IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

The Honourable Mr. Justice T.S. Sivagnanam

W.P.No. 7592 of 2009
and
M.P.No.2 of 2009

Bay Forge Ltd.,
Rep. by its Vice President & Company Secretary,
No.23/9, III Floor,
Beemanna Garden,
Alwarpet, Chennai - 18. ... Petitioner

Vs.

1.The Deputy Commissioner,
Office of Commercial Tax Office,
Kancheepuram Town & District.

2.The Commercial Tax Officer,
Madurantakam Town & Taluk,
Kancheepuram District. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from the file of the second respondent culminated in Na.Ka.1861/2006/A3/13.04.2009, for auctioning the immovable property of an extent of about 0.4.30 Hec. comprised in S.No.274/1 situate in Pukkathurai Village, Madurantakam Taluk, Kancheepuram District and to quash the same.

For Petitioner :M/s. C. R. Rukmani

For Respondents:Mrs.S. Narmadha Sampath
Special Government Pleader

O R D E R

Heard M/s.C.R.Rukmani, the learned counsel for the petitioner and Mrs.S. Narmadha Sampath, the learned Special Government Pleader for the respondents.

2. The petitioner, who purchased an immovable property, measuring an extent of about 1.07 acres, comprised in Survey No.274/1, Pukkathurai Village, Madurantagam Taluk, and an extent of 0.05 acres, in Survey No.3/1A1 in Kolampakkam Village, Madurantakam Taluk, by a registered sale deed, dated 22.09.2008, registered as Doc.No.5015 of 2008 on the file of the Sub-Registrar Office, Madurantakam, has approached this Court, challenging a communication sent by the first respondent, dated 13.04.2009, addressed to M/s.Batharachalam Rubber Factory Private Limited and its Directors M.Krishnamurthy, M.Gopalakrishnamurthy and the Revenue Officials. This notice proposes to bring the property of M/s.Batharachalam Rubber Factory Private Limited for sale, for recovery of the sales tax arrears of Rs.59,66,588/-.

3. Admittedly, the impugned communication has not been addressed to the petitioner. Therefore, the petitioner should not be aggrieved by the communication, but, however, the petitioner, having purchased a part of the property, which was originally owned by the defaulting Company, is now concerned that, if any, further proceedings are taken, it would directly affect their interest, as they are in possession and enjoyment of the property ever since the date of purchase, i.e. 2008.

4. It is to be noted that the petitioner did not purchase the property from the defaulting Company viz., M/s.Batharachalam Rubber Factory Private Limited, but, in fact, purchased the property from one Tmt.S.K.Geetha and Tmt.Dhanalakshmi respectively for valuable consideration. The properties were originally owned by the defaulting Company, the Company went into liquidation and was wound up, pursuant to the order passed in in C.P.No.94 of 2001, dated 07.03.2002. The Official Liquidator is stated to have brought the property for sale, under the supervision of this Court, and sold two items of the properties to Sathyakumar and Dhanalakshmi, by a registered sale deed, dated 13.11.2006, bearing Document No.360 of 2007. The said purchaser, viz., Sathyakumar, in turn, sold his portion of the property to Tmt.S.K.Geetha, the petitioner's vendor, by a registered sale deed, dated 21.03.2007, registered as Document No.1908 of 2007. The said Tmt.S.K.Geetha and Tmt.Dhanalakshmi in turn sold their respective portions, by a common sale deed, dated 22.09.2008 in favour of the petitioner.

5. Thus, by virtue of the impugned notice, the first respondent seeks to proceed against the immovable property owned by the defaulting Company for recovery of the sales tax dues. The property, having been sold by the Official Liquidator

pursuant to the order passed in Winding Up proceedings and the sale, having been held pursuant to the orders by this Court, proper remedy available for the respondent/Department is to approach the Official Liquidator, by way of a Claim Petition, and the respondent/Department is not justified in proceedings against the petitioner, who is a bona fide purchaser, for valuable consideration. This type of transactions have been protected by various decisions of this Court, and one such being the decision rendered by this Court, in the case of Chamundeeswari and another Vs The Commercial Tax Officer, Vellore Rural, Vellore, in W.P.Nos.3085 & No.3086 of 2000, dated 05.01.2007. The relevant paragraphs from the said order are as follows:-

> " "4. On hearing the counsel on either side, I am afraid, the argument advanced on behalf of the respondent by the learned Government Advocate can be accepted. It is well settled that a company is a legal entity by itself and it can sue or can be sued as a legal entity and any dues from the company has to be recovered only from the company and not from its directors.Section 19A of the Act cannot be taken assistance by the respondent for sustaining the order, which provides for the liability to tax of partitioned Hindu family, dissolved firm. Even section 19B of the Act, which provides for liability to tax private company on winding up, cannot be invoked.
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> 5. In this regard, useful reference can be had to the decisions of various High Courts, which are as follows :
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> > "In the case of Desiraju Venkatakrishna Sarma, In re, (1955) XXV Company Cases 32, Andhra Pradesh High Court has, in similar circumstance, held that a company is a body corporate and can be made liable for payment of taxes in respect of taxes payable by it. There is no personal obligation on the shareholders on the directors of a limited company in respect of the debts, or the taxes, revenue, etc., due from the company. The Managing Director or other directors of a

limited liability company cannot be proceeded against as regards recovery of arrears of sales tax payable by the company.

In the case of Lalita Shivaram Ubhaykar v. CTO, XII Circle, Bangalore, (1975) 35 STC 267, in which the company committed default in payments of sales tax due from it and the authorities proceeded against the petitioner who was its director, for recovery of the sales tax dues, the High Court of Karnataka has held that there is no provision in the statute which authorises recovery of arrears due from a company by proceedings against its director.

In the case of Ramachandran v. State of Kerala, ((1984) 55 STC 209), the High Court of Kerala held that there is no provision of law which enables the revenue to proceed against a Director of a company, personally for the arrears of sales tax due from the company, which is a distinct and different legal entity, but if it is shown or substantiated that the director has got the properties of the company, the revenue would not be prevented from proceeding against him.

In the case of Punalur Paper Mills Ltd v. District Collector, Quilon, ((1985) 60 STC 193), the Kerala High Court held that in the absence of a specific provision in the Kerala General Sales Tax Act, fastening liability on the director or the Managing Director of a company for the tax due by the company, no proceedings can be initiated against the Director of the Managing Director for recovery of such dues.

In Nishad Patel v. State of Kerala ((1999) 113 STC 395), the High Court of Kerala held that a company is a legal entity distinct from its shareholders as well as its directors, and as such no proceedings can be taken against the Directors of a company for recovery of any amounts whatsoever due from the company. The directors cannot be made personally liable to pay arrears of sales tax due from the company under the Kerala General Sales Tax Act, 1963.

In Subash Chandra Kankaria v. State of Rajasthan ((1999) 114 STC 413, the Jodhpur Bench of Rajasthan Taxation Tribunal held the provisions of Section 9D of the Rajasthan Sales Tax Act, 1954 cannot be invoked against a Director of a public company for effecting the recovery of the amount of tax, interest and penalty outstanding against the company."

6. For the reasons stated in the foregoing paragraphs and in the light of the decisions referred to above and in the absence of any statutory provision, I am of the view that the impugned order is liable to be set aside and it is accordingly set aside. The writ petitions are allowed. No costs." "

6. In the light of the above cited decision, it may not be necessary for this Court to set aside the impugned proceedings, but, it would suffice to hold that the impugned proceedings cannot be enforced against the petitioner or the property purchased by them, leaving it open to the Commissioner of Sales Tax Department to proceed against the defaulting Company, which has now been wound-up by approaching the Official Liquidator, by way of a Claim Petition.

7. Accordingly, the Writ Petition is disposed of, by holding that the impugned proceedings cannot be enforced against the petitioner, nor the properties purchased by them could be proceeded against, for the default committed by M/s.Batharachalam Rubber Factory Private Limited. However, liberty is granted to the respondent to file a Claim Petition before the Official Liquidator. If such a Claim Petition is

filed before the Official Liquidator within sixty days from the date of receipt of a copy of this order, the Official Liquidator shall entertain the Claim Petition without reference to the limitation aspect and adjudicate the same on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

msm/sd
To

1. The Deputy Commissioner,
   Office of Commercial Tax Office,
   Kancheepuram Town & District.

2. The Commercial Tax Officer,
   Madurantakam Town & Taluk,
   Kancheepuram District.

+1 CC to M/s. C. R. Rukmani, Advocate sr 77694.

W.P.No.7592 of 2009

SP(28/12/2017)