In the High Court of Judicature at Madras

Dated : 02.8.2021

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.1857 of 2021 & CMP.No.11800 of 2021

K.Parimalam ...Appellant / Petitioner

Vs

The Assistant Commissioner (ST),
Podanur Assessment Circle,
Coimbatore-18. ...Respondent / Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 07.4.2021 made in W.P.No.24760 of 2018.

Prayer in WP.No.24760 of 2018: This Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus Call for the records on the files of the respondent herein in ROC / Ref.3205/ 98-A3 in Form No.5 Form No.7 and Form No.7A dated 31.05.2002 under the Tamil Nadu Revenue Recovery Act 1864 read with Section 29 of the Tamil Nadu General Sales Tax Act
1959 and to quash the same and direct the respondent herein to raise the encumbrance created by way of Intimation in NK. 3205/98/ A3 dated 12.12.2007

For Appellant : Mr.N.Inbarajan

For Respondent: Mr.M.Venkateswaran, GA

Judgment was delivered by T.S.SIVAGNANAM,J

We have elaborately heard Mr.N.Inbarajan, learned counsel for the appellant and Mr.M.Venkateswaran, learned Government Advocate accepting notice for the respondent.

2. This appeal, filed by the writ petitioner, is directed against the order dated 07.4.2021 in W.P.No.24760 of 2018.

3. The appellant – Mrs.K.Parimalam, W/O late V.Kadirvel, who was the proprietor of M/s.Sri Angalamman Traders and who was registered as a dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (for short, the TNGST Act, 1959) on the file of the respondent, filed the said writ petition

challenging the notice of recovery issued by the respondent dated 31.5.2002 under the provisions of the Tamil Nadu Revenue Recovery Act, 1864 read with Section 29 of the TNGST Act, 1959 and to direct the respondent to raise the encumbrance created by way of intimation dated 12.12.2007.

4. The learned Single Judge, by the impugned order, dismissed the said writ petition and aggrieved by the same, the appellant is before us by way of this appeal.

5. The legal issue, which is canvassed before us in this appeal is as to whether the learned Single Judge was right in not taking note of the fact that Section 24(2) of the TNGST Act, 1959 provides the charge and priority over the other claims against the property of a registered dealer only if any tax or penalty is to be recovered, that admittedly, the appellant herein – wife of the registered dealer, is not a defaulter and that therefore, the respondent has no jurisdiction to proceed against the appellant merely on the ground that the appellant executed a security bond dated 02.9.1992. It is further submitted that in the counter, there was a specific admission that the security bond in Form XIXB was filed towards security for registration purpose only under the provisions of the TNGST Act, 1959, that the appellant being a surety, the property, which is an individual property, cannot be proceeded against and that deprivation of property is a serious issue and though it may not be a Fundamental Right, it is a human right and therefore, the respondent would not be justified in proceeding against the appellant's individual property.

6. The learned counsel for the appellant has drawn our attention to the copy of the security bond dated 02.9.1992 and submits that the bond clearly states that the appellant is only a surety and therefore, she cannot be proceeded with.

7. Admittedly, at the time when the appellant's husband applied for registration under the provisions of the TNGST Act, 1959, he was required to furnish security for registration. The appellant voluntarily offered the property in S.F.No.52/2A in site Nos.15 and 16 near SIHS Colony, Singanallur, Coimbatore measuring an extent of 10 cents and 382 sq.ft as a security and assured the Government of Tamil Nadu that for any amount due and payable by the registered dealer towards tax or penalty, they are first entitled to proceed against the property of the appellant, which had been more fully described in the schedule to the security bond.

8. The argument of the appellant is that she has been described as a surety.

9. In fact, the description of the appellant as a surety is

on account of the appellant having executed the surety bond.

10. What we are required to look into is the statutory form, which has been stipulated under the provisions of the Tamil Nadu General Sales Tax Rules and more particularly in terms of Rule 24(15-A) of the said Rules. The said Rule enumerates various forms of security, which the registered dealer is required to furnish at the time when he or she seeks registration. The first among them is immovable property. We may not be required to go into the other forms of security since the appellant furnished an immovable property as a security.

11. Explanation I to Rule 24(15-A) of the said Rules would be relevant for the purpose of this case. It states that where the security is furnished in the form of immovable property, the person furnishing it may, in any town, to which Sub-Section (f) of Section 58 of the Transfer of Property Act, 1882 is applicable, mortgage such property to the Government by deposit of title deeds, that in other cases, the security should be by means of registered mortgage of the immovable property and that the security bond should be in Form XIX-B and should be filed in duplicate, the original of which should bear appropriate adhesive non judicial stamps or court fee stamps.

12. The statutory form as stipulated in Form XIX-B states that the applicant, who is the husband of the appellant herein filed an application for registration before the respondent under the TNGST Act, 1959 and the Registering Authority directed the appellant's husband to furnish security as required under Section 21 of the TNGST Act, 1959. Therefore, the appellant mortgages and creates a charge over the property mentioned in the schedule to the bond to the Government of Tamil Nadu under Section 21 of the TNGST Act, 1959 and covenants that if the security amount due under Section 21 of the TNGST Act, 1959 is not required, the bond shall be void and of no effect, otherwise, it should remain in full force and effect. The statutory form further stipulates the amount of stamp that should be affixed.

13. Admittedly, there is no necessity for registration of a security bond as the appellant is irrevocably bound herself to the dues payable by the firm at the time when the registration was applied by the husband of the appellant. Therefore, it will be too late in the day for the appellant to state that the property cannot be proceeded against, that it is her individual property and that the provisions of the TNGST Act, 1959 do not specifically provide for recovery of arrears of sales tax from a person, who is not a dealer/defaulter. The terms and conditions of the bond read along with Explanation I to Rule 24(15-A) are lucid and will clearly state that the respondent had enough jurisdiction to proceed in terms of the security bond for recovery of tax arrears payable by the said firm.

14. For all the above reasons, we find no grounds to interfere with the order passed by the learned Single Judge.

15. Accordingly, the above writ appeal is dismissed. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner (ST), Podanur Assessment Circle, Coimbatore-18.

+1cc to M/s.N.Inbarajan, Advocate, S.R.No.37194
+1cc to the Special Government Pleader(Taxes), S.R.No.37577

WA.No.1857 of 2021 &
CMP.No.11800 of 2021

RSI(CO)
SB(27/08/2021)