IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19473 of 2018 &
W.M.P.No.22904 of 2018

Hema Engineering Industries Ltd.,
Represented by Mr.Suresh Kumar Kalra,
VP-Legal, Taxation & Company Secretary,
Plot No.G-47 & G-77, SIDCO Industrial Estate,
Kakkalur, Thiruvallur District,
Thiruvallur - 602 003. ... Petitioner

vs.

1. The Assistant Commissioner,
Office of the Assistant Commissioner (ST),
Korattur Assessment Circle,
No.52/98, Yadaval Street,
Chennai - 600 050.

2. SAS Autocom Engineers India Pvt. Ltd.,
Represented by its Director Mr.S.Shyamraj,
C-34, SIDCO Industrial Estate, SIDCO, Hosur,
Krishnagiri District - 635 126.
... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records in the proceedings in Revised Notice No.RC.242/2016/A3 dated 19.03.2018, issued by the 1st Respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mrs.G.Dhanamadhri,
Government Advocate - for R1

O R D E R

Heard Mr.Joseph Prabakar, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate for the 1st Respondent.

2. The petitioner is aggrieved by the notice issued by the 1st respondent stating that the 2nd respondent is in arrears of Sales Tax payable to the Government and that the petitioner has purchased the property of the 2nd respondent/defaulter on 02.05.2016 but the arrears have been accrued earlier i.e., from 12.11.2015. The property purchased by the petitioner is liable to the proceeded with under the provisions of the Revenue Recovery Act. The notice grants 15 days time to the petitioner to submit their objections.

3. The learned Government Advocate raised preliminary objection as regards the maintainability of the Writ Petition on the ground that the impugned proceedings is only a notice.

4. I heard the learned counsel for the petitioner on the above submissions.

5. Though the impugned proceeding is a show cause notice, if it is established that it is in violation of statutory provision or if it suffers from lack of jurisdiction, the court could have justified in entertaining the Writ petition. Therefore, availability of an alternative remedy is not always a bar in entertaining a writ petition. The second reason for entertaining the writ petition is that even as per the written instructions given by the 1st respondent to the learned Government Advocate, the encumbrance on the petitioner's property for the default committed by the 2nd respondent was made only on 27.02.2018 is much after the petitioner had purchased the property vide registered Sale Deed dated 02.05.2016. Therefore, any subsequent attachment made by the 1st respondent cannot bind the petitioner. More or less, identical facts were considered by this Court in the case Noor M.Saied v. The Commercial Tax Officer, Thiruvanmiyur Assessment Circle, Chennai made in W.P.No.30793 of 2007, [2018 (9) G.S.T.L. 63 (Mad.)] and after taking note of the decision in the case of Deputy Commercial Tax Officer, Thudiyalur Assessment Circle, Coimbatore and another v. R.K. Streets reported in (1998) 101 STC 161, wherein it was held that the respondent therein being a bona fide purchaser, without notice of the charge under Section 24 (2) of the Tamil Nadu General Sales Tax Act, 1959 and therefore, the property cannot be proceeded for recovery of arrears of tax. The Court also referred to the decision in the cases of Raghuvar (India) Limited Vs. Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur reported in (2006) 144 STC 331, D.Senthil Kumar and others Vs. Commercial Tax Officer, Erode and another reported in [2006] 148 STC 204 (Mad), and Rukmani Vs. The Deputy Commercial Tax Officer (CDJ 2012 MHC 5515). The operative portion of the order reads as follows:-

"3. In the case of Deputy Commercial Tax Officer, Thudiyalur Assessment Circle, Coimbatore and another Vs.R.K.Streels reported in (1998) 101 STC 161, the Court considered somewhat a similar case and held that the respondent therein is a bona fide purchaser without notice of charge under Section 24(2) of the Tamil Nadu General Sales Tax Act, 1959 and therefore, the property cannot be proceeded against for the recovery of sales tax arrears. In the case hand, there is no charge on the property and there is no doubt about the bonafide of the purchase made by the petitioner, because it is TIIC who brought the property for sale. In Raghuvar (India) Limited Vs. Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur reported in (2006) 144 STC 331, the Court considered the case of similar purchaser who had purchased the property without notice of Sales Tax arrears and it was held that the property, at the hands of the purchaser, was free of charge and it was not open to the Sales Tax Department to enforce the liability of the defaulter against the purchaser. In D.Senthil Kumar and others Vs. Commercial Tax Officer, Erode and another reported in [2006] 148 STC 204 (Mad), the Hon'ble Division Bench has held that the appellants therein, as transferee for the properties for valuable consideration without the notice of the charge are entitled for direction as mentioned above. The petitioner's case is on a better footing as there was no charge on the property. In Rukmani Vs. The Deputy Commercial Tax Officer (CDJ 2012 MHC 5515), a similar view was taken and it was held that there is no material placed before them to prove that steps have been taken under the provisions of the Revenue Recovery Act against the delinquent or the subsequent first purchaser, and therefore the petitioner therein cannot be penalized. The above decisions are fully in support of the petitioner. Thus, for all the above reasons, this Court is of the firm view that the impugned notice is unsustainable in law.

6. On facts, the petitioner is better placed than Noor.M.Saied (cited supra) in the sense that, the purchase was made by the petitioner through bankers of the 2nd respondent vide registered sale deed dated 02.05.2016 and 30.06.2016. Admittedly, on the said date there was no attachment of the property in question. Therefore, the subsequent attachment or

the proceedings initiated by the 1st respondent would neither bind the petitioner nor the 1st respondent can proceed against the property owned by the petitioner, as they are a bona fide purchaser for valuable consideration much prior to action being initiated by the 1st respondent.

7. The learned counsel for the petitioner informs the Court that the 2nd respondent is still carrying on business and it is not known as to why the 1st respondent has not proceeded against the 2nd respondent which would have been the proper course.

8. Hence, for the above reasons, the writ petition is allowed and the impugned p\notice is quashed as being without jurisdiction with a direction to the 1st respondent to lift the attachment and accordingly intimate the Sub Registrar, Hosur, to remove the encumbrance, within one week from the date of receipt of copy of this order. The 1st respondent is at liberty to proceed against the 2nd respondent/defaulter in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Assistant Commissioner
Office of the Assistant Commissioner (ST)
Korattur Assessment Circle
No.52/98, Yadaval Street
Chennai - 600 050.

2.The Sub Registrar,
Hosur.

+1cc to Mr.Joseph Prabakar , Advocate, S.R.No.52323

+1cc to the Government Pleader, S.R.No.57533

W.P.No.19473 of 2018 &
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RK(CO)
GSP(28/08/2018)