IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.7132 OF 2019
AND
W.M.P.NOS.7858 & 11565 OF 2019

[Video Conferencing]

K.Mageswari,
W/o.P.Kasinathan,
No.570, New Colony,
Brammadesam Village & Post,
Marakkanam Taluk,
Villupuram 604 301.

...Petitioner

-Vs.-

1.The Commercial Tax Officer (Main)
Tindivanam 604 001.

2.G.Sivakumar,
Managing Partner,
Tvl.Sabari Steel,
Brammadesam,
Tindivanam 604 001.

...Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in Section 8 distraint order 14.02.2019 in Form No.1 and quash the same restrain the respondents from taking any action to Form F dated 05.03.2013 allegedly signed by the Petitioner in favour of the 1st Respondent and pass such further or other orders as this Court may deem fit.

For Petitioner	:	Mr.M.Gnanasekar
For Respondents	:	Mr.Amirta Poonkodi Dinakaran Government Advocate, for R1

ORDER

This case is taken up for final hearing after perusing the records maintained by the first respondent which has been produced by the learned Government Advocate representing the Commercial Tax Department.

2.The petitioner has challenged the impugned distraint order dated 14.02.2019 in Form No.1 issued by the respondent seeking to attach the property of the petitioner on the ground that the petitioner had stood as guarantor at the time when the second respondent approached the Commercial Tax Department namely, the first respondent for obtaining registration under the provisions of TNVAT Act, 2006 and CST Act, 1956.

3.It is the specific case of the petitioner that the property in question had already been settled by the petitioner in favour of her minor son as early as 13.08.2012. The learned counsel for the petitioner has produced the original of the settlement deed dated 13.08.2012 which is registered as Document No.4469/2012 before the SRO, Avaraipakkam.

4.The question that arises for consideration is whether the respondent is justified in passing the distraint order based on the Form F dated 05.03.2013 which appears to have been signed by the petitioner. The original copy of Form F has not been maintained at the Commercial Tax Department. The original document of the property was also not collected by the Commercial Tax Department at the time of execution of Form F for granting registration to the second respondent for running the partnership firm in the name and style of Tvl.Sri Sabari Steel.

5.The Form F which has been filed along with the Writ Petition and the photo copy of which is available in the official records of the respondent indicates that after the words “one lakh” the words “and above” has been added. However, no signature has been obtained from the petitioner. The signature of the petitioner in Form F and the signature in the affidavit filed in support of the present Writ Petition appears to be the same.

6.Considering the same, I am inclined to uphold the distraint order only for a sum of Rs.1,00,000/- [Rupees one lakh only]. The first respondent is at liberty to recover the sum of Rs.1,00,000/- from the petitioner in accordance with law. The recovery for the alleged tax due of the partnership firm namely, Tvl.Sri Sabari Steel above the sum of Rs.1,00,000/- cannot be fastened on the petitioner.

7.Under these circumstances, the impugned distraint order dated 14.02.2019 stands quashed with liberty to the first respondent to issue distraint order only for a sum of Rs.1,00,000/- [Rupees One Lakh] alone. In fine, the Writ Petition stands partly allowed with the above observation. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

pgp

To

The Commercial Tax Officer (Main)
Tindivanam 604 001.

+1cc to Mr.M.Gnanasekar, Advocate, S.R.No.68070

+1cc to the Special Government Pleader(Taxes), S.R.No.68433

W.P.No.7132 of 2019

EV(CO)
RLP(11/01/2022)