IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2017

Coram

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

Writ Petition No.17573 of 2004

K.Thangavel
Partner: M/s.Lakshmi Mills,
51A/3, Bakthavatchalam Nagar,
T.Kailasampalayam (P.O),
Tirchengodu,
Namakkal District. ...Petitioner

Vs.

The Commercial Tax Officer,
Rasipuram.
...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the respondent, in his proceedings in N.K.1645/2001/A3, quash the recovery notice dated 27.05.2004.

For Petitioner : Mr.P.Sudhaker

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.P.Sudhaker, the learned counsel appearing for the petitioner, and Mr.K.Venkatesh, the learned Government Advocate for the respondent.

2. The petitioner has purchased the property in an auction conducted by the Recovery Officer, Debt Recovery Tribunal (DRT) Coimbatore, and a sale deed has been executed in his favour. The respondent has issued the impugned notice, calling upon the petitioner to pay the sales tax arrears payable by the defaulting dealer.

3. Admittedly, the property has been brought for auction on the ground that the defaulting dealer has defaulted in

repayment of the Bank loan availed by him from the South Indian Bank, Salem Main Branch. The legal issue would be, as to whether the Sales Tax Department would have priority of dues over and above the secured creditors. This aspect has been settled by the Full Bench of this Court, in the case of (The Assistant Commissioner (Ct) vs The Indian Overseas Bank, reported in (2017) 99 VST 222 (Mad) Full Bench, wherein, it is held as follows:-

> "The writ petitions have been listed before the Full Bench in pursuance to the reference
>
> 'a) As to whether the Financial Institution, which is a secured creditor, or the department,
>
> b) As to the status and the rights of a third party purchaser of the mortgaged property.
>
> 2.We are of the view that if there was at all any doubt, the same stands resolved by view ''31B. Notwithstanding anything contained in any other law for the time being in force, Explanation. - For the purposes of this section, it is hereby clarified that on or after.
>
> 3.There is, thus, no doubt that the rights of a secured creditor to realise secured debts.
>
> 4.The law having now come into force, naturally it would govern the rights of the parties.
>
> 5.The aforesaid would, thus, answer question (a) in favour of the financial institution.
>
> 6.In so far as question (b) is concerned, the same is stated to relate only to auction.
>
> 7.We, thus, answer the aforesaid reference accordingly.
>
> 8.The matters be placed before the roster Division Bench for dealing with the individual"

4. In the light of the decision of the Hon'ble Full Bench, referred to supra, the Banks, being secured creditors will have priority over the assets, and the petitioner cannot be made liable to pay the sales tax due, as he was a purchaser in an auction conducted for and behalf of the secured creditors, by DRT. Therefore, the impugned notice has to be necessarily set aside.

5. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the respondent/Department is granted liberty to recover the sales tax dues from the defaulting dealer. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sd

To

The Commercial Tax Officer,
Rasipuram.

+1cc to Mr.Chandran Karuppiah, Advocate, S.R.No.48275
+1cc to the special Government Pleader, S.R.No.48319

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KJ(CO)
GN(30/08/2017)