IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.07.2019

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.12241 of 2007

Canara Bank,
represented by its Manager
S.Viswanathan
Asset Recovery Management Branch,
Spencer Tower-II, First Floor,
770, Anna Salai, Chennai-600 002. ... Petitioner

Vs

The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
'Sire Mansion', Second Floor,
621, Anna Salai,
Chennai- 600 006. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the files of the respondent herein in Rc.4083/2000/A3 dated 15.02.2007 and quash the same as illegal and direct the respondent to forthwith issue to the petitioners, copies of the orders of assessment of Disco Stone Indo Limited, the alleged defaulter for the Assessment years TNGST. 1996-97, 1997-98 and CST.1997-98 based upon which demands are being raised against the petitioners.

For Petitioner :Mr.K.A.Parthasarathy

For Respondent :Mrs.Dhanamadhri
Government Advocate

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ORDER

Consequent to the issuance of 'B6' attachment notice, the impugned order in Rc.4083/2000/A3 dated 15.02.2007 has been passed by the respondent herein, calling upon the petitioner to send a Demand Draft for the Sales Tax arrears of M/s.Disco Stone

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India Limited, for the Assessment years 1996-97 to 1997-98. Apparently, the respondent herein had invoked Section 26 of the TNGST Act, 1959, on the ground that they are entitled to have the first charge over the property of the assessee, under Section 24 of the Act.

2.The issue as to whether the financial institution would have the priority of charge over the mortgaged property has been decided by the Hon'ble Full Bench of the Court in the case of the Assistant Commissioner Vs. Indian Overseas Bank and another, reported in [2017] 99 VST 222(Mad) and it was held therein that the financial institution which is a secured creditor would have the priority of charge over the mortgaged property.

3.The decision of the Hon'ble Full Bench of this Court, has been challenged before the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No(s).20471 of 2017 and by an order dated 16.03.2018, it was held that the status quo as it exists today, shall be maintained by the parties till the disposal of the S.L.P. The mortgaged property of the assessee was auctioned on 18.10.2006 and the sale certificate was also issued on 26.11.2006 which were all pursuant to the orders of the Debt Recovery Tribunal.

4.The learned Government Advocate on the other hand would submit that even prior to the sale proceedings, the respondents had issued 'B6' notices on the petitioner bank and the sale that took place after such notices cannot be sustained. Whatsoever be the position, the fact remains that the transaction of this nature requires to be sustained till the S.L.P., before the Hon'ble Supreme Court is disposed of, in view of the status quo order granted therein on 16.03.2018.

5.As such it would not be appropriate for this Court to interfere with the impugned order and the appropriate remedy would be to await for the final outcome of the S.L.P. The respondent herein would thereafter be at liberty to workout their remedy for recovery of the tax arrears, based on the decision to be rendered by the Hon'ble Supreme Court.

6.In the light of the above observation, this writ petition is disposed of, by granting liberty to the respondent to workout their remedies, subject to the outcome of the final decision in Special Leave Petition (Civil) Diary No(s).20471 of 2017 or any other interim order / modified orders that may be passed by the Hon'ble Supreme Court in the aforesaid case, after giving due opportunities to the petitioner to raise their objections including the opportunity of personal hearing. Till such decision is taken by the respondents to invoke their liberty, the respondent shall not take any further coercive

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action, pursuant to the impugned order in Rc.4083/2000/A3 dated 15.02.2007. In case, any rights accrues in favour of the petitioner in the final decision to be taken in the S.L.P., the petitioner is also granted liberty to workout their remedies. No costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
'Sire Mansion', Second Floor,
621, Anna Salai, Chennai- 600 006.

+1cc to Mr.N.Inbarajan Advocate, S.R.No.64777
+1cc to the Government Pleader, S.R.No.65009

NRL(CO)
CB(06/09/2019)

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