IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP No.30793 of 2007
&
MP No.1 of 2007

Noor M.Saied ... Petitioner

Vs.

The Commercial Tax Officer
Thiruvanmiyur Assessment Circle
98, Annai Velankanni Church Road
Besant Nagar
Chennai - 600 090 ... Respondent

Prayer: Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the respondent and quash the impugned proceedings in Ref No.A3/7970/94 dated 23.01.2006.

For Petitioner : Mr.T.V.Ganesh
for Mr.M.P.Mohandass

For Respondent : Mr.S.Narmadha Sampath
Specail Government Pleader

O R D E R

Heard Mr.T.V.Ganesh, learned counsel appearing on behalf of Mr.P.R.Kumar, learned counsel on record for the petitioner and Ms.Narmadha Sampath, learned Special Government Pleader for the respondent.

2.The petitioner has filed this writ petition challenging a proceedings which is in the nature of a demand issued to the petitioner calling upon the petitioner to pay arrears of Sales Tax payable by M/s.Karpaga Electronics (P) Ltd.,. The reason for issuing the impugned notice to the petitioner is because the petitioner had purchased the property in Plot No.167, D.P.Estate, Perungudi, Chennai- 600 096 from the Tamilnadu Industrial Investment Corporation Ltd., (TIIC), who brought the property for sale, which property was initially allotted to

M/s.Karpaga Electronics (P) Ltd., and who had defaulted in repayment to TIIC. Thus, the question would be whether the petitioner can be proceeded against for the tax arrears payable to M/s.Karpaga Electronics (P) Ltd. The sale was effected by TIIC pursuant to a public auction in which petitioner was the successful bidder. Admittedly, there was no charge on the property in question for the alleged Sales Tax arrears. Thus, for all purposes, TIIC had absolute right, title and interest to sell the property. Since the machineries were under the control of the Industries Department, they had executed a Deed of Confirmation in favour of the petitioner on 29.11.2005. For the first time, in 2006, the respondent sent a notice to the TIIC stating that M/s.Karpaga Electronics (P) Ltd. is in arrears of Sales Tax. TIIC sent a reply dated 10.02.2006 informing the Sales Tax Department that the properties in question have been sold in auction on 26.11.1999 and possession has also been handed over to the auction purchaser/petitioner. Thus, the petitioner has purchased the property for valuable consideration and in the absence of charge over the property by the Sales Tax Department, the petitioner cannot be made liable to pay alleged arrears of Sales Tax for the defaulting dealer and for such reason, the petitioner cannot be denied registration under the provisions of the Act when the petitioner files an application for registration.

3. In the case of Deputy Commercial Tax Officer, Thudiyalur Assessment Circle, Coimbatore and another Vs.R.K.Streels reported in (1998) 101 STC 161, the Court considered somewhat a similar case and held that the respondent therein is a bona fide purchaser without notice of charge under Section 24(2) of the Tamil Nadu General Sales Tax Act, 1959 and therefore, the property cannot be proceeded against for the recovery of sales tax arrears. In the case hand, there is no charge on the property and there is no doubt about the bonafide of the purchase made by the petitioner, because it is TIIC who brought the property for sale. In Raghuvar (India) Limited Vs. Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur reported in (2006) 144 STC 331, the Court considered the case of similar purchaser who had purchased the property without notice of Sales Tax arrears and it was held that the property, at the hands of the purchaser, was free of charge and it was not open to the Sales Tax Department to enforce the liability of the defaulter against the purchaser. In D.Senthil Kumar and others Vs. Commercial Tax Officer, Erode and another reported in [2006] 148 STC 204 (Mad), the Hon'ble Division Bench has held that the appellants therein, as transferee for the properties for valuable consideration without the notice of the charge are entitled for direction as mentioned above. The petitioner's case is on a better footing as there was no charge on the property. In Rukmani Vs. The Deputy Commercial Tax Officer (CDJ 2012 MHC 5515), a similar view was taken and it was held that

there is no material placed before them to prove that steps have been taken under the provisions of the Revenue Recovery Act against the delinquent or the subsequent first purchaser, and therefore the petitioner therein cannot be penalized. The above decisions are fully in support of the petitioner. Thus, for all the above reasons, this Court is of the firm view that the impugned notice is unsustainable in law.

Accordingly, the writ petition is allowed and impugned notice dated 23.01.2006 is set aside. However, this will not prejudice the right of the Department to proceed against M/s.Karpaga Electronics (P) Ltd. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer
Thiruvanmiyur Assessment Circle
98, Annai Velankanni Church Road
Besant Nagar
Chennai - 600 090

+ 1 cc to M/s.Kannan P.R.Kumar Advocate,SR.76907

+ 1 cc to The Special Govt.Pleader, SR.77277

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RSI(CO)
NR 04/12/2017