IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON:21.09.2020

PRONOUNCED ON:01.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.28735 of 2018
and
WMP.No.33563 of 2018

V M R Textiles Private Ltd.,
rep. by its Director
Mr.Ramasamy Sivanantham,
36, Theeran Chinnamalai Street,
Veerappanchatram Post,
Erode-638 004. ...Petitioner

.Vs.

1.The Sub-Registrar,
Registration Department,
Taluk Office Campus,
Thirupathur.

2.The District Registrar,
Registration Department,
Muthurani Muduku Lane,
Karaikudi-630 101.

3.The Deputy Inspector General of
Registration Officer,
Integrated Complex of Registration
Department, TNAU Nagar,
Rajakampeeram, Y. Othakadai,
Madurai-625 107.

4.The Joint Commissioner,
Commercial Taxes Department,
Chennai Central Division,
IV Floor, PAPJM Building,
Greams Road, Chennai-600 006.

5.IFCL Limited,
Continental Chambers,
142, Mahatma Gandhi Road,
Post Box No.3318, Chennai-600 034.

6.Pillaiyar Pattiyar Textiles Ltd.,
Registered Office Address at
407-408 GR Complex,
Anna Salai,
Nandanam,
Chennai-600 035.

[R4-impleaded vide order dated 06.02.2019
made in WMP.35911/18 in WP.28735/18 by PSNJ.

R5-impleaded as per order dated 24.09.2019 in
WMP.27854/2019 in WP.28735/2018 by KRCBJ

R6-impleaded as per order dated 21.10.2019 in
WMP.29950/2019 in W.P.28735/2018 by KRCBJ]

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to consider the notice of representation of the petitioner-Company dated 12.09.2018 in line with Notice dated 14.09.2018 issued by the respondent No.3 for removal of the entry of the commercial tax attachment on the immovable properties of the Petitioner-Company admeasuring 29 acre and 51 cents situated at Tirupattur Village, Tiruppattur Town Panchayat, Parankipatti Village as Survey Nos.1/3, 1/1, 158/3, 158/2, 158/6, 160/1, 160/2, 160/3, 160/5, 164/2, 157/3B, 157/5, 157/4A and 164/1 together with buildings and structures constructed thereon executed and registered under Document No.3605/2010 with respondent No.1 and consequentially direct the respondent No.1 herein to delete the said entry from his records and make appropriate entries stating that the said attachment has been lifted and register the Scheme of Arrangement to be filed by the Petitioner-Company to enjoy the property without any hindrance.

| | | |
|---|---|---|
| For Petitioner | : | Mr.Derick Sam<br>for Mr.N.V.Prakash |
| For Respondent Nos.1to3 | : | Mr.T.M.Pappiah, SGP |
| For Respondent-4 | : | Mr.R.Swarnavel, GA (T) |



O R D E R

With the consent of both parties, the present Writ Petition is taken up and heard through Video Conferencing on 21.09.2020.

2. The brief facts of the case are as follows:-

The dealer namely, M/s.Pillayar Pattiyar Textiles Limited had availed IFST deferral of sales tax scheme for the period between 01.01.1993 to 31.12.2001. As per the conditions of the deferral agreement, the dealer should not alienate their fixed assets until the Government loan is fully repaid. The IFST dues was paid upto 2007-08 and thereafter, the dealer had committed default. Accordingly, the fourth respondent herein had attached the dealer's property and created encumbrance in the Sub-Registrar's records at Thirupathur in the year 2012.

3. In the meanwhile, the property was purchased by the petitioner through a Sale Certificate dated 16.04.2010 issued under the SARFAESI Act, 2002 from IFCI Limited. The petitioner claims to be a bona-fide purchaser without notice of the charge over the properties and therefore seeks for removal of the encumbrance over the subject properties, in this Writ Petition. A Hon'ble Division Bench of the Madras High Court in the case of A.Senthil Kumar and another V. The Assistant Commissioner (CT) and others reported in 2011 (1) CTC 828, had an occasion to deal with a similar set of facts concerning a bona-fide purchaser under the SARFAESI Act based on the charge over the property which was not reflected in the encumbrance as on the date of the sale and held that, the petitioners are bona-fide purchasers without notice of charge under Section 24(2) of the TNGST Act and that rights accrued to them cannot be interfered with. The relevant portion of the order reads as follows:

> "17. However in this case, the property was sold under the provision of SARFAESI Act for non-payment of dues to the Bank, the third respondent which brought the property for auction through tender-cum-auction sale on 19.05.2008. The Sale Certificate was also issued on 19.05.2008 and possession and also stated to be given to the petitioners. The rights already got accrued to the petitioners in view of the sale under the SARFAESI Act. The First respondent's communication dated 24.12.2008 to the third respondent bank reads as follows:
>
> "The Sub-Registrar, Virugambakkam has issued an Encumbrance Certificate on 24.12.2008 with the Commercial Tax Officer as one of the purchaser cannot claim the right on the said property."
>
> The aforesaid communication would show that the Encumbrance (tax arrears) Certificate was only reflected on 24.12.2008. Whereas the Encumbrance Certificate dated 15.05.2008 issued by the Sub-Registrar Office, Virugambakkam did not reflect any

encumbrance except the Sale Deed dated 09.06.1998 and no claim of the first respondent was reflected. The sale was conducted on 19.05.2008 and subsequent only the encumbrance of the first respondent was made on 24.12.2008. It is clear from Sale Notice dated 20.09.2008 by the first respondent, the sales tax arrears were due from 1991-92 to 1996-97. However, the petitioners had no notice of charge over the property in question, inspite of their due verification of Encumbrance Certificate dated 15.05.2008. Hence, it has to be held that the petitioners are bona fid purchasers without notice of charge under Section 24(2) of the TNGST Act and the rights accrued to them cannot be interfered with. For the reasons stated above the respondents 1 and 2 belatedly could not proceed against the petitioner's property for the arrears of sales tax due of the Company which availed the loan from the third respondent-Bank.”

4. The aforesaid decision of the Hon'ble Division Bench squarely applies to the facts of the present case also. The dealer had defaulted the dues under IFST deferral scheme for the year 1992-93 to 2000-01 for which the subject property was attached and the encumbrance was created in the year 2012. However, the petitioner had purchased the subject properties through a Sale Certificate dated 16.04.2010 issued under the SARFAESI Act, which was much prior to the encumbrance. By applying the ratio laid down in the aforesaid decision of the Hon'ble Division Bench, it can be said that the petitioner is a bona-fide purchaser without notice of charge and therefore, would be entitled for the relief sought for in the present Writ Petition.

5. Accordingly, a Writ of Mandamus is hereby issued, directing the respondents 1 and 2 to remove the entry of attachment made by the Commissioner of Tax Department on the immovable properties of the petitioner's company ad-measuring 29 acre and 51 cents situated at Tirupattur Village, Tiruppattur Town Panchayat, Parankipatti Village as Survey Nos.1/3, 1/1, 158/3, 158/2, 158/6, 160/1, 160/2, 160/3, 160/5, 164/2, 157/3B, 157/5, 157/4A and 164/1 together with buildings and structures constructed thereon executed and registered under Document No.3605/2010 and make appropriate entries to the effect that the attachment made by the Commissioner of Tax Department over the subject properties have been lifted pursuant to the orders of this Court. Such an exercise shall be completed atleast within a period of 30 days from the date of receipt of a copy of this order.

6. The Writ Petition stands allowed accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1.The Sub-Registrar,
Registration Department,
Taluk Office Campus,
Thirupathur.

2.The District Registrar,
Registration Department,
Muthurani Muduku Lane,
Karaikudi-630 101.

3.The Deputy Inspector General of
Registration Officer,
Integrated Complex of Registration
Department,
TNAU Nagar,
Rajakampeeram,
Y. Othakadai,
Madurai-625 107.

4.The Joint Commissioner,
Commercial Taxes Department,
Chennai Central Division,
IV Floor, PAPJM Building,
Greams Road,
Chennai-600 006.

+1cc to The Government Pleader, SR.No.32511

+1cc to The Government Pleader, SR.No.32637



W.P.No.28735 of 2018
and
WMP.No.33563 of 2018

KJ(CO)
RN(22/10/2020)