IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 31.10.2017

CORAM :

The Hon'ble Mr. Justice T.S.Sivagnanam

W.P.No.9004 of 2009
and
M.P.No.1 of 2009

Foundation Garments Private Ltd.,
Represented by its Managing Director,
Ms.Anne Marie Canthaswamy,
Super A3 * A4, Industrial Estate,
Guindy, Chennai - 600 032.
.. Petitioner

Vs

The Assistant Commissioner (CT),
Guindy Assessment Circle,
46, Chamiers Road,
Chennai - 600 028. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the respondent herein in connection with the proceedings Ref.Rc.280/07.A3 dated 20.04.2009 and to quash the same.

For Petitioner : Mr. V. Prakash, Senior Counsel
For Mr.K.Sudalaikannu

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.V.Prakash, the learned Senior Counsel representing for Mr.K.Sudalaikannu, the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, the learned Additional Government Pleader for the respondent.

2. Considered the submissions made on either side as well as the parawise comments and written instructions given by the respondent to the learned Special Government Pleader, vide letter, dated 31.10.2011.

3. The short question, which falls for consideration in this Writ Petition is as to whether the impugned notice issued in Form-4, under Section 25 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter, referred to as 'the TNGST Act') could be issued to the petitioner, proposing to bring the land and building owned by the petitioner for sale, for recovery of the sales tax dues payable by another Company, solely for the reason that, one of the Directors in both the Companies is the same person. The answer to the question should be in favour of the petitioner/assessee and against the Revenue for the following reasons:-

i) Admittedly, the defaulting/Company has not been wound up.

ii) The property, which is sought to be proceeded against is owned by the petitioner, which is also a Private Limited Company, having a separate registration. Merely because, one of the Directors is common in both the Companies, there is absolutely no jurisdiction for the respondent to proceed against the property owned by the petitioner/Company.

4. The learned counsel for the respondent has referred to Section 19 (B) of TNGST Act. The said provision can have no application to the facts and circumstances of the case, because, the defaulting/Company has not been wound up. The respondent has referred to Section 18 of the Central Sales Tax Act, 1956 with regard to liability of the Directors of Private company in liquidation. Firstly, the said provision cannot be applied in the instant case, as the respondent has proceeded against the different entity, i.e., the petitioner/Company and not against a Director. Even in cases, where, the proceedings are done against the Director of a Private Company during the period, for which, tax is due, such proceedings cannot be initiated, unless, it is shown that there was gross negligence or misfeasance, or breach of duty, on the part of the Director, in relation to the affairs of the Company. There is no such allegation or material available with the respondent to show that, there was such allegation against the Directors/Managing Directors. In such Circumstances, the impugned proceedings are wholly without jurisdiction and illegal.

5. In the result, the Writ Petition is allowed and the impugned proceedings are quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Guindy Assessment Circle,
46, Chamiers Road,
Chennai - 600 028.

+1 cc to M/s.K.Sudalaikannu Advocate sr77159
+1 cc to Spl Govt Pleader (Taxes) sr 77278

W.P.No.9004 of 2009

aa23/11/2017