THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

<u>WRIT PETITION No.13472 of 2017</u>

Between:

1. C.H. Kutumba Rao, S/o. Late Sri C.H. Subba Rao, H.No.8-2-1/4, Opp: State Bank of India, Punjagutta, Hyderabad.
2. M/s. Deccan Chromates Limited, 8-2-1/4, Srinagar Colony Road, Punjagutta, Hyderabad – 500 082, rep. by its Managing Director, Sri C.H. Kutumba Rao.

PETITIONERS

And

1. Commercial Tax Officer, Miryalaguda Circle, Nalgonda.

2. Deputy Commercial Tax Officer, Miryalaguda Circle, Nalgonda.

3. Deputy Commissioner (CT), Nalgonda Division, Nalgonda.

4. Commissioner of Industries, State of Telangana, Basheerbagh, Hyderabad.

5. The State of Telangana, rep. by its Principal Secretary, Revenue Department, Telangana Secretariat, Hyderabad.

RESPONSENTS

Counsel for the Petitioner : Mr. S. Suri Babu

Counsel for respondents 1 to 4 : Mr. J. Anil Kumar Spl. Standing Counsel for Commercial Tax

Court made the following order:

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Challenging the notice of attachment issued in Form No.V, dated 16.12.2016 published in the District Gazette on 19.12.2016 under Section 27 of the Telangana Revenue Reciovery Act, 1864, the Managing Director of the dealer as well as the Company, which is the dealer, have come up with this writ petition.

2. Heard Mr. S. Suri Babu learned Counsel for the petitioners and Mr. J. Anil Kumar, learned Special Standing Counsel for the respondents.

3. The short ground on which the notice of assessment is challenged is that under Section 24(5) of the Telangana Value Added Tax Act, 2005, the respondents are entitled to proceed against the properties of the Directors of a Private Limited Company only when such company is wound up. Section 24(5) of the Act reads as follows:

> "Section 24(5):- When any private company is wound up and any tax assessed on the company under the Act for any period, whether before or in the course of or after its liquidation cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax, unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company."

4. Admittedly the 2nd petitioner-company is not wound up. The respondents 1 to 3 have not even taken steps under the Companies Act, 1956 for winding up, which they are entitled to take.

5. As on date, the 2nd petitioner-company is not wound up. Therefore, the occasion for invoking Section 24(5) has not arisen. Hence

the writ petition is allowed and the impugned notice is set aside. It will be open to the respondents to resort to any other method of recovery available to them under law.

6. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

25th April, 2017
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.13472 of 2017

Date: 25-04-2017

Js.