IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.07.2017
Coram

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

Writ Petition No.21789 of 2004
and
W.P.M.P.No.26337 of 2004

M.Susila ...Petitioner

Vs.

1. The Commercial Tax Officer,
Annathanapttai Circle,
Salem.

2. Mr.M.Marimuthu ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent, in ROC 1514/02 A3 in Form 5 notice, dated 18.05.2004, and the connected proceedings in ROC 1514/02 A3 in Form 7 notice, dated 18.05.2004, and to quash both as illegal.

For Petitioner : Mr.S.Sivanandam

For Respondent-1 : Mr.S.Kanmani Annamalai
Additional Government Pleader

<u>O R D E R</u>

Heard Mr.S.Sivanandam, the learned counsel appearing for the petitioner, Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax) for the first respondent, and perused the materials placed on record as well as the written instructions given by the first respondent to the learned Special Government Pleader (Taxes) High Court, Chennai, vide letter, dated 21.09.2004.

2. The petitioner is the wife of the second respondent, who is a registered dealer on the file of the first respondent, under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and Central Sales Act, 1956. The orders impugned in this Writ Petition are to the notices of attachment and sale of the property owned by the petitioner.

3. The petitioner's case is that, the second respondent/husband was a Proprietor of a Firm, run under the name and style "Karthiravan Enterprises', dealing in Sago. He has been assessed to the sales tax for the assessment years 1998-1999 to 2000-01, both under the TNGST and CST

Acts, and the liability attained finality. For recovery of the sales tax, the first respondent initiated action against the second respondent and parallely, sought to proceed against the property owned by the petitioner. According to the petitioner, the property, which is the subject matter of this Writ Petition, is the property exclusively owned by the petitioner, purchased in the year, 1998, vide registered sale deed, dated 22.04.1988, registered as Document No.951 of 1988, much prior to the period of defaulting. The petitioner has produced all the records before the first respondent, and in spite of the same, the first respondent, refused to withdraw the attachment order, and also refused to acknowledge the representation.

4. In the para wise comments given to the learned Special Government Pleader (Taxes) High Court, Chennai, it is stated that the property belongs to a Hindu undivided family. It is not known as to how the first respondent came to such conclusion, in the absence of any record to show that it was the joint property of the petitioner and her husband (second respondent) or the property owned by Hindu undivided family, or that the property was purchased by the second respondent in the name of the petitioner. In the absence of any such records, the conclusion arrived by the

first respondent is not tenable.

5. For the above reasons, the Writ Petition is allowed, the impugned orders are quashed. It is open to the first respondent to proceed against the second respondent for recovery of the sales tax arrears. No costs. Consequently, connected Miscellaneous Petition is closed.

14.07.2017

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To

The Commercial Tax Officer,
Annathanapttai Circle,
Salem.

<u>T.S.Sivagnanam, J.</u>

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