IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.11141 of 2007 & M.P.No.1 of 2007

M/s. Supreme Power Equipment (P) Ltd.,
Rep. by it's Managing Dirctor,
No.16, Susmith Apartments,
Gill Nagar, Kandapan Colony,
Choolaimedu, Chennai-94. … Petitioner

Vs.

The Commercial Tax Officer,
Sriperumbudur Assessment Circle,
Varadharajapuram-602 103. … Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in Na.Ka.3086/06/A3 dated 12.03.2007 and quash the same and consequently direct the respondent not to proceed against the petitioner/petitioner's property for the alleged sales tax arrears.

For Petitioner : Mr.A.Sivaji

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.A.Sivaji, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2.The petitioner has filed this writ petition challenging the notice issued by the respondent threatening to proceed against their property for recovery of the arrears of sales tax payable by one M/s.Carryon Trailers Private Limited.

3.The short question which falls for consideration is whether the property owned by the petitioner can be proceeded against for the sales tax arrears payable by M/s.Carryon Trailers Pvt. Ltd. The petitioner purchased the industrial plot bearing No.55 SIDCO Industrial Estate, Thirumazhisai, Thiruvallur District, including the land and building from two private individuals by a registered Sale Deed dated 30.11.2005 for valid consideration. The petitioner's vendors are Mr.K.Mohanraj and Miss.Kanjana and each of them had purchased the property from the original owner/allottee, M/s.Carryon Trailers Private Ltd., by separate registered Sale Deeds dated 12.07.1999.

4.The petitioner bonafidely pleads that his vendors had right to sell the property, since they had purchased the property from the allottee, SIDCO. Furthermore, the encumbrance certificate showed that the property is free from encumbrance. The respondent now seeks to demand the arrears of sales tax payable by M/s.Carryon Trailers Pvt. Ltd. The said property was leased out to M/s.Jai Bharat Exchangers by the petitioner's vendors (K.Mohanraj & Kanjana), who were running their business up to 09.03.2006. After the petitioner purchased the property, the said tenant (M/s.Jai Bharat Echangers) had moved over to a new premises at No.30, SIDCO Industrial Estate, Thirumazhisai on 09.03.2006 and the petitioner has stated that their new company is in the premises purchased by them. The petitioner has been registered as a dealer under the provisions of the TNGST Act and the CST Act.

5.It appears that M/s.Carryon Trailers had defaulted in payment of sales tax. However, no action was taken immediatedly before they sold the property to the petitioner's vendors or subsequently when the petitioner's vendors were holding the property. Even after the petitioner purchased the property in 2005, no action was initiated and only in 2007, for the first time action is being initiated by way of impugned proceedings.

6.Admittedly, there was no attachment made on the property by the Sales Tax Department, on the date when the petitioner purchased the property or for that matter when the petitioner's vendors purchased the property. In the para wise comments given to the learned Special Government Pleader by the respondent, there is no specific reference stating as to on which date attachment proceedings were initiated. It may be true that notice of demand was issued on 15.10.1999. However, even as on the said date, the defaulting company viz., Mr.Carryon Trailers Private Limited were not the owner of the property, as they had already sold the property on 12.07.1999 and parted possession.

7.Thus, in the absence of any valid attachment on the property prior to the petitioner's purchase, the impugned notice cannot be given effect to and the petitioner cannot be made liable for the arrears of sales tax by M/s.Carryon Trailers Pvt., Ltd.

8.For the above reasons, this writ petition is allowed and the impugned notice is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

abr

To

The Commercial Tax Officer,
Sriperumbudur Assessment Circle,
Varadharajapuram-602 103.

1 cc to Mr. A.S. Sivaji, Advocate, Sr. 67344(08/11/2017)

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MN (CO)
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