IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 4415 & 4416 of 2011
and
M.P. Nos.1,2 of 2011
(Through Video Conferencing)

R.Radha	...	Petitioner in W.P.No.4415 of 2011
B.Ramachandhiran	...	Petitioner in W.P.No.4416 of 2011

Vs

Commercial Tax Officer,
Saligramam Assessment Circle,
Chennai - 600 083. ... Respondent in both W.Ps

Prayer in both W.Ps: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent in his proceedings being Form-I distraint order dated 03/01/2011 under Section 8 of the Revenue Recovery Act against the property No.4, 42nd Street, 6th Avenue, Ashok Nagar, Chennai - 600 083, being the property personally owned by the petitioner for the dues of the company "Power Petro Products Ltd." and quash the same as ultra vires and without jurisdiction and direct the respondent not to proceed against the petitioner personally or against petitioner's personal properties for the sales tax arrears of the company "Power Petro Products Ltd.".

For Petitioners (in both W.Ps)	: Mr.T.V.Lakshmanan
For Respondent (in both W.Ps)	: Mr.R.Swarnavel Government Advocate

COMMON ORDER

These Writ Petitions have been filed for issuance of Certiorarifed Mandamus, to call for the records on the files of the respondent in his proceedings being Form-I distraint order dated 03/01/2011 under Section 8 of the Revenue Recovery Act against the property No.4, 42nd Street, 6th Avenue, Ashok Nagar, Chennai - 600 083, being the property personally owned by the petitioner for the dues of the company "Power Petro Products Ltd." an assessee in default and quash the same as ultra vires and without jurisdiction and also to direct the respondent not to proceed against the petitioner personally or against petitioner's personal properties for the sales tax arrears of the said company "Power Petro Products Ltd."

2. The learned counsel for the respondent submits that the assessee company namely Power Petro Products Ltd was in arrears of huge tax liability and therefore the Commercial Tax Department was justified and attaching the property belonging to its Directors.

3. I have considered the arguments advanced by the learned counsel for the petitioners and the respondent.

4. There is no dispute that the assessee company of which the petitioners are the Directors was not a private limited company. The certificate of incorporation filed along with the typed set of papers shows that the assessing company was a public limited company.

5. The Assessment Orders of the said company for the years 1994-1995 & 1995-1996 also indicates the name of the assessee company as Tvl.Power Petro Products Limited. Thus, the assessee company is a private limited company.

6. Section 19B of the Tamil Nadu General Sales Tax Act, 1959 as also Section 37 of the Tamil Nadu Value Added Tax Act, 2006 applies only where a dealer was a private company and where such company is wound up. It is only under those circumstances, every person who was a director of such company at the time of such winding up shall, notwithstanding such winding up, be jointly and severally liable for the payment of tax, penalty or other amount payable under the Act whether assessment is made prior to or after such winding up unless he proves that the non-payment of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the Company.

7. Since there is no dispute that the assessee company which was in arrears of tax of which both the petitioners (husband and wife) are directors was not a private company, Section 19B of the TNGST Act, 1959 or Section 37 of the TNVAT Act, 2006 cannot be invoked against their property. Therefore, the impugned attachment orders attaching their property were without jurisdiction. Therefore, I do not find any merits in the impugned orders passed by the respondent. They are therefore liable to be quashed.

8. Accordingly, these writ petitions stand allowed with consequential to the petitioners. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/
Sub Asst. Registrar

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To

The Commercial Tax Officer,
Saligramam Assessment Circle,
Chennai - 600 083.

W.P. Nos. 4415 & 4416 of 2011
and
M.P. Nos.1,2 of 2011

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