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

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**W.P.No.42404 of 2015**

**ORDER**: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri G.Narendra Chetty, learned counsel for the petitioners, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is disposed of at the stage of admission.

The proceedings under challenge in this writ petition is the demand "prior to attachment of land" in Form No.4 dated 03.08.2015, the notice of attachment in Form No.5 dated 22.09.2015, the notice of sale of land in Form No.7, and Form No.7-A dated 07.12.2015 issued under Sections 25, 27 and 36 respectively of the Revenue Recovery Act, 1864 attaching and proposing to put to sale the personal landed properties of the 3rd petitioner herein, who is the Managing Director of the 1st petitioner-company.

The 1st petitioner was granted sales tax deferment of Rs.94,55,168/- from 01.04.1992 to 30.03.2002 repayment of which started from 2006-07. On the ground that the petitioner had failed to pay the deferment amount, proceedings were initiated for recovery of Rs.27,95,417/-. The petitioners gave an undertaking on 18.08.2015 that they would pay Rs.50,000/- each month, as monthly instalment, to the 1st respondent.

Sri G.Narendra Chetty, learned counsel for the petitioners, on instructions, would submit that the 1st petitioner has been paying Rs.50,000/- each month; and they shall continue to pay Rs.50,000/- each month till either the one time settlement, sought for by them, is granted or till the entire amount is repaid.

The question, which arises for consideration in this writ petition, is whether the respondents have been conferred the power to put the private properties of the 3rd petitioner herein to sale for recovery of the tax arrears of the 1st petitioner-company. Section 24(5) of the A.P.Value Added Tax Act, 2005 (for short “the Act”) provides that, when any private company is wound up and any tax assessed on the company under the Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax, unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Section 24(5) of the Act is attracted only when a private company is would up. Once a winding up order is passed, then the tax assessed on the company, either before or in the course of or after liquidation, can be recovered from a person who was a Director of the private limited company during the period when the tax was due. It is not in dispute that, in the present case, the 1st petitioner-company has not been wound up; and, in the absence of any order of winding up being passed against the 1st petitioner-Company, the respondents cannot proceed to attach and put the private properties of the Directors of the Company, including the 3rd petitioner, to sale.

To the extent the private properties of the 3rd petitioner are sought to be put to sale, for recovery of the tax arrears of the 1st petitioner-company, the impugned proceedings of attachment and sale must be, and are hereby, set aside. Needless to state that the petitioners shall, in terms of the undertaking furnished by them to the respondents, continue to pay Rs.50,000/- each month. It is also made clear that this order shall not preclude the respondents, if they so choose, from initiating winding up proceedings against the 1st petitioner-company.

The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

**RAMESH RANGANATHAN, J**

**M. SATYANARAYANA MURTHY, J**

Date:05.01.2016.
JSU

***<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>***

***AND***

***<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>***

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**<u>Date: 05.01.2016</u>**

JSU