IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.19846 of 2018
W.M.P.No.23298 of 2018

S.Bavani Dass .. Petitioner

vs.

1.The Assistant Commissioner (CT),
Gummidipoondi Assessment Circle,
No.38, GNT Road, 2nd Floor,
Sri Ganapathi Theatre Complex,
Gummidipoondi-601 201.

2.The Official Liquidator,
Office of the Official Liquidator, High Court,
Chennai-600 104.
.. Respondents

R2 is impleaded as per order dated 26.11.2019 made in W.M.P.No.37398 of 2018 in W.P.No.19846 of 2018.

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records on the file of the respondent in TIN/33431702496/94-95, dated 27.06.2018 and quash the same.

For petitioner :Mr.K.V.Sajeev Kumar

For Respondent :Mr.M.Hariharan

Additional Government Pleader (Taxes)

for R1

R2-Official Liquidator

O R D E R

The order passed by the first respondent in proceedings dated 27.06.2018 requesting the petitioner to pay the arrears of Sales Tax is under challenge in the present writ petition.

2. The learned counsel appearing for the petitioner made a submission that the petitioner was a Director in Magnum Polymer India Limited. The winding up application is filed by BIFR which was allowed by this Court and the Liquidator has taken a possession of the properties/secured assets belongs to the Company namely Magnum Polymer India Limited. Once the Company is wound up and the Official Liquidator is appointed, then the claim petition is to be filed by the respondents by following the procedures contemplated. For this purpose, the Liquidator has been impleaded in the present writ petition.

3. The learned counsel appearing for the writ petitioner referred the counter filed by the respondents stating that the Assessing Officer will take steps to file a claim petition before the Official Liquidator for the deferral tax arrears, in the event of receiving any communication from the Official Liquidator of the High Court of Madras. Thus, the respondent is bound to approach the Official Liquidator by filing a claim petition for the deferral tax arrears.

4. The learned counsel appearing for the respondent/Department disputed the said contention by stating that the deferral tax arrears were admitted by the Company before this Court in W.A.No.1368 of 2005. Now, the impugned notice has been issued to the individual namely S.Bavani Dass. Thus, an adjudication is required in respect of certain facts and circumstances and the Department has to take a decision in this regard. Further, the present writ petition is filed challenging the notice issued by the Assistant Commissioner of Commercial Tax.

5. This Court is of the considered opinion that in a writ petition filed by the writ petitioner in his individual capacity challenging the notice, the High Court cannot issue a direction to the respondent to file a claim petition before the Official Liquidator. The facts and circumstances require an adjudication. However, in the counter, the respondent have stated that the Assessing Officer has not received any communication from the dealers or from the Official Liquidator regarding winding up of the Company. Presuming that, now the information is provided to the respondent. Still, the notice stands in the name of an individual. Therefore, the issues are to be placed before the Competent Authority for taking a decision to file a claim petition or otherwise. High Court cannot direct the respondents to file a claim petition as the factual matrix is to be considered by the Competent Authority, whether to file an application before the Official Liquidator or to proceed as per law.

6. This being the factum, this Court is of the considered opinion that the petitioner is bound to file all these documents including winding up order and other connected documents with reference to the counter filed by the respondent enabling them to take a decision in accordance with law. Accordingly, the petitioner is at liberty to submit all the documents and a representation, if any, in this regard to the respondent and the respondent shall consider the same and take a decision in accordance with law.

7. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ssb

To

1.The Assistant Commissioner (CT),
Gummidipoondi, Assessment Circle,
No.38, GNT Road, 2nd Floor,
Sri Ganapathi Theatre Complex,
Gummidipoondi-601 201.

2.The Official Liquidator,
Office of the Official Liquidator, High Court,
Chennai-600 104.

+1cc to Mr.K.V.Sajeev Kumar, Advocate, S.R.No.24342
+1cc to Spl Government Pleader(Taxes), S.R.No.25063

W.P.No.19846 of 2018

RR(CO)
CB(18/06/2021)