IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.2458 of 2021
and
C.M.P.No.15781 of 2021

S.Venkatajalapathy ...Appellant/Petitioner

Vs.

1. The Commercial Tax Officer,
   Tondiarpet Assessment Circle,
   Chennai – 600 081.

2. K.P.Kesavan ...Respondents/Respondents

Prayer :Writ Appeal filed under Clause 15 of the Letter Patent, against the order dated 02.03.2021 made in W.P.No.23574 of 2015.

Prayer in W.P.No.23574 of 2015 : Writ petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records on the file of the 1st respondent herein in Ma. Ve. Vasa. No.95411/09-10 to 12-13 dt 13.7.2015 and quash the same.

For Appellant : Mr.P.Ramesh Kumar

For R1 : Mr.M.Venkateswaran
Government Counsel

J U D G M E N T
(Judgment was delivered by T.S. SIVAGNANAM, J.)

This Writ Appeal filed by the writ petitioner is directed against the order, dated 02.03.2021, in W.P.No.23574 of 2015.

2.Heard Mr.P.Ramesh Kumar, learned counsel for the appellant and Mr.M.Venkateswaran, learned Government Counsel, accepting notice on behalf of the 1st respondent.

3.The said writ petition was filed by the appellant challenging the proceedings issued by the 1st respondent, dated 13.07.2015, which is a notice issued to the appellant for recovery of Sales Tax arrears payable by a Proprietary concern in the name and style of "M/s.Kairali Steels Traders". The reason for issuing such a notice to the appellant was on the ground that the appellant has purchased a property, which was offered as security to the extent of Rs.50,000/-, when the said Proprietary concern secured registration under the provisions of the Tamil Nadu General Sales Tax Act, 1959 ("TNGST Act" for brevity).

4.The appellant contended that he is the bona fide purchaser of the property for a sale consideration of Rs.13,50,000/- and the sale deed dated 06.01.2014 was executed and registered by Mr.K.P.Kesavan, the father of the Proprietor of M/s.Kairali Steels Traders, who was the assessee in default. The appellant claimed protection under the provisions of Section 24-A of the TNGST Act on the ground that he is the bona fide purchaser and he cannot be compelled to pay the arrears of Sales Tax payable by M/s.Kairali Steels Traders.

5.At this juncture, it is worthwhile to take note of the decision of this Court in the case of the Noor M.Saied v. Commercial Tax Officer, Chennai [2018 (9) G.S.T.L. 63], wherein, it was held that a bona fide purchaser, without notice of the charge under Section 24(2) of the TNGST Act, action cannot be taken against the property for recovery for Sales Tax arrears. The operative portion of the judgment reads as follows :

> "2.In the case of Deputy Commercial Tax Officer, Thudiyalur Assessment Circle, Coimbatore and another v. R.K. Streets reported in (1998) 101 STC 161, the Court considered somewhat a similar case and held that the respondent therein is a bona fide purchaser without notice of charge under Section 24(2) of the Tamil Nadu General Sales Tax Act, 1959 and therefore, the property cannot be proceeded against for the recovery of sales tax arrears. In the case on hand, there is no charge on the property and there is no doubt about the bona fide of the purchase made by the petitioner, because it is TIIC who brought the property for sale. In Raghuvar (India) Limited v. Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur reported in (2006) 144 STC 331, the Court considered the case of similar purchaser who had purchased the property without notice of Sales Tax arrears and it was held that the property, at the hands of the purchaser, was free of charge and it was not open to the Sales Ta x Department to enforce the liability of the defaulter against the purchaser. In

D. Senthii Kumar and others v. Commercial Tax Officer, Erode and another reported in MANU/TN/2377/2006 : (2006) 148 STC 204 (Mad.), the Hon'ble Division Bench has held that the appellants therein, as transferee for the properties for valuable consideration w ithout the notice of the charge are entitled for direction as mentioned above. The petitioner's case is on a better footing as there was no charge on the property. In Rukmani v. The Deputy Commercial Tax Officer (MANU/ TN/2674/ 2012 : CDJ 2012 MHC 5515), a similar view was taken and it wa~ held that there is no material placed before them to prove that steps have been taken under the provisions of the Revenue Recovery Act against the delinquent or the subsequent first purchaser; and therefore the petitioner therein cannot be penalized. The above decisions are fully in support of the petitioner. Thus, for all the above reasons, this Court is of the firm view that the impugned notice is unsustainable in law. Accordingly, the writ petition is allowed and impugned notice dated 23-1-2006 is set aside. However, this will not prejudice the right of the Department to proceed against M/ s. Karpaga Electronics (P) Ltd . No costs. Consequently, the connected miscellaneous petition is closed."

6.The same decision has been rendered by this Court in the case of Rukmani v. Deputy Commercial Tax Officer-I [(2013) 62 VST 369 (Mad)]. In fact, the judgment of the Hon'ble Division Bench of this Court in the case of D.Senthil Kumar and others v. Commercial Tax Officer, Erode reported in (2006) 3 L.W.627 would also support the case of the appellant that the property cannot be proceeded against, as the appellant is a bona fide purchaser.

7.The learned Single Bench accepted the case of the appellant and held that there is no reason to sustain the recovery notice dated 13.07.2015 and accordingly, set aside the same, however, directed the appellant to pay a sum of Rs.50,000/- to the Department. This direction is on the ground that the said property was offered by the 2nd respondent as a security seeking to obtain registration under the provisions of the TNGST Act. The learned Writ Court having held that the appellant is a bona fide purchaser and entitled to the defence under Section 24-A, the direction could not have been issued to the appellant to pay a sum of Rs.50,000/-. This is more so, because, the appellant can never be treated as the assessee in default. Therefore, to that extent, the order passed by the learned Writ Court warrants interference.

8.This Writ Appeal is partly allowed and the order and direction issued by the learned Single Bench insofar it directs the appellant to pay a sum of Rs.50,000/- to the 1st respondent, is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mkn

To

The Commercial Tax Officer,
Tondiarpet Assessment Circle,
Chennai – 600 081.

+1cc to Special Government Pleader (Taxes)
High Court, Madras S.R.No.49996

W.A.No.2458 of 2021

AK-II(CO)
RGA(06/10/2021)