IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.39675 to 39677 of 2002

The Karur Vysya Bank Limited,
Rep. by its Assistant General Manager,
Central Office, Karur-639 001,
Divisional Office at No.568, Anna Salai,
Teynampet, Chennai-600 018.

... Petitioner in all W.Ps.

-Vs-

1.The Commercial Tax Officer,
Saligramam Assessment Circle,
Ashok Nagar, Chennai-600 083.

2.T.S.Parthasarathy

3.P.Sumathi ... Respondents in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified mandamus, to call for the records of the first respondent issued under No.RC.1731/98/A3 dated 12.09.2002 enclosing the distraint order in Form 1 and demand prior to attachment of land in Form 4 and to quash the same and forbear the first respondent from making a demand or taking distress proceedings, pursuant to the distraint order in Form 1 and demand prior to attachment of land in Form 4 enclosed with the letter No.RC.1731/98/A3 dated 12.09.2002 of the first respondent.

For Petitioner : Mr.T.K.Bhaskar

For Respondent : Mr.K.Venkatesh, for R1
Government Advocate

No appearance for RR2 & 3

COMMON ORDER

Heard Mr.T.K.Bhaskar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the first respondent.

2.The petitioner is a Bank viz., Karur Vysya Bank Limited and they have impugned the communication sent by the first respondent dated 12.09.2002, calling upon the petitioner to pay arrears of sales tax payable by M/s.Thirumalai Cement Agencies Private Limited, M/s.Thirumalai Group of Companies and M/s.Mercury Cement. In these three companies, one is the company registered under the Companies Act and the other two are partnership firms registered under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short "TNGST Act"). The petitioner had advanced certain financial facilities to respondents 2 and 3 herein, who were the Directors of M/s.Thirumalai Cement Agencies Private Limited and partners in the two firms. The interest of the Bank was secured by deposit of Title Deeds dated 28.10.1997. Subsequently, it appears that the petitioner entered into an agreement with respondents 2 and 3 by which they agreed to purchase the properties, which were offered as security to the petitioner-Bank for advancing the loans so as to close certain amount of the liability. This resulted in execution of a Deed of absolute sale in favour of the petitioner-Bank dated 20.12.1999. Thus, the petitioner became absolute owner of the property having purchased the same for a valuable consideration. The first respondent now seeks to proceed against the petitioner because they purchased the property from respondents 2 and 3.

3.Admittedly, the defaulting dealers viz., the Private Company and the partnership firms were not the owners of the property in question. Therefore, the petitioner cannot be brought within the ambit of the provisions of the TNGST Act. The first respondent traces his power to Section 24-A of the TNGST Act. The said provision would have no application to the facts of the case, because it deals with transfer of the property made by the dealer to defraud the Revenue. Even in the said provision, the first proviso provides that if the purchase has been made without notice of the pendency of any proceedings under the TNGST Act, the same will not be void.

4.Thus, when viewed from any angle, Section 24-A of the TNGST Act would have no application to the facts of the case. Further, the first respondent cannot take shelter under Section 19-B of the TNGST Act, as there is no allegation that the defaulting company has been wound up. Thus, the impugned proceeding is wholly without jurisdiction. For the above reasons, these writ petitions are allowed and the impugned order is quashed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

abr

To

The Commercial Tax Officer,
Saligramam Assessment Circle,
Ashok Nagar, Chennai-600 083.

+ 1 cc to Mr.T.K.Bhaskar Advocate,SR.71583

+ 1 cc to The Special Govt.Pleader, SR.71776

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LRS(CO)
NR 09/11/2017