IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2017

Coram

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

Writ Petition Nos. 18455 and 18456 of 2004
and
W.P.M.P.Nos.21979 and 21980 of 2004

1. Mohanlal Ojha ...Petitioner in W.P.No.18455 of 2004
2. John Samuel ...Petitioner in W.P.No.18456 of 2004

Vs.

1. The Deputy Commercial Tax Officer,
Thiruvallur Assessment Circle,
Thiruvallur.

2. The State of Tamil Nadu,
rep. by the Secretary to Government
Department of Commercial Taxes
and Religious Endowments,
Fort St. George,
Chennai - 600 009. ...Respondents in both W.Ps

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, forbearing the State of Tamil Nadu, its Officers and agents from proceeding to institute recovery proceedings personally against the petitioners herein pursuant to Form No.4, dated 26.12.2003 of the first respondent herein to release the sales tax dues of Metro Industries Pvt. Ltd., D.P.No.101-A, and 101-B, SIDCO Industrial Estate, Kakkalur (Thiruvallur Taluk and District).

In both W.Ps.

For Petitioners : Mr.N.Prasad

For Respondents : Mr.K.Venkatesh
Government Advocate

COMMON O R D E R

Heard Mr.N.Prasad, the learned counsel appearing for the petitioners and Mr.K.Venkatesh, the learned Government Advocate for the respondents.

2. The petitioners, who are Directors of the Metro Industries Pvt. Ltd., are before this Court, challenging the distrain proceedings initiated against them for recovery of the arrears as well as tax payable by the Company.

3. It is submitted by the learned counsel for the petitioners that, no recovery proceedings can be initiated against the Directors of the Company, for the default committed by the Company. In support of the said contention, reliance has been placed on the following reported decisions:-

i) (R.Vasinathan and others Vs. Commercial Tax Officer (FAC) Ambattur Assessment Circle, Villiwakkam) (2009) 23 VST 82 (Mad).

ii) (Union of India Vs. Manik Dattatreya Lotlikar) (1988) 172 ITR 1 (Bombay)

and

iii) (G.C.Mehrotra Vs. Deputy Collector (Collections) Sales Tax (1988) 110 STC 406 (Allahabad)

4. The learned counsel for the petitioners further submitted that, there were two other Directors of the very same Company by name Sushil Kumar Garge and Ved Prakash Agarwal, who had filed similar Writ Petitions, in W.P.Nos.18506 and 18507 of 2004, and after the filing of the said Writ Petitions, a communication, dated 16.04.2010 in Na.Ka.No.14/2003 has been issued, stating that the defaulting Company has settled the entire dues, and the learned Single of this Court, based on the said communication and also by taking into consideration the legal position as well as the factual position, allowed the Writ Petitions, by order, dated 09.12.2015.

4. Thus, in the light of the above legal position and that the petitioner-Company has settled the entire arrears, the Writ Petition are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commercial Tax Officer,
Thiruvallur Assessment Circle,
Thiruvallur.

2. The Secretary to Government
The State of Tamil Nadu,
Department of Commercial Taxes
and Religious Endowments,
Fort St. George,
Chennai - 600 009

+1 cc to Mr.N.Inbarajan Advocate sr 46624
+1 cc to the Special Government Pleader Taxes

Writ Petition Nos. 18455
and 18456 of 2004

kk(co)
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