IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.6267 of 2006

M/s.Gupta & Company,
Rep. by its Managing Partner
Dr.S.K.Gupta,
No.8 & 11, Ekkaduthangal Road,
Guindy, Chennai - 32. ... Petitioner

vs.

1.The Commercial Tax Officer,
Alandur Assessment Circle,
62, Pudupet Street, Alandur,
Chennai - 16.

2.The Commercial Tax Officer,
Nandanam Assessment Circle,
Greenways Road,
Chennai - 28.

3.The Official Liquidator,
High Court of Madras,
Representing M/s.Moolchand
Exports Limited, (In Liquidation),
Kuralagam Building,
First Floor, Chennai - 108.

4.The Recovery Officer - II,
Debt's Recovery Tribunal - I,
Spencer Plaza, 6th Floor,
770-A, Annasalai,
Chennai - 600 002.

5.State Bank of India,
Rep. by its Branch Manager,
Leather International Branch,

MVJ Towers,
Chennai - 10. ... Respondents

Prayer: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for and quash the impugned proceedings of the first respondent in Form No.5 in Rc.23/2006/A3 dated 16.01.2006.

For Petitioner	:	Mr.V.Ramesh
For R1 & R2	:	Mr.M.Hariharan Additional Govt. Pleader (Taxes)
For R3	:	Mr.S.R.Sundar
For R5	:	Mr.S.Sethuraman for Mr.G.Senthil Kumar

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Auction purchaser/writ petitioner has challenged Form No.5 in Rc.23/2006/A3 dated 16.01.2006 of the Commercial Tax Officer, Alandur Assessment Circle, first respondent herein, towards recovery of arrears of Rs.6,94,09,527/-, for the years 1995-96 and 1996-97, and sought for a Writ of Certiorari to quash the same.

2. Facts leading to the writ petition are that the petitioner had purchased immovable property bearing Door No.2/4, Mount Poonamallee Road, Chennai - 58 situated in 102, Ramapuram village, Saidapet Taluk, Chengelpet District, comprised in part of Survey No.151/2 in Patta No.184 measuring 50 cents, by way of sale in public auction held on 17.04.2003, conducted by the Recovery Officer - II, Debt's Recovery Tribunal - I, Chennai, fourth respondent herein, for a sale consideration of Rs.1,20,10,000/- in execution of Certificate No.150/2002, dated 27.08.2002 issued in O.A.No.1032/1998 by the Debt's Recovery Tribunal, Chennai - 2, for recovery of debts due to State Bank of India, represented by its Branch Manager, fifth respondent herein, from M/s.Moolchand Industries Ltd., and 10 others.

3. Petitioner has further contended that, after clearing all the Income Tax formalities, the Recovery Officer - II, Debt's Recovery Tribunal - I, Chennai, fourth respondent herein, issued a sale certificate, dated 22.05.2003 in favour of the petitioner and the same was duly registered as Document No.828/2003 on the file of the Joint Sub-Registrar-II, Saidapet, Chennai-15. Since 22.05.2003, the petitioner is in absolute

possession and enjoyment of the property.

4. Vide order of this Court, in C.P.No.254/1994, dated 22.06.2000, Official Liquidator was appointed for M/s.Moolchand Exports Limited, (In Liquidation), Chennai. Petitioner has also purchased another immovable property bearing Door No.2/4, Mount Poonamallee Road, Ramapuram, Chennai - 89, measuring 50 cents under Survey Nos.151/1B and 152/2C for sale consideration of Rs.80,00,000/- from the Official Liquidator, High Court of Madras, the third respondent herein, representing M/s.Moolchand Exports Limited, (In Liquidation), Chennai.

5. Sale of the above immovable property by Official Liquidator, High Court of Madras, representing M/s.Moolchand Exports Limited, (In Liquidation), Chennai, third respondent herein, was confirmed by the High Court order dated 14.10.2004 in C.P.No.254/1997 and C.A.No.654/2004.

6. Vide notice dated 05.01.2006 in Rc.23/2006/A3, Commercial Tax Officer, Alandur Assessment Circle, first respondent herein, informed the petitioner that one M/s.Moolchand Exports Limited, a company in liquidation, an assessee on the file of the Commercial Tax Officer, Nandanam Assessment Circle, Chennai, second respondent herein, was in arrears of sales tax to the extent of Rs.3,85,99,770/- for the years 1993-94 to 1996-97 and that the arrears accrued during the year 2000.

7. First respondent has further informed the petitioner that since the assessee/defaulter has sold the property without discharging the sales tax liability and as per the provisions of Tamil Nadu General Sales Tax Act, 1959, a charge had been created over the property for the sales tax amount due by the M/s.Moolchand Exports Limited, defaulter, and such charge can be enforced against the property transferred in the hands of the petitioner.

8. Vide notice dated 05.01.2006, first respondent herein, instructed the petitioner to file reply to the show cause as to why Revenue Recovery proceedings should not be taken against the petitioner for the recovery of arrears of sales tax due by M/s.Moolchand Exports Limited, the defaulter under the Revenue Recovery Act.

9. It is the further case of the petitioner that, the first respondent herein, without waiting for any reply, initiated proceedings under Revenue Recovery Act and issued notice in Form 4 as per Section 25 of the Revenue Recovery Act and directed the petitioners to pay a sum of Rs.3,85,99,770/-, within 7 days from the date of receipt of the said notice. Form 4, dated 05.01.2006 was served on the petitioner on 09.01.2006. Petitioner submitted

a reply dated 17.01.2006, stating that the properties were purchased through Court auction and that they were not aware of the statutory liabilities of the defaulter company, and that without even waiting for the completion of 7 days, as given in Form 4 notice dated 05.01.2006, the Commercial Tax Officer, Alandur Assessment Circle, first respondent herein, has issued an attachment notice in Form 5 dated 16.01.2006.

10. Contending inter alia that the petitioner is not liable to pay tax stated to have been defaulted by M/s.Moolchand Exports Limited and that the Commercial Tax Officer, Alandur Assessment Circle, first respondent herein, has failed to consider the fact that the petitioner had purchased the immovable property for valuable consideration without notice of the sales tax arrears and thus a bonafide purchaser, protected under the Transfer of Property Act, 1872, and placing reliance on the decisions of the Hon'ble Division Bench of this Court in the case of M/s.R.K.Steels, reported in 108 STC Page 161 (Madras) and the decision of the Hon'ble Supreme Court in the case of Shreyas Papers (P) Ltd., reported in 2006 (1) CTC 290, instant writ petition has been filed to quash the proceedings dated 16.01.2006 of the Commercial Tax Officer, Alandur Assessment Circle.

11. Writ petitioner has further contended that a bonafide purchaser cannot be imposed with the liability to pay tax, defaulted by a dealer. Reliance has also been made to the decision of this Court in the case of ICICI Bank Limited, reported in 2005 (1) CTC 758 and contention has been made that as regards the inter se right between the secured creditor and tax arrears due to the Government, the right of a secured creditor will prevail over the claim Sales Tax Authorities, for realisation of debt or tax, as the case may be and in such circumstances, when the Recovery Officer - II, Debt's Recovery Tribunal - I, fourth respondent herein, has sold the property towards realisation of the debts due and payable to the State Bank of India, fifth respondent herein, such property purchased bonafide, cannot be attached and recovery proceedings by the Sales Tax Authority, is not maintainable.

12. In addition to the above, placing on reliance on a Full Bench decision of this Court in the case of B.Suresh Chand Vs. State of Tamil Nade, represented by the Secretary, Revenue Department, Chennai, reported in 2006 (4) CTC 805, Mr.V.Ramesh, learned counsel for the petitioner submitted that the bonafide purchaser, without notice of the charge over the property under Section 24(1) of the Tamil Nadu General Sales Tax Act, 1959, cannot be proceeded against, for the recovery of sales tax arrears.

13. Attention of this Court was also brought to the

decision of this Court in Rukmani Vs. Deputy Commercial Tax Officer I, Pattukottai I, Assessment Circle, Pattukottai, reported in [2013] 62 VST 369 (Mad), wherein one of us (S.Manikumar.J.,) held that right of the bonafide purchaser for the value has to be protected.

14. In response to the above submission of petitioner, Mr.M.Hariharan, learned Additional Government Pleader (Taxes), submitted that when the subject property was brought for auction by the Recovery Officer, fourth respondent herein, the fact of the sale arrears due and payable by M/s.Moolchand Exports Limited, the defaulter was brought to the notice of the Debts Recovery Tribunal-I, Chennai, and a weak submission has been made.

15. Learned Additional Government Pleader further submitted that as per Section 24(1) of the TNGST Act, for the arrears of tax, a charge is automatically created on the property and therefore recovery proceedings can be initiated against the property, which admittedly, is in the hands of the writ petitioner.

16. Heard the learned counsel for the parties and perused all the materials available on record.

17. Section 24 of the Tamil Nadu General Sales Tax Act, 1959, reads thus:-

> "24. Payment and recovery of tax -- (1) Save as otherwise provided for in sub-section(2) of Section 13, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such installments, if any, and within such time as may be specified in the notice of assessment, not being less than twenty-one days from the date of service of the notice. The tax under sub-section (2) of Section 13 shall be paid without any notice of demand. In default of such payments the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or interest under this Act.
>
> (2) Any tax assessed on or has become payable by, or any other amount due under this Act from a dealer or person and any fee due from him under this Act, shall, subject to the claim of the government in respect of land revenue and the claim of the Land Development Bank in regard to

the property mortgaged to it under section 28(2) of the Tamil Nadu Co-operative Land Development Banks Act, 1934 (Tamil Nadu Act X of 1934), have priority over all other claims against the property of the said dealer or person and the same may without prejudice to any other mode of collection be recovered,--

(a) as land revenue, or

(b) on application to any Magistrate by such Magistrate as if it were a fine imposed by him:

Provided that no proceedings for such recovery shall be taken or continued as long as he has, in regard to the payment of such tax, other amount or fee, as the case may be, complied with an order by any of the authorities to whom the dealer or person has appealed or applied for revision, under Sections 31, 31-A, 33, 35, 36, 37 or 38.

(3) On any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at [one and a half per cent per month of such amount for the first three months of default and two per cent per month of such amount for the subsequent period of default]:

Provided that if the amount remaining unpaid is less than one hundred rupees and the period of default is not more than a month, no interest shall be paid:

Provided further that where a dealer or person has preferred an appeal or revision against any order of assessment or revision of assessment under this Act, the interest payable under this sub-section, in respect of the amount in dispute in the appeal or revision, shall be postponed till the disposal of the appeal or revision, as the case may be, and shall be calculated on the amount that becomes due in accordance with the final order passed on the appeal or revision as if such amount had been specified in the order of assessment or revision of assessment, as the case may be.

(3-A) Where a dealer submits the prescribed return within ten days after the expiry of the prescribed period, he shall also pay, in addition to the amount of tax due as per his return, interest at two per cent of the tax payable for every month or part thereof.

(4) Where the tax paid under this Act is found to be in excess on final assessment or revision of assessment, or as a result of an order passed in appeal, revision or review, the excess amount shall be refunded to the dealer after adjustment of arrears of tax, if any, due from him. Where the excess amount is not refunded to the dealer within a period of ninety days from the date of the order of assessment or revision of assessment and in the case of order passed in appeal, revision or review, within a period of ninety days from the date of receipt of the order, the Government shall pay by way of interest, where the amount refundable is not less than one hundred rupees, a sum equal to a sum calculated at the rate of one per cent or part thereof such amount for each month or part thereof after the expiry of the said period of ninety days.

Explanation- For the purpose of this section, the expression "order passed in appeal, revision or review" shall not include order passed in such appeal, a revision or review with direction to make fresh assessment order.

24-A. Transfers to defraud revenue void:- Where, during the pendency of any proceeding under this Act or after the completion thereof, any dealer creates a charge on,or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise:

Provided that, such charge or transfer shall not be void if it is made-

(i) For adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the dealer; or

(ii) with the previous permission of the assessing authority.

Explanation- In this section, "assets" means land, building, machinery, plant, shares, securities and fixed deposits in banks to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the dealer."

18. Contention of Mr.V.Ramesh learned counsel for the petitioner that the property had been purchased in the public auction held on 17.04.2003, by the Recovery Officer - II, Debt's Recovery Tribunal - I, Chennai, fourth respondent herein, in execution of Certificate No.150/2002, dated 27.08.2002 issued in O.A.No.1032 of 1998 on the file of the Debts Recovery Tribunal, Chennai, for recovery of debts due to the fifth respondent/State Bank of India, represented by its Branch Manager, Chennai, from M/s.Moolchand Industries Ltd., and 10 others, is supported by the auction notice issued by the Recovery Officer-II, Debt's Recovery Tribunal - I, Chennai, fourth respondent herein, bringing the subject property, for auction and the same is extracted hereunder:-

"AUCTION SALE
DEBTS RECOVERY TRIBUNAL - I
6TH FLOOR, SPENCER TOWERS,
770-A, ANNA SALAI, CHENNAI - 600 002.
Fax.No.044-2854 8163
DRC.No.150/2002-R.O.-II
Auction sale of Immovable Property, Mortgaged to Bank, Under Recovery of Debts, due to Banks and Financial Institutions Act, 1993.
IN THE MATTER OF
State Bank of India, Leather International Branch, MVJ Towers, Chennai - 600 010 Vs. Moolchand Industries Ltd., Ramapuram, Chennai - 89 and 11 others

PLACE OF AUCTION: Debts Recovery Tribunal - I, 6th Floor, Spencer Towers, Anna Salai, Chennai - 600 002.
DATE AND TIME OF AUCTION: On 17.04.2003 at 3.00 p.m.
DESCRIPTION OF PROPERTY:
1. All that place and parcel of land together with superstructure thereon situated at Door No.2/4, MOUNT POONAMALLEE ROAD, RAMAPURAM, CHENNAI - 600 089 comprised in Survey No.151/2 of No.102, RAMAPURAM VILLAGE, SAIDAPET TALUK, CHENGALPATTU MGR DISTRICT in patta No.184, measuring 50 cents and bounded on the north by poonamallee to Madras Road, South and East by land belonging to B.K.METAL PRODUCTS, west by land belonging to SOUTH INDIA SURGICAL COMPANY.

UPSET PRICE: Rs.1,20,00,000/- (Rupees one crore and twenty lakhs only)

2. All that place and parcel of land situated at OTHIVAKKAM VILLAGE, KATTANKOLATHUR PANCHAYAT UNION, CHENGALPAT TALUK, KANCHEEPURAM DISTRICT comprised in Survey Nos.46/17, 17D, 17E and 17F admeasuring about 18.38 acres located at GUDAVANCHERRY THIRUPORUR ROAD AT OTHIVAKKAM VILLAGE.

UPSET PRICE: Rs.22,00,000/- (Rupees Twenty Two Lakhs only).

For further details contact the undersigned or the Manager of the Bank personally or on phone Nos.28603234, 2860 3243.

CONDITIONS:

1. The property can be inspected between 11.00 a.m. And 3.00 p.m.
2. The intending bidders should pay 10% of the upset price ad EMD (for each property separately) by means of a D.D. Drawn in favour of the Recovery Officer, Debts Recovery Tribunal-1, Chennai, payable at Chennai before 12.00 Noon, on the date of auction.
3. The successful bidder should pay 25% of the bid amount (less the EMD) immediately on the sale being knocked down in his favour and the balance money within 15 days.
4. The successful bidder should bear the charges/fee payable for conveyance such as Registration fee, Stamp duty etc., as applicable as per law in addition to poundage fee.
5. The Recovery Officer has the absolute right to accept or reject a bid or postphone/cancel the sale.
6. Information about other conditions of sale can be collected from the Deputy General manager, State bank of India, 5th floor, State Bank Building, Anna Salai, (next to LIC) Chennai-600 002. or the under signed.

(K.PANDIAN)

Recovery Officer-II"

19. Recovery Officer - II, Debts Recovery Tribunal - II, Chennai, fourth respondent herein, has also issued a Sale

Certificate dated 22.05.2003, to the writ petitioner and the same is extracted hereunder:-

"(Proceedings of Recovery Officer, Debts Recovery Tribunal-I at Chennai)
CERTIFICATE OF SALE OF IMMOVABLE PROPERTY
(Section 25 to 29 of the Recovery of debts due to Bans and Financial Institutions Act, 1993, read with Rule 65 of the Section Schedule to the Income Tax Act, 1961)
THIS IS TO CERTIFY THAT
M/s.Gupta & Company
Represented by
Dr.S.K.Gupta,
Managing Partner
Having its office at
No.8 & 11, Ekkaduthangal Road,
Guindy,
Chennai - 600 032.

Has paid a sum of Rs.1,20,10,000/-(Rupees One Crore Twenty Lakhs Ten Thousand only) and has been declared the purcahser at a sale by public auction held on 17.04.2003 of the undermentioned immovable property in execution of Certificate No.150/2002 dated 27.08.2002 issued in O.A.No.1032/1998 by the Hon'ble Presiding Officer, Debts Recovery Tribunal, Chennai-600002 under Section 19(22) of the Recovery of Debts Due to Bank and Financial Institution Act, 1993 (Act 51 of 1993) for

RECOVERY OF DEBTS DUE FROM

1. M/s.Moolchand Industries Ltd.
2. Mr.Pradeep Kothari
No.151/1,Mount Poonamallee
3. Mr.Santhosh Kothari Road,
Ramapuram,
4. M/s.Moolchand Export Ltd., Chennai - 89.
5. Mr.Moolchand Kothari
6.Mrs.Kantha Bhattad
7.Mr.Om Prakash Kothari
8.Mr.Jayaprakash Kothari
9.Mrs.Rajkumar Bisani
10.Mrs.Saroj Kumari Rathi No.28,
Ramaswamy Street
11.Mrs.Rekha Kabra
T.Nagar, Chennai - 17.

And the said sale has been duly confirmed by the undersigned and becomes absolute.

SPECIFICATION OF PROPERTY

All that piece and parcel of land together with superstructure thereon bearing Door No.2/4, Mount Poonamalle Road, Chennai - 89, as detailed below situated in 102, Ramapuram Village, Saidapet Taluk, Chingelput District, comprised in part of S.No.151/2, in Patta No.184 measuring 50 cents (9 grounds & 180 Sq.ft.) bounded on the North by Ponamallee to Madras Road, South and East by land belonging to B.K.Metal Products and West by land belonging to Sough India Surgical Company, land having linear measurement of East to West on the Northern side 90 links (about 60 ft.); on the Southern side 90 links (about 60 ft.); North to South on the Eastern side 548 links (360 ft.) and on the Western side 565 links (370 ft.) and situate within the Sub-Registration District of Alandur and Registration District of Chennai-South.

Details of Superstructure:

1. Two two storeyed buildings on the front side facing the road, with a constructed area of 3220 Sq.ft. In each floor (3220 sq.ft. * 4 = 12880 Sq.ft.)
2. One three storeyed building on the rear side with a constructed area of 4200 sq.ft. In each floor. (4200 sq.ft. * 3 = 12600 sq.ft.)

Total constructed area in all the floors in the three buildings is 25480 sq.ft (12880 + 126000)

Given under my hand and seal of this Tribunal at Chennai this the 22 day of May.

(R.PANDIAN)
RECOVERY OFFICER-II"

20. Sale certificate dated 22.05.2003, has been registered as Document No.828/2003 on the file of the Joint Sub-Registrar-II, Saidapet, Chennai-15.

21. As regards the contention of the petitioner that another immovable property bearing Door No.2/4, Mount Poonamallee Road, Ramapuram, Chennai - 89, measuring 50 cents under S.Nos.151/1B and 152/2C, was purchased for a sale consideration of Rs.80,00,000/- from the Official Liquidator, High Court of Madras, representing M/s.Moolchand Exports Limited, (In Liquidation), the third respondent herein, sale notice dated 17.08.2004, supports his contention.

22. Sale Notice dated 17.08.2004, issued by the Official Liquidator, High Court of Madras, representing M/s.Moolchand

Exports Limited, (In Liquidation), third respondent herein, is reproduced hereunder:-

"IN THE HIGH COURT OF JUDICATURE AT MADRAS
ORIGINAL JURISDICTION
In the matter of the Companies Act, 1956 and
In the matter of M/s.Moolchand Exports Limited
(In Liquidation)
Company Petition No.254 of 1997
SALE NOTICE

Pursuant to the orders passed on 13.08.2004 by Hon'ble Mr.Justice, Kulasekaran of the Hon'ble High Court, Madras offers are invited in Sealed Tenders from the intending purchasers for the sale of landed property admeasuring 50 cents under Survey No.151/1B & 151/2C of the company situated at Door No.2/4, Mount Poonamallee Road, Ramapuram, Chennai - 89, excluding two buildings thereon which were sold already to another purchaser through the DRT, Chennai and the movables such as furniture and other articles on "As is where is basis". The upset price for the landed property is Rs.77,10,000/- (Rupees Seventy Seven Lakhs and Ten Thousand Only) and Rs.50,000/- (Rupees Fifty Thousand Only) for furniture and other articles. In respect of subject landed property to title deeds are available with Official Liquidator and the property is in the custody of this Hon'ble Court upon liquidation of the subject company, pursuant to Section 456(2) of the Companies Act, 1956 and the Official Liquidator has taken possession of the said property under Section 456(1) of the said Act and a notice calling objection, if any, for the sale has been published on 30.7.2004 in this Newspaper but no objection was received by Official Liquidator in this regard till date.

Details of Earnest Money Deposit to be paid with the tenders are available in the Terms and Conditions which can be obtained alongwith Tender Form from the Office of the undersigned from 20.8.2004 to 27.8.2004 during office hours. The last date of receipt of tender is 27.8.2004 upto 4.00 p.m.

The tenders shall be opened on 30.8.2004 by the Hon'ble High Court, Madras (in the Court presided over by Hon'ble Mr.Justice Kulasekaran) in the presence of tenderers who may remain present and they shall be given an opportunity to raise their bid. The sale will be conducted by the Hon'ble High Court, Madras.

The intending purchasers may take inspection of the above mentioned landed property and the movable assets of the company in liquidation at the above address on 23.8.2004 between 11 a.m. and 4 p.m.

Dated at Chennai this
(H.BANERJEE)
17th day of August 2004. OFFICIAL LIQUIDATOR
Address:- HIGH COURT, MADRAS.
O/o. the Official Liquidator, High Court,
Madras, Kuralagam Building, Block,
I Floor, Esplanade, Chennai - 600 108.
Phone Nos.25342127/25341473."

23. Perusal of the sale notice dated 17.08.2004, issued in the matter of Companies Act, 1956, in the matter of M/s.Moolchand Exports Limited (In Liquidation), in Company Petition No.254 of 1997, does not indicate the tax arrears have to be paid by the bidder. Sale deed dated 06.12.2004 has been executed by the Official Liquidator, High Court of Madras, as Liquidator of M/s.Moolchand Exports Limited, (In Liquidation), to and in favour of M/s.Gupta & Company, a Partnership Firm represented by its Managing Partner Dr.S.K.Gupta.

24. As stated supra both in the sale notices, there is any indication of the sale tax arrears to be paid by M/s.Moolchand Exports Limited (In Liquidation).

25. Commercial Tax Officer, Alandur Assessment Circle, has issued notice dated 05.01.2006, to Thiru.Dr.S.K.Gupta, Managing Partner, Tvl.Gupta & Company, No.8 & 11, Ekkattuthangal Road, Guindy, Chennai-600 032, petitioner herein, and the same is extracted hereunder:-

"Rc.23/2006/A3 Office of the Commercial Tax Officer,
Alandur Assessment Circle,
No.62, Pudupet Street,
Alandur, Chennai 600 016.
Dated : 05.01.2006

NOTICE

Sub: ARREARS - Office of the Commercial Tax Officer, Nandanam Assessment Circle - Tvl. Moolchand Exports Limited - Arrears of Rs.3,85,99,700 - for the years 1993-94 to 1996-97 - R.R.Action - Notice issued.

Ref: Commercial Tax Officer, Nandanam Assessment Circle Rc.2914/96/1999/A3, dated 26.12.2005.

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You take notice that the Commercial Tax Officer, Nandanam Assessment circle has informed that Tvl. Moolchand Exports Ltd., are in arrears of sales tax to the extent of Rs.3,38,99,770/- for the years 1993-94 to 1996-97 and the defaulters were having a Land and Building at No.151/1, Mount Poonamallee Road, Ramapuram, Chennai-89. The arrears were accrued during the year 2000.

2) It is learnt that you have purchased the said land and building situated at No.151/1, Mount Poonamallee Road, Ramapuram, Chennai - 89 by way of public auction in execution certificate No.150/2002 dated 27.08.2002 issued in O.A.No.1032/1998 by the Hon'ble Presiding Officer, Debt Recovery Tribunal, Chennai.

3) The defaulters sold the property without discharge his sales tax liability. As a result of section 24(1) of the TNGST Act 1959, a charge was created over the property for the sales tax amount due by the transferee even before the transfer was actually effected and the said charge can be enforced against the property transferred which are in the hands of the transferee. Thus even if transferer is not taken to be defaulter, the property in his hands can be proceeded against R.R.Act.

4) In view of the above circumstances, you are requested to reply as to why Revenue Recovery Proceedings should not be enforced against you for the recovery of arrears of sales tax due by Tvl. Moolchand Exports Limited under R.R.act.

Commercial Tax Officer,
Alandur Assessment Circle

To
Thiru.Dr.S.Gupta,
Managing Partner,
Tvl. Gupta and Company,

No.8 & 11, Ekkattuthangal Road,
Guindy, Chennai - 600 032.)"

26. On the same day, the Commercial Tax Officer, Alandur Assessment Circle, has also issued Form 4, dated 05.01.2006, under Section 25, which is a Demand, Prior to Attachment of Land, and the same is extracted hereunder:-

"Rc.A3/23/2006

Office of the Commercial Tax Officer,
Alandur Assessment Circle,
No.62, Pudupet Street,
Alandur, Chennai 600 016.

Dated : 05.01.2006

Form No.4

SECTION 25 - DEMAND PRIOR TO ATTACHMENT OF LAND

Notice of demand to Tvl. Moolchand Exports Limited at No.151/1, Mount Poonamallee Road, Ramapuram, Chennai - 600 089 of Manapakkam Village in Saidapet Taluk.

Take notice that the Commercial Tax Officer of Alandur Assessment Circle, Chennai - 600 016 demands, you the sum of Rs.3,85,99,770/- (Rupees Three Crores Ninety nine lakhs seven hundred and seventy only) being the arrears of sales tax for the years 1993-94 to 1996-97 under TNGST Act 1959 due from you, as holder of the lands comprised in Patta No.151/1, Mount Poonamallee Road, Ramapuram Village, Saidapet Taluk, and that you are required to pay the amount with Seven days from the date of service of this notice.

Commercial Tax Officer,
Alandur Assessment Circle,
Chennai-600 016.

To
Thiru.Dr.S.Gupta,
Managing Partner,
Tvl. Gupta and Company,
No.8 & 11, Ekkattuthangal Road,
Guindy, Chennai - 600 032.)"

27. Subsequently, Form 5 notice dated 16.01.2006 has been issued under Section 27, which is a Notice of Attachment and the same is extracted hereunder:-

"Rc.23/2006/A3 Office of the Commercial Tax Officer,
Alandur Assessment Circle,
No.62, Pudupet Street,
Alandur, Chennai 600 016.
Dated : 16.01.2006

Form No.5

SECTION 27 - NOTICE OF ATTACHMENT

Notice of attachment to Tvl.Moolchand Exports Limited, 151/1, Mount Poonamallee Road, Ramapuram, Chennai - 600 089 (Present occupier Thiru Dr.S.Gupta, Managing Partner, Tvl.Gupta and Company, No.8 & 11, Ekkattuthangal Road, Guidy, Chennai - 600 032.

Take notice that as you have not paid or shown sufficient cause for the non payment of Rs.3,85,99,770/- (Rupees Three Crores Eighty Five Lakhs Ninety nine thousand sevan hundred and seventy only)

TNGST/1990-94 to 1996-97

Although the said sum has been duly demanded in writing from you, the landed property belonging to you is hereby placed under attachment, and that unless the arrear due by you with interest and other charges be paid within SEVEN days the 23rd day of January, 2006, the landed property will be brought to sale in due course of lay. You will further take notice that from the date of this attachment notice until the date of sale of your land hereby attached. You are, and will be held liable for all kists thereon accruing and the said kists will be demanded of.

Station: Chennai-600016.
Dated : 16.01.2006.

Commercial Tax Officer,
Alandur Assessment Circle

To
Thiru.Dr.S.Gupta,
Managing Partner,
Tvl. Gupta and Company,

No.8 & 11, Ekkattuthangal Road,
Guindy, Chennai - 600 032.)"

28. Vide proceedings in Rc.120/2006/A3, dated 16.01.2006, Commercial Tax Officer, Alandur Assessment Circle, has directed the petitioner to submit a reply as to why Revenue Recovery Proceedings against the petitioner for the recovery of arrears of sales tax due by Tvl.Moolchand Leathers Limited, and reply dated 17.01.2006 and 20.01.2006 respectively, are stated to have been sent.

29. Though the instant writ petition has been filed in the year 2006 against the recovery proceedings initiated by the Commercial Tax Officer, Alandur Assessment circle, Chennai, first respondent herein, the same has been tagged along with a batch of writ petitions, on the issue, as to whether the claim of the secured creditor would prevail over the unsecured creditor, which was the subject matter of reference, before a Hon'ble Full Bench of this Court in W.P.No. 6267 of 2006 and W.P.No.253 of 2011. The issues for which reference was sought for, are hereunder:-

> "a) As to whether the Financial Institution, which is a secured creditor, or the department of the government concerned, would have the 'Priority of Charge' over the mortgaged property in question, with regard to the tax and other dues.
>
> b) As to the status and the rights of a third party purchaser of the mortgaged property in question"

30. After Considering the provisions of the statute and in particular, Section 31B of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, a Hon'ble Full Bench of this Court in W.P.Nos.2675,253 and 9750 of 2011 etc. batch of cases, vide order dated 10.11.2016, at paragraph Nos.3 to 7 held as follows:-

> "3.There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with "notwithstanding" clause and has come into force from 01.09.2016.
>
> 4. The law having now come into force, naturally it would govern the rights of the

parties in respect of even a lis pending.

5. The aforesaid would, thus, question (a) in favour of the finacial institution, which is a secured creditor having the benefit of the mortgaged property.

6. In so far as question (b) is concerned, the same is stated to relate only to auction sales, which may be carried out in pursuance to the rights exercised by the secured creditor having a mortgage of the property. This aspect is also covered by the introduction of Section 31B, as it includes "secured debts due and payable to them by sale of assets over which security interest is created".

7. We, thus, answer the aforesaid reference accordingly."

31. Thus, after reference, instant writ petition filed in the year 2006, is placed before us. In B.Suresh Chand Vs. State of Tamil Nadu, rep. by the Secretary, Revenue Department, Fort St. George, Madras-9 and another, reported in 2006 (4) CTC 805, a Full Bench of this Court, after considering a catena of judgment, at para 20 held as follows:-

"20. Therefore we hold that in view of the Honourable Supreme Court's judgment approving the law laid down in Deputy Commercial Tax Officer, Thudiyalur Assessment Circle, Coimbatore and another v. R.K.Steels, 108 STC 161 (referred to above) by its decision in State of Karnataka and another v. Shreyas Papers (P) Ltd., and others, 2006 (1) CTC 290 : 2006 (1) SCC 615, the law down by the Division Benches of this Court in the decisions in Deputy Commercial Tax Officer v. Azha Kumari, 1985 WLR 240 and Coramandel Indag Products India Limited v. Commercial Tax Officer and others, 1993 (3) MTCR 8, are no longer good law. We hold that the property purchased by a bona fide purchaser without notice of the charge under Section 24(1) of the Act cannot be proceeded against for the recovery of sales tax arrears."

In Union of India and others vs. SICOM Limited and another, reported in (2009) 2 SCC 121, the issue before the Hon'ble Supreme Court was whether the State Financial Corporation from whom money was borrowed, by executing a mortgage to the corporation, would have priority over Central Government, which intended to realise the central excise dues, by attachment and seizure of the mortgaged properties. After considering several decisions, the Hon'ble Supreme Court in SICOM's case at paras 9 and 23, held as follows:-

"9. Generally, the rights of the Crown to recover the debt would prevail over the right of a subject. Crown debt means the "debts due to the State or the King; debts which a prerogative entitles the Crown to claim priority for before all other creditors". [See Advanced Law Lexicon by P.Ramanatha Aiyar (3rd Edn.), p.1147] Such creditors, however, must be held to mean unsecured creditors. Principle of Crown debt as such pertains to the common law principle. A common law which is a law within the meaning of Article 13 of the Constitution is saved in terms of Article 372 thereof. Those principles of common law, thus, which were existing at the time of coming into force of the Constitution of India are saved by reason of the aforementioned provision. A debt which is secured or which by reason of the provisions of a statute becomes the first charge over the property having regard to the plain meaning of Article 372 of the Constitution of India must be held to prevail over the Crown debt which is an unsecured one.

"23. Furthermore, the right of a State Financial Corporation is a statutory one. The act contains a non obstante clause in Section 46-B of the Act which reads as under:

"46-B. Effect of Act on other laws.--The provisions of this Act and of any rule or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern."

The non obstante clause shall not only prevail over the contract but also other laws.(See Priyar & Pareekanni Rubbers Ltd. v. State of Kerala)."

In the light of the above discussions, the issue as to whether the right of the secured creditor over the subject property mortgaged will prevail over crown debt is no longer res integra.

32. On the aspect of protection of a bonafide purchaser, without notice, in Rukmani vs. Deputy Commercial Tax Officer I, Pattukottai I, Assessment Circle, Pattukottai, reported in (2013) 62 VST 369 (Mad), one of us (Mr.Justice S.Manikumar) considered a similar case, as to whether a bonafide purchaser,

without notice is protected. After considering M/s.R.K.Steels, reported in 108 STC Page 161 (Madras), D.Senthilkumar's case reported in (1998) 108 STC 161, on the facts and circumstances of the case in Rukmani's case discussed this Court ordered, as hereunder:-

> "14.The issue to be considered is when a bona fide purchaser of a property would be protected from the proceedings under the Revenue Recovery Act,under section 24A of the Act. In N. Padma Coffee Works' case [1999] 114 STC 494 (TNTST), the Tamil Nadu Special Taxation Tribunal, Chennai,considered a claim made by a subsequent purchaser, for protection under section 24A of the Act. After considering section 24A of the Act, section 3 of the Transfer of Property Act, 1882, section 101 of the Indian Evidence Act, 1872, the earlier decisions of this court, as well as the decision of the honourable Supreme Court in Ahmedabad Municipal Corporation of the City of Ahmedabad v. Haji Abdul Gafur Haji Hussebhai reported in [1971] 1 SCC 757; AIR 1971 SC 1201, Chogmal Bhandari v. Deputy Commercial Tax Officer reported in [1977] 40 STC 207 (SC) and Deputy Commercial Tax Officer v. R.K. Steels reported in [1998] 108 STC 161 (Mad); the Tamil Nadu Special Taxation Tribunal, Chennai, at paragraph Nos. 2, 4 and 6 held as follows (pages 96-98 in 114 STC):
>
> "2. It is no doubt true that an honest and a bona fide purchaser who had no knowledge about the encumbrance of the tax liability of the original owner is protected under the proviso (i) of section 24A of the Act which reads as follows:
>
> '24A. Transfers to defraud revenue void.- Where, during the pendency of any proceedings under this Act or after the completion thereof, any dealer creates, a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise:
>
> Provided that, such charge or transfer shall not be void, if it is made,-
>
> (i) for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the dealer: or
>
> (ii) with the previous permission of the assessing authority.' ...
>
> 4. Under section 19 of the Tamil Nadu General Sales Tax Act, 1959, (hereinafter referred to as, 'the Act'),

when the firm is liable to pay tax under the Act, the firm, and each of the partners of the firm shall be jointly and severally liable for such tax. Under this section, for the liability of the firm, the partners also are made liable and therefore their properties cannot escape for the tax liability. When such a person has effected transfer of his property during the pendency of the proceedings under the Act or after the completion thereof, it cannot be stated that he did not intend to evade the tax and therefore if the sale was to defraud the Revenue, the sale will be ab initio void. But, at the same time, the Legislature has intended to protect an honest person who had purchased the property from such a seller, if he had not colluded with the seller and he had no notice of the liability of the vendor. Under the proviso (i) to section 24A of the Act, not only adequate consideration, but also the want of notice, are the two ingredients to safeguard the purchaser.

...

6. A reading of section 3 of the Transfer of Property Act, 1882, leads to the conclusion that, not only a wilful abstention from an enquiry which a person ought to have made, but the gross negligence to make enquiry also would amount to notice of a fact to him. When the prudence of a person requires to make enquiry, but due to his own negligence he failed to make enquiry, he falls in the category of a person, with notice. A purchaser of the property when claims the transaction to be bona fide without notice, the yardstick to be applied for the 'notice' is given in section 3 of the Transfer of Property Act, 1882 and only by the application of this provision, a purchaser who seeks protection under section 24A of the Tamil Nadu General Sales Tax Act, is to be identified, whether he is a purchaser for value without notice. The necessity of the purchase, the intention of the transfer, the relationship between the vendee and vendor are all vital factors to find out the reasonableness of the person in purchasing the property. Sometimes unexplained secrecy or the haste in the transactions may also throw some light as to the bona fide or mala fide. To decide whether a transaction was genuine or bona fide or mala fide, all facts relating to the conduct of the parties to the transaction have to be weighed as a whole. Such enquiry on disputed facts is not possible in the proceedings under article 226 of the Constitution of India, because the enquiry under these proceedings will be on admitted facts or on the question of law. The controversies as to the facts can be proved

only by evidence. For the mere assertions in the affidavit of these petitioners that they are bona fide purchasers, the court or Tribunal cannot simply nod its head to give the relief as prayed for. The petitioners in these proceedings have not disputed the liability of their vendors to pay the sales tax, even at the time of the sales, but claim protection under the exception clause, for which the parameters of section 3 of the Transfer of Property Act, 1882, have to be applied. This can be done only in a regular suit where there is scope for the evidence to prove the conduct of the parties in making the enquiries with prudence, or utter negligence and the real intention in their mind. Every purchaser from the assessee is naturally interested to protect the property and will claim to be a bona fide purchaser. For the sake of their claim, the court cannot approve the transaction as a bona fide sale."

15. N. Padma Coffee Works' case [1999] 114 STC 494 (TNTST), has been relied on by a honourable judge of this court, while dismissing a Writ Petition (MD). No. 1277 of 2005, dated February 28, 2005 (R. Balasubramaniam v. Additional Deputy Commercial Tax Officer III, Thoothukudi). The appeal preferred by the subsequent purchaser in W.A. (MD). No. 130 of 2005, has been dismissed on February 7, 2008 (R. Balasubramaniam v. Additional Deputy Commercial Tax Officer). However, in D. SenthilKumar's case reported in [2006] 148 STC 204 (Mad), the First Bench of this court, presided over by the honourable Chief Justice, who was also a party to the unreported judgment in W.A. (MD). No. 130 of 2005, dated February 7, 2008 (R. Balasubramaniam v. Additional Deputy Commercial Tax Officer), has considered a similar issue, as to whether a purchaser of a property in execution of the recovery certificate issued by the Debts Recovery Tribunal and who was not aware of the arrears of sales tax dues under the Act, can claim exemption from the action for recovery of the said arrears and whether a charge can be enforced against the transferee, if he had no notice thereof and whether the requirement of such notice had been waived, if there is a bona fide purchase.

16. In W.A. (MD). No. 130 of 2005, dated February 7, 2008 (R. Balasubramaniam v. Additional Deputy Commercial Tax Officer), decided subsequently, there is no reference to the earlier decision of the honourable First Bench in D. Senthil Kumar's case, reported in [2006] 148 STC 204 (Mad). Probably, the parties to W.A. (MD). No. 130 of 2005, dated February 7, 2008 (R. Balasubramaniam v. Additional Deputy Commercial Tax Officer), would not have brought to the notice of the

earlier decision to the Bench.

17. When the correctness of a notice of recovery issued to a subsequent purchaser came up for consideration before the Division Bench in D. Senthil Kumar's case, reported in [2006] 148 STC 204 (Mad), it has been contended, inter alia, that the appellant therein was a bona fide purchaser for valuable consideration, and hence, his case was covered within the exempted category, as provided under section 24A of the Act. The appellant has also contended that no encumbrance could be created, in view of the fact that the property had already been transferred in his favour, and hence, the question of creating any encumbrance in respect of the same does not arise. Reference has also been made to the Transfer of Property Act, 1882 and the appellant has also submitted that a charge created under the Tamil Nadu General Sales Tax Act, 1959, cannot bind a bona fide purchaser for valuable consideration without notice and in the absence of any provision requiring to dispense with such a notice, under the Tamil Nadu General Sales Tax Act, 1959, it would not be permissible for the sales tax authorities to proceed against the transferee, who had purchased the property for valuable consideration, without notice.

18. In the reported case, per contra, learned Special Government Pleader for the Department has submitted that since a charge over the property of the defaulting firm had been created under the Tamil Nadu General Sales Tax Act, 1959, the appellant, as transferee of the said property, has held the property subject to that charge, and therefore, the Department can take appropriate action.

19. While adverting to the aforesaid rival submissions, in D. Senthil Kumar's case reported in [2006] 148 STC 204 (Mad), the honourable Division Bench, at paragraph No. 8, held as follows (pages 208-211 in 148 STC):

"8. The short question is whether the charge created on a property under the TNGST Act is enforceable against a transferee of such property. The expression 'charge' is not defined by the TNGST Act. However, this concept is well-known in law of transfer of property and has been defined by section 100 of the Transfer of Property Act, wherein the word 'charge' is defined as follows:

'Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simply mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.' (emphasis supplied).

As the section itself indicates, a charge may not be enforced against a transferee if he/she has had no notice of the same, unless by law, the requirement of such notice had been waived.

The provisions of section 100 of the Transfer of Property Act fell for consideration of the Supreme Court in Ahmedabad Municipal Corporation of the City of Ahmedabad v. Haji Abdul Gafur Haji Hussenbhai [1971] 1 SCC 757; AIR 1971 SC 1201. In that case, the respondent was in arrears of property tax, due under the Bombay Provincial Municipal Corporation Act, 1949. Consequently, the Municipal Corporation created a charge over the property of the defaulter. However, the property was sold in execution of a mortgage decree. When the Municipal Corporation purported to exercise their charge over the property, the purchaser in court auction filed a suit for a declaration that he was the owner of the property and that the arrears of municipal taxes due by the transferor were not recoverablefrom him by proceeding against the property purchased in the auction. In the appeal before the Supreme Court, the MunicipalCorporation's main argument was that where the local law provided for the creation of a charge against a property for which municipal taxes were due, transferees of such properties were imputed with constructive knowledge of any charge created against the properties that they had purchased. This argument was, however, rejected. The court held that while constructive notice was sufficient to satisfy the notice in the proviso to section 100 of the Transfer of Property Act, whether the transferee had constructive notice of the charge had to be determined on the facts and circumstances of the case. In other words, the Supreme Court held that there could be no fixed presumption as to the transferee having constructive notice of the charge against the property.

The principle laid down in Ahmedabad Municipal Corporation's case [1971] 1 SCC 757; AIR 1971 SC 1201 has been applied in a sales tax case arising under the Karnataka Sales Tax Act, 1957 in State of Karnataka v. Shreyas Papers P. Ltd. [2006] 144 STC 331 (SC); [2006] 1

SCC 615. There, following the decision in Ahmedabad Municipal Corporation's case [1971] 1 SCC 757; AIR 1971 SC 1201, the Supreme Court held as follows (paras 18 and 19 in 144 STC):

'22. In the present case, firstly, no provision of law has been cited before us that exempts the requirement of notice of the charge for its enforcement against a transferee who had no notice of the same. It remains to be seen, therefore, if in the facts of the present case, the first respondent had notice-actual or constructive-of the charge. At the outset, in the advertisement/notice dated March 17, 1992, issued by the Corporation, mention is only made of the sale of the defaulting company's assets and there is no indication, whatsoever, of any sales tax arrears. Further, the bid offer made on behalf of the first respondent on June 5, 1992 specifically excludes any statutory liabilities, including sales tax. This offer was accepted by the Corporation on July 15, 1992. Even at that stage, there was no mention of any sales tax arrears. The sale of the assets took place pursuant to the agreement dated August 12, 1992 in which a specific clause was inserted that the first respondent would be liable to pay all property taxes, other taxes, electricity bills, water taxes and rents from the date of the agreement (i.e., August 12, 1992). For the first time, by letter dated January 8, 1993 of the second appellant to the Mandal Panchayat, Aloor Taluk, the issue of sales tax dues of the defaulting company was brought to the surface. This is further borne out by the correspondence between the first respondent and the Corporation. Thus, it is evident that the first respondent had no actual notice of the charge prior to the transfer. As to whether the first respondent had constructive notice of the charge, no substantive argument on this issue was made, either before the High Court or at any rate before us. Hence, we cannot hold that the first respondent had constructive notice of the charge.

23. In these circumstances, we are of the view that the first respondent was a purchaser for value without notice of the sales tax arrears of the defaulting company or the consequent charge on the property. This would, therefore, attract the principle laid down by this court in Ahmedabad Municipal Corporation's case [1971] 1 SCC 757; AIR 1971 SC 1201, which is also embodied in the proviso to section 100 of the T.P Act. Thus, the property in the hands of the first respondent was free of the charge and it is not open to the appellants to enforce the liabilities of the defaulting company in this manner against the first respondent.'

In Shreyas Papers' case [2006] 144 STC 331 (Karn); [2006] 1 SCC 615, the Supreme Court also referred to the decision of a Division Bench of this court in Deputy Commercial Tax Officer v. R.K. Steels reported in [1998] 108 STC 161 (Mad), where this very question arose under section 24 of the TNGST Act. In that case, the assessee-firm was in arrears of tax from the assessment years 1976-77 to 1979-80. The assessee-firm was closed on October 19, 1979. Thereafter, the land belonging to the firm was sold by one of the partners of the firm on December 30, 1981. The purchaser had no notice of the charge over the property by virtue of sales tax dues. The purchaser challenged the form 7 notice issued under the Tamil Nadu Revenue Recovery Rules on the ground that he is a bona fide purchaser without notice of charge under the TNGST Act. The Division Bench held that no provision is made in the TNGST Act contrary to section 100 of the Transfer of Property Act and therefore, a bona fide purchaser for consideration without notice is protected."

20. It is a well-settled legal position that a judgment rendered by a court, taking into consideration of the later judgment of the Supreme Court, on the same issue is binding. Later judgment of the Supreme Court, on the point of law, would prevail over the former. One of the issues considered by another Division Bench of this court in A. Senthilkumar v. Assistant Commissioner (CT), Koyembedu Assessment Circle reported in [2011] 1 CTC 828, was whether the arrears of sales tax would prevail upon the claim of the secured debtors, like a bank, on the basis of the charge over the property and if the purchaser establishes that he is a bona fide purchaser, without notice, in a valid sale, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for brevity, "the SARFAESI Act"), whether the property can still be brought for public auction, for recovery of sales tax arrears, due to the Government. In the above reported A. Senthilkumar's case [2011] 1 CTC 828, at paragraph No. 10, the honourable Division Bench has held as follows:

". . . The tax due would be a charge as per section 24(1) of the Act. Section 24(1) creates charge whereas section 24(2) gives preference/ priority to the tax arrears over other claims except the claim of the Land Development Bank over property mortgaged under section 28 (2) of the Tamil Nadu Co-operative Land Development Bank Act, 1934. Therefore, it is very evident that except the claim of the Land Development Bank, the tax arrears would be given priority and it would be the 'first charge' on the property and would have priority over other claims."

21. Following the aforesaid decision in A. Senthilkumar's case [2011] 1 CTC 828, a honourable judge of this court in W.P. No. 36547 of 2007, dated June 6, 2011 (Ravindranath (K) v. Authorised Officer and Chief Manager, Indian Bank), has set aside the recovery notice issued section 11(2) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, in respect of arrears of contribution, wherein a charge was created in respect of the property.

24. Placing reliance on a judgment of this court in A. Senthilkumar v.This copy was printed from VATLaws licensed to: R.S. GoyalVATLaws (Readable Version) - Wednesday, March 19, 2014 Assistant Commissioner (CT), Koyembedu Assessment Circle, Chennai reported in [2011] 1 CTC 828, a honourable judge set aside the impugned demand notice issued by the Regional Provident Fund Commissioner II and Recovery Officer, the second respondent therein.

25. Thus, in the light of the above judgments, it could be seen that even though a charge is created on the properties on the finalisation of the assessment of tax or contribution to the Regional Provident Fund Commissioner, as the case may be, and a demand is raised, the same would not preclude the bona fide purchaser from seeking protection under section 24A of the Act. Constructive notice means, "legal inference from established facts". "Notice imputed by the law to a person not having actual notice". "Knowledge of any fact which would put a prudent man upon inquiry." "Knowledge of such facts as should induce inquiry, and as would lead to injury in the case of an ordinarily prudent man and which cannot be neglected without a voluntary closing of the eyes, and conduct inconsistent with good faith."

28. Even in N. Padma Coffee Works' case [1999] 114 STC 494 (TNTST) the Special Tribunal has clearly observed that the legislative intent in engrafting proviso to section 24A of the Act, is to protect a honest person, who had purchased the property from a seller and further observed that there should not be any collusion with the seller, but the necessary ingredients of section 24A of the Act should be there, i.e., the sale effected should be for adequate consideration and want of notice. Unless the charge is duly registered in the Registration Department, it would not be possible for any prospecting buyer to know whether there is any charge over the property, for any arrears of tax or any statutory dues to be paid to the Government or statutory body. That apart, there are no materials to indicate that the petitioner had any constructive notice of the charge. There is no pleading to the effect and rightly, no arguments have

been advanced, and therefore, this court is of the view that the case on hand would squarely also fall within the ambit of the apex court in Ahmedabad Municipal Corporation's case reported in [1971] 1 SCC 757; AIR 1971 SC 1201 also. On the facts and circumstances of this case, this court is of the view that the legislative protection has to be extended to the petitioner."

33. Mr.V.Ramesh, learned counsel for the petitioner submitted that the decision in Rukmani's case, has not been challenged on appeal, by the Revenue. Said submission is not refuted by the revenue. Portion of the property has been sold by the Recovery Officer - II, Debts Recovery Tribunal - I, Chennai, the fourth respondent herein, and another portion of the property has been sold by the Official Liquidator, Hight Court of Madras. No material has been placed by the respondents that the writ petitioner was put on notice of the arrears of tax due and payable by M/s.Moolchand Exports Limited (In Liquidation), Chennai - 108, and the creation of charge over the property. No encumbrance has been made in the office of the Sub-Registrar, within whose territorial jurisdiction, properties are situated.

34. Though Mr.M.Hariharan, learned Additional Government Pleader (Taxes), contended that the Sales Tax Department had already informed the arrears of tax due and payable by M/s.Moolchand Exports Limited, to the Tribunal, sale notice does not reflect any condition imposed on the bidders to pay the arrears of tax, payable by M/s.Moolchand Exports Limited to the Government.

35. As rightly contended by Mr.V.Ramesh, learned counsel for the petitioner, in the absence of any specific condition, in the sale notice that, arrears of tax due and payable by M/s.Moolchand Exports Limited, has to be paid by the auction purchaser, in the sale notice we are of the view that sale notice he should be treated as a be bonafide purchaser, without notice.

36. Thus, on the facts and circumstances of the case, and in the light of the decisions, considered supra, we hold that the petitioner is bonafide purchaser and that he should not be imposed with any liability to pay arrears of tax, payable by M/s.Moolchand Exports Limited, (In Liquidation), Chennai. Proceedings impugned, are liable to be set aside and accordingly set aside.

37. In the result, the Writ Petition is Allowed. No Costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

dm

To

1.The Commercial Tax Officer,
Alandur Assessment Circle,
62, Pudupet Street, Alandur,
Chennai - 16.

2.The Commercial Tax Officer,
Nandanam Assessment Circle,
Greenways Road,
Chennai - 28.

3.The Official Liquidator,
High Court of Madras,
Representing M/s.Moolchand
Exports Limited, (In Liquidation),
Kuralagam Building,
First Floor, Chennai - 108.

4.The Recovery Officer - II,
Debt's Recovery Tribunal - I,
Spencer Plaza, 6th Floor,
770-A, Annasalai,
Chennai - 600 002.

+1cc to Mr.S.R.Sundar, Advocate SR.No.18597
+1cc to Mr.V.Ramesh, Advocate SR.No.18186
+1cc to MR.S.Senthuraman, Advocate SR.No.18214
+1cc to Special Government Pleader(Taxes) SR.No.18579

W.P.No.6267 of 2006

PA(CO)
GN(04/04/2018)