IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8654 of 2006

S.S. PETRO PROJECTS PRIVATE LIMITED,
NO.38 & 39, COROMALNAL TOWN,
SIDCO INDUSTRIAL ESTATE,
AMBATTUR, CHENNAI - 600 098.
REP BY ITS DIRECTOR,
MR. PAWAN CHOWDHARY. ... PETITIONER

Vs.

1. THE COMMERCIAL TAX OFFICER,
   ASHOK NAGAR ASSESSMENT CIRCLE,
   ASHOK NAGAR, CHENNAI.

2. THE DEPUTY COMMERCIAL TAX OFFICER,
   MADURANTAKAM ASSESSMENT CIRCLE,
   MADURANTAKAM. ... RESPONDENTS

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the 2nd respondent relating to the notice of the 2nd Respondent dated 10.02.2006 in Na.Ka.179/2006/A3 and demand dated 03.03.2006 in Rc/179/2006/A3/ and quash the same.

For Petitioner : Mr.A.R.Karthik Lakshmanan for Ms.AL.Ganthimathi

For Respondents : Mr.K.Venkatesh, Government Advocate

O R D E R

Heard Mr.A.R.Karthik Lakshmanan for Ms.AL.Ganthimathi, learned counsel for the petitioner and Mr.K.Venkatesh, Government Advocate for the respondents.

2. The petitioner has filed this writ petition challenging the notice issued by the respondent dated 03.03.06,

calling upon the petitioner to clear the arrears of sale tax payable by M/s. Lakshmi Ceramics Private limited, failing which, threatened that they will proceed against the petitioner property.

3. Admittedly the petitioner is not the defaulter. The petitioner purchased the immovable property vide sale deed 12.03.1998, pursuant to a public auction conducted by the TIIC, who is a secured creditor, and had taken over the property exercising their right under the State Financial Corporation Act, on account of default committed by M/s.Lakshmi Ceramics private limited. Thus, the property vested with the TIIC was free from all encumbrances. The property was sold to the petitioner and sale deed was executed and the petitioner was put in possession and continued to remain as such since 1998 onwards. However, all of a sudden, in the year 2006, the impugned proceedings have been issued. Impugned proceedings is clearly illegal as the petitioner had purchased the immovable property in the public auction and it has not taken over M/s. Lakshmi Ceramics, as a on going concern.

4. In this regard, it will be beneficial to refer to the decision of the Hon'ble Supreme Court in the case of Rana Girders limited Vs. Union of India and others (2013) 10 SCC page 746, wherein in identical circumstances, the Hon'ble Supreme Court held that the person who had purchased the land and building and machinery of the erstwhile concern cannot be fastened with the liability of the defaulter. The operative portion of the said judgment is as follows:

> 20. Coming to the liability of the successor-in-interest, the Court clarified the legal position enunciated in Macson by observing that such a liability can be fastened on that person who had purchased the entire unit as an ongoing concern and not a person who had purchased land and building or the machinery of the erstwhile concern. This distinction is brought out and explained in para 19 and it would be useful for us to reproduce herein below:
>
> "19. Reliance has also been placed by Ms.Rao on Macson Marbles (P) Ltd. wherein the dues under Central Excise Act was held to be recoverable from an auction purchaser, stating:
>
> '10. We are not impressed with the argument that the State Act is a special enactment and the same would prevail over the Central Excise Act. Each of them is a special enactment and unless in the operation of the same any conflict arises this aspect need not be

examined. In this case, no such conflict arises between the corporation and the Excise Department. Hence it is unnecessary to examine this aspect of the matter.

11. The Department having initiated the proceedings under Section 11A of this Act adjudicated liability of Respondent 4 and held that Respondent 4 is also liable to pay penalty in a sum of Rs.3 lakhs while the Excise dues liable would be in the order of a lakh or so. It is difficult to conceive that the appellant had any opportunity to participate in the adjudication proceedings and contend against the levy of the penalty. Therefore, in the facts and circumstances of this case, we think it appropriate to direct that the said amount, if already paid, shall be refunded within a period of three months. In other respects, the order made by the High Court shall remain undisputed. The appeal is disposed of accordingly."

The decision, therefore, was rendered in the facts of that case. The issue with which we are directly concerned did not arise for consideration therein. The Court also did not notice the binding precedent of Dena Bank as also other decisions referred to herein before."

21. A harmonious reading of the judgments in Macson and SICOM would tend us to conclude that it is only in those cases where the buyer had purchased the entire unit i.e. the entire business itself, that he would be responsible to discharge the liability of Central Excise as well. Otherwise, the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government unless there is a specific provision in the Statute, claiming "first charge for the purchaser". As far as the Central Excise Act is concerned, there was no such specific provision as noticed in SICOM as well. The proviso to Section 11 is now added by way of amendment in the Act only w.e.f. 10.9.2004. Therefore, we are eschewing our discussion regarding this proviso as that is not applicable in so far as present case is concerned. Accordingly, we thus, hold that in so far as legal position is concerned, UPFC being a secured creditor had priority over the excise dues. We further hold that since the appellant had not purchased the entire unit as a business, as per the statutory framework he was not liable for discharging the dues of the Excise Department.

5. In the light of the above factual and legal position, the impugned proceedings has to be held illegal. Accordingly, the writ petition is allowed and impugned proceedings are quashed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sli

To

1.THE COMMERCIAL TAX OFFICER,
ASHOK NAGAR ASSESSMENT CIRCLE,
ASHOK NAGAR, CHENNAI.

2.THE DEPUTY COMMERCIAL TAX OFFICER,
MADURANTAKAM ASSESSMENT CIRCLE,
MADURANTAKAM.

+1cc to Ms.AL.Ganthimathi, Advocate, S.R.No.58493

W.P.No.8654 of 2006

GJ(CO)
CA(06/09/2017)