BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.07.2019
CORAM
THE HONOURABLE DR.JUSTICE ANITA SUMANTH
W.P(MD)No.4616 of 2012
and
W.M.P.(MD)No. 2 of 2012

M/s.Sri Mappillai Vinayagar Roller Flour Mill,
Rep.by its Partner, K.Balamuruganandam,
163, Nethaji Road,
Madurai. ... Petitioner

Vs.

The Commercial Tax Officer,
Nethaji Road Circle,
Dr.Thangaraj Salai,
Madurai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari, to call for the records relating to the impugned proceedings issued by the respondent in Na.Ka.No.A3/1525/07 dated 04.02.2008 in the form of public notice in Form-5 for attachment and Form-7A of public auction of land situate at Survey No.166/6A, 166/7A, 166/6A, 166/6 admeasuring 94 cents, Sithalangudi Village, T.Vadipatti Taluk, Madurai District, published in the Madurai District Gazette, dated 08.05.2008 and quash the same as illegal and in violation of the provisions of Revenue Recovery Act and without jurisdiction.

For Petitioner : Mr.B.Saravanan
For Respondent : Mr.R.Murugan
Additional Government Pleader

ORDER

The petitioner is a partnership firm and is an assessee in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006. The petitioner challenges Notification dated 04.02.2008, issued in the form of public notice in Form 5 for attachment and form 7-A for public auction of land situated at Survey No.166/6A, 166/7A and 166/6 admeasuring in *toto* 94 cents at Sithalangudi Village, T.Vadipatti Taluk, Madurai District Village, Vadipatti Taluk, Madurai District (in short 'property in question') published in the Madurai District Gazette, dated 08.05.2008.

2. The challenge to the Notification is on the ground that the attachment is ostensibly to protect the interests of the revenue as against the tax arrears of an individual namely K.Kathirvel. However, the settled position in law is that an asset of a firm

cannot be attached for the tax arrears of a third party, even assuming such third party were a partner in the very same firm, whilst the reverse might well be possible.

3. The counter filed by the respondent states at paragraph 8, that the impugned auction is proposed as against the dues of the petitioner. However, this runs contra to the impugned Notification, which clearly states that K.Kathirvel is the defaulter. This Court in the case of *Sri Mappillai Vinayagar Spinning Mills and Sri Manicka Vinayagar Spinning Mills Vs. Commercial Tax Officer* in W.P.(MD)No.159 of 2008 dated 30.01.2008 has considered a similar matter *inter se* the petitioner in that case, one Sri Mappillai Vinayagar Spinning Complex, and K.Kathirvel. In fine, this writ petition is allowed and impugned notification is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commercial Tax Officer,
Nethaji Road Circle,
Dr.Thangaraj Salai,
Madurai.

+1 CC to Mr.B.SARAVANAN, Advocate (SR-74920[F] dated 12/07/2019)
+1 CC to SPL GP (SR-75036[F] dated 12/07/2019)

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