IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.35283 of 2005

Indo Skins Garments (P) Ltd.,
S3, Thiru. Vi. Ka. Estate,
(Behind State Bank of India),
Guindy,
Chennai - 600 032. ...Petitioner

vs

1.Commercial Tax Officer,
Chengalpattu.

2.Tamil Nadu Small Industries
Development Corporation Limited,
Registered Office at Paulwels Road,
Kathipara Junction,
Chennai - 600 016. ...Respondents

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 first respondent in RC.No.3627/99/A3 dated 23.10.2003 and quash the proceedings of the first respondent in RC.No.3627/99/A3 dated 23.10.2003 in so far as it pertains to demand of tax, surcharge, additional surcharge, additional tax and penalty imposed under TN Sales Tax Act, 1959.

For Appellant : Mr.N.Inbarajan
For Respondents : M/s.G.Dhanamadhri, GA (T)

ORDER

This case was originally filed in OP.No.1426 of 2003 before the Tamil Nadu Taxation Special Tribunal, Chennai. Pursuant to the abolition of the aforesaid Tribunal, this Original Petition was transferred to this Court and re - numbered as Writ Petition.

2. The petitioner has challenged the impugned notice dated 12.06.2003 issued under section of 25 of the Revenue Recovery Act . The said notice reads as under:

> "Section 25 - Demand prior to attachment of land
> Notice of demand to M/s.G.K.Tanks and Equipments E.P.14, Industrial Estate, of Maraimalai Nagar Village in Chengalpattu Taluk.
>
> Take notice that the CTO Chengalpatu Assessment Circle, demands you the sum of Rs.4,87,996/- being the arrears of Revenue due from by you for year 91-92 to 95-96 as holder of the land comprised in patta no.EP-14 SIDCO Industrial Estate of Maraimalai Nagar Village and that you are required to pay the amount within 7 days from the date of service of this notice.
>
> You are now required to pay ------ on account of peon's batta".

3. Pursuant to the impugned notice in Form No. 4, further detailed notice has also been issued to the petitioner on the same date under Section 8 of the said Act. Under these circumstances, the petitioner by letter dated 25.06.2003 informed the respondent / Commercial Tax Officer that the property in question was purchased by them vide sale deed No.747 dated 24.01.2001 and therefore requested the respondent to remove the notice affixed from the wall of the said factory of the petitioner which was purchased by them from SIDCO.

4. The respondent /Commercial Tax Officer by an order dated 23.10.2003 impugned in this writ petition has rejected the request of the petitioner on the ground that Form-4 was issued and attached the factory on 12.06.2003 and since the defaulting company namely M/s. G.K.Tanks and Equipment had not paid the tax due under the IFST scheme, the petitioner was liable to pay arrears of tax along with interest at 2 % per month in terms of Section 24(3) of the TNGST Act from the date of acrual of arrears within 15 days from the date of the receipt of notice.

5. The case of the petitioner is that the defaulter namely M/s. G.K.Tanks and Equipment had entered into a lease-cum-sale agreement with SIDCO. As per the aforesaid agreement, the lessor, namely SIDCO was entitled to take possession of the

property under the provisions of the Tamilnadu Public Premises (Eviction of Authorised Occupants) Act, 1975 in case there is default by the lessee. It is further submitted that until regular conveyance sale deed of the property is executed, the lessee-purchaser shall occupy the property as a lessee and shall not be entitled to exercise any powers as owner thereof. The property in question of property was taken over by SIDCO and thereafter sold to the petitioner by the sale deed dated 24.01.2001. Therefore the petitioner cannot be made liable for arrears of tax of M/s. G.K.Tanks and Equipment.

6. Per contra, the learned counsel for the respondent submitted that the impugned order notice cannot be quashed as the petitioner has purchased the property knowing fully well that the property was subject to arrears and there were charges as per Section 24 of the TNGST Act, 1959. The learned counsel for the respondent further submitted that under Section 24(A) of the TNGST Act, 1959, any subsequent transfer would be void and therefore the petitioner has to pay arrears of tax due under IFST scheme by M/s. G.K.Tanks and Equipment.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent/Revenue.

8. It is the case that the property in question was leased to the defaulting dealer M/s. G.K.Tanks and Equipment. Since the defaulter had also defaulted the liability of lease rental to SIDCO, the SIDCO had exercised its powers under agreement and had taken re-possession of the property and later sold the same to the petitioner on 24.01.2001. Since the property did not belong to the defaulter namely M/s. G.K.Tanks and Equipment, the petitioner cannot made liable to pay tax of arrears of the said M/s. G.K.Tanks and Equipment. Section 24 (A) of the TNGST, Act, 1959 would apply only where the defaulting dealer creates a charge or part with the possession of any of the asset in any body's favour or any such other person. In this case, it is not as if the said M/s. G.K.Tanks and Equipment has transferred the possession or created charge on the property. On the other hand the owner of the property namely SIDCO had exercised its right and took re-possession of the property and thereafter conveyed the same to the petitioner by sale deed dated 24.01.2001. That being the case, I find no reason to sustain the impugned notice asking the petitioner to pay arrears of tax of M/s. G.K.Tanks and Equipment.

9. Under these circumstances, this writ petition is allowed with liberty to the respondent to initiate appropriate proceedings against the defaulter. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

drl

To

1.The Commercial Tax Officer,
Chengalpattu.

2.Tamil Nadu Small Industries
Development Corporation Limited,
Registered Office at Paulwels Road,
Kathipara Junction,
Chennai - 600 016.

+1cc to Mr.N.Inbarajan, Advocate sr.301
+1cc to Special Government Pleader (Taxes) sr.928

W.P.No.35283 of 2005

bs(co)
nr 17/02/2020