appointed for taking possession of the properties of the second respondent company, fixing the date of public auction as 23.01.2006. The petitioner contends that, in terms of Section 16(c) of the APGST Act, they have a preferential right over the subject property for recovery of tax arrears; and a similar right accrues in their favour even under Section 26 of the Andhra Pradesh Value Added Tax Act, 2005.

Despite service of notice, no counter affidavit has been filed on behalf of any of the respondents for the past more than nine years. When the matter cam up on 21.03.2016, at the request of Sri A. Krishnam Raju, Learned Counsel for the respondent-bank, we granted a week's time to enable them to file a counter affidavit. No counter affidavit is filed even today and, instead, a request is again made for an adjournment. As the writ petition has been pending on the file of this Court for nearly a decade, we see no reason to accede to any such request.

In the impugned order, the Recovery Officer rejected the petitioner's claim on the ground that no assessment order, for the years 1997-98 and 1990-91, was filed. From the table aforementioned, it is evident that there was no tax arrears for the years 1990-91 and 1997-98. As such the petitioner's failure, to file assessment orders for these two years, is of no consequence. The fact that the assessee was a defunct company, when the assessment orders for 1998-99, 1999-00 and 2000-01 were passed, is again of no consequence, as the company is nonetheless liable to pay the tax in arrears. The Recovery Officer erred on both counts in rejecting the petitioner's preferential claim over the subject property.

Sri A. Krishnam Raju, learned Standing Counsel for the respondent Bank, would submit across the Bar that the property does not belong to the company, but belongs to one of the Directors of the company. In the absence of any counter-affidavit, being filed by the

Bank, it is difficult to accept any such submission more so as, even in the counter affidavit filed by the respondent-Bank in I.R No.76 of 2006 in R.P.No.91 of 2003 before the Recovery Officer, no such claim, of the property belonging to the Directors of the company and not the company itself, is to be found.

Section 16 (C) of the APGST Act stipulates that, notwithstanding anything contrary contained in any law for the time being in force, any amount of tax, penalty, interest and any other sum, if any, payable by the dealer or any other person under this Act, shall be the first charge on the property of the dealer or such person.

In ***Central Bank of India vs. State of Kerala***[1] the Supreme Court held that a similar provision under the Kerala General Sales Tax Act conferred a preferential right on the Government to put the subject property to sale for recovery of tax arrears. As the petitioner's claim for preferential right over the subject property, in terms of Section 16(C) of the Act, was negatived by the Recovery Officer, and such a right has been recognised by the Supreme Court in **Central Bank of India**[1], the impugned order must be, and is hereby, set aside. The petitioner is declared to have a preferential right over the subject property, under Section 16(c) of the A.P.G.S.T. Act, to recover tax arrears for the aforesaid period.

The Writ Petition is allowed. However, in the circumstances, without costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M. SATYANARAYANA MURTHY, J)

Date: 28.03.2016
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[1] (2009) 4 SCC 94