IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.42171 of 2006

1.P.Ellappan
2.Mrs.E.Devanai
3.E.Murugesh
... Petitioners

Vs.

The Commercial Tax Officer,
Hosur South,
Hosur.
... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari call for the records of the Respondent pertaining to the Impugned Notice dated 15.09.2006 in R.O.C.No.2591/1998-A3 and quash the same.

For Petitioners : Mr.T.Jothi for P.Muralidharan

For Respondent : Ms.G.Dhana Madhri
Government Advocate (Taxes)

O R D E R

This Writ Petition is filed to quash the Notice dated 15.09.2006 in R.O.C.No.2591/1998-A3.

2.The Petitioners state that the first Petitioner purchased the land and building situated at Shed No.A-7, SIDCO Industries Estate in Survey No.20, Zuzuvadi Village, Hosur Taluk, Krishnagiri District ad- measuring an extent of 9570 sq.ft. through a Sale Deed dated 09.08.2000 in Document No.2853 for a valuable sale consideration of Rs.4,64,000/-. It is further stated that the Second Petitioner purchased the Property situated at Survey No.20 at Zuzuvadi Village, ad-measuring an extent of 12045 sq.ft. through a Sale Deed dated 09.08.2000 for a valuable sale consideration of Rs.4,58,000/- and that the Third Petitioner purchased the property situated at Survey No.20 & 21 in Zuzuvadi Village, ad-measuring an extent of 12105 sq.ft. through a Sale Deed dated 09.08.2000 for a valuable sale consideration of Rs.4,60,000/-. It is further stated that all the Petitioners purchased the properties from the following persons, namely, 1)Fathima, 2)Nazaquat 3)Alefiya and 4)Shamina. After purchasing the said properties from their vendors, the Petitioners were shocked and surprised to receive a notice dated 15.09.2006 from the Respondent under Section 25 of the Tamil Nadu Revenue Recovery Act,1864. By this notice, the Petitioners were called upon to pay a sum of Rs.18,27,401/- as Sales Tax dues from the vendors of the Petitioners, namely. TVL Industry Lamination(Tamil Nadu). The present Writ Petition has been filed challenging the said Impugned Notice dated 15.09.2006.

3.The Petitioners submitted a copy of the three Sale Deeds each dated 09.08.2000 and a copy of an Encumbrance Certificate (E.C) dated 13.03.2000. The E.C. is for the period from 01.01.1979 to 29.02.2000 and the only encumbrance reflected therein is the Sale Deed dated 12.04.1989 executed by the Tamil Nadu Small Industries Development Corporation(SIDCO) in favour of Industrial Lamination. The Petitioners have also filed a copy of an Indemnity Bond dated 26.04.2000 executed by the vendors indemnifying them in respect of any dues including statutory dues relating to the said property.

4.At the hearing, the learned counsel for the Petitioners submitted that the Petitioners are not liable to pay the Sales Tax dues of the previous vendor/assessee of the Sales Tax Department. In addition, the Petitioners submit that the property was purchased by the Petitioners as bona fide purchasers for valuable consideration and without notice of the prior charge in favour of the Sales Tax Department. Therefore, it is submitted that the charge cannot be enforced against the property in the hands of the Petitioners. Hence, the Impugned Notice is liable to be quashed.

5.In response, the learned counsel for the Respondent submitted that the Respondent has a statutory charge over the property under Section 24(1) of the Tamil Nadu General Sales Tax Act, 1959(the TNGST Act) in view of the non-payment of tax dues by the erstwhile owner of the property within 21 days of the notice of demand after assessment thereof. It is further submitted that as per Section 24A of the TNGST Act, any transfer, including sale, by the assessee in default is void.

6.The affidavit, counter affidavit, documents and oral submissions of the parties were considered carefully.

7.From the documents, it is clear that the Petitioners purchased the property from the erstwhile owners/assessee of the Sales Tax Department on 09.08.2000. It is also clear from the E.C. dated 13.03.2000 that the charge in favour of the Sales Tax Department is not reflected in the E.C. Therefore, there are no materials to conclude that the Petitioners were put on notice either actual or constructive, about the statutory charge in favour of the Sales Tax Department.

8.The Hon'ble Supreme Court in AHMEDABAD MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD Vs. HAJI ABDUL GAFUR HAJI HUSSENBHAI in AIR 1971 SC 1201 held that, as per Section 100 of the Transfer of Property Act,1882, a charge cannot be enforced against a transferee without notice unless the statutory provision in question expressly permits the enforcement of the charge in spite of not putting the transferee on notice. Accordingly, the limited issue that arises for consideration is whether the charge under Section 24(1) of the TNGST Act can be enforced against the property in the hands of the Petitioners. This issue is no longer res integra and it was decided that such a charge cannot be enforced against a transferee without notice by a Division Bench of this Court in DEPUTY COMMERCIAL TAX OFFICER, THUDIYALUR ASSESSMENT CIRCLE, COIMBATORE AND ANOTHER Vs. R.K.STEELS in 1998 (1) CTC 124, which was subsequently followed by a Division Bench of this Court in M/s.GUPTA & COMPANY Vs. THE COMMERCIAL TAX OFFICER in W.P.No.6267 of 2007 and also recently by this Court in Order dated 26.03.2018 in DAKSHINAMURTHY Vs. COMMERCIAL TAX OFFICER IN W.P.No.36469 of 2006 wherein, at paragraph 13, it was held as follows:

> 13.From the aforesaid discussion and the precedents adverted to above, the principles of law that can be gleaned in respect of the enforcement of charges, including statutory charges, are as under:
>
> (i)A mortgage is a transfer of interest in property and, therefore, attaches itself to and moves with the property. Accordingly, it would be enforceable in the hands of a transferee without notice, including the ultimate transferee in case of multiple transfers.
>
> (ii)By contrast, there is no transfer of interest in a charge and, therefore, as per Section 100 of the TPA, notwithstanding the fact that a charge holder has the same rights as a simple mortgagee, a charge is enforceable against the property in the hands of a transferee only if the transfer was not bona fide and the transferee had either actual or constructive notice of the prior charge.

(iii) If the relevant statute provides that the charge can be enforced against the property in the hands of a transferee without notice, it can be enforced notwithstanding the fact that the transferee is a bona fide purchaser for value without notice of the prior charge.

(iv) Section 24 A of the TNGST Act does not stipulate that the charge can be enforced against the property in the hands of a transferee without notice of the prior charge.

9.In view of the foregoing discussion and analysis, this Writ Petition is liable to be allowed and the Impugned Notice is liable to be quashed.

10.In the result, this Writ Petition is allowed and the Impugned Notice dated 15.09.2006 is quashed. There shall be no order as to costs. However, the Respondent is at liberty to initiate appropriate proceedings against the assessee in accordance with law in order to recover its dues.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rrg

To

The Commercial Tax Officer,
Hosur South,
Hosur.

+1cc to Special Government Pleader(Taxes)

W.P.No.42171 of 2006

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