BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.7805 of 2017 and
W.P.(MD)No.5518 of 2020
W.M.P.(MD)Nos.6066 of 6067 of 2017& 4828 of 2020

W.P.(MD)No.7805 of 2017

Tvl.Sree Saraswathy Tyres,
Rep. by its Proprietrix,
M.Saraswathy,
W/o.V.Muthu,
No.68, V.O.C.Road, Karaikudi,
Sivagangai District - 630 001. ... Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Commercial Tax Officer,
Karaikudi Assessment Circle,
Commercial Taxes Office,
50/52, Jawahar Street,
Karaikudi,
Sivagangai District - 630 001. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned notice of the second respondent in Form 'U' in Roc.A3/456/2015 dated 01.02.2016 issued to the petitioner's suppliers M/s.MRF Limited to attach the petitioner's account and quash the same.

W.P.(MD)No.5518 of 2020

M.Saraswathy ... Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Commercial Tax Officer,
   Karaikudi Assessment Circle,
   Commercial Taxes Office,
   50/52, Jawahar Street,
   Karaikudi,
   Sivagangai District - 630 001.

3. The No.1 Joint Sub-Registrar,
   O/o.No.1 Joint Sub-Registrar,
   Muthoorani Mudukku Lane,
   Karaikudi,
   Sivagangai District - 630 001.

4. V.Muthu
   (R-4 is suo motu impleaded vide order dated 17.03.2020) ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the second respondent in Na.Ka.No.A3/456/2015 dated 26.08.2016 and quash the same and to consequently direct the third respondent to raise the attachment registered as No.1 of 2016 dated 08.09.2016/09.09.2016 in respect of the petitioner's property.

For Petitioners : Mr.B.Rooban in WP(MD)No.5518 of 2020
Mr.B.Rooban for Mr.R. Veeramanikandan in WP(MD)No.7805 of 2017

For Respondents : Mr.G.Arjunan, for RR1 & 2 in WP(MD)No.7805 of 2017 Government Advocate.

Mr.G.Arjunan, for RR1 to 3 in WP(MD)No.5518 of 2020 Government Advocate.

* * *

O R D E R

Heard the learned counsel on either side.

2. One V.Muthu was engaged in retail sale of tyres at Karaikudi. He was running business in the name and style of “Iyyappa Tyres”. Muthu had opted to pay at compounded rate of tax under Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006. But the ceiling limit of Rs.50,00,000/- was breached. Therefore, he had to be regularly assessed under Section 3(2) of the Act. That apart,

Muthu had also taken one more registration and it was seen that he was only making purchases and no return as regards sales was filed. He also did not pay any tax. Therefore, proceedings were initiated against Muthu and the sales tax liability was quantified at more than Rs.2 Crores and together with penalty. Muthu was liable to pay a sum of Rs.5,22,83,230/-. Muthu did not clear the arrears. Instead he closed down the business.

3. Muthu was running his business in Door No.68, V.O.C.Road, Karaikudi, Sivagangai District. Interestingly, Muthu was a dealer under M/s.MRF Limited. After Muthu closed down his business, his wife M.Saraswathy began to carry on the very same business in the very same premises. She also continued to be a dealer under M/s.MRF Limited. Therefore, the respondents treated Saraswathy's business as a continuation of Muthu's business. Since Muthu did not clear the arrears, the petition mentioned communication was issued fastening on joint and several liability on Saraswathy also. Since Saraswathy was having dealings with M/s.MRF Limited on agency basis, the impugned proceedings were issued to M/s.MRF Limited. Therefore, they are under challenge in these writ petitions.

4. The respondents opposed the prayer made in the writ petitions. The respondents have filed a detailed counter affidavit. The stand of the respondents is that this is a case in which we should lift the veil created by the petitioner. They would point out that Muthu and Saraswathy should be construed as a single entity. In order to avoid his tax liability, Muthu closed down his business and he is presently running his business through his wife Saraswathy. The learned counsel appearing for the respondents strongly contended that Saraswathy is running the very same business at the very same place. The respondents were justified in fastening joint and several liability on M.Saraswathy also. They also pointed out that Muthu made a fraudulent transfer transferring his properties in favour of M.Saraswathy. The learned Special Government Pleader appearing for the respondents called for dismissal of the writ petitions.

5. I carefully considered the contentions and went through the materials on record.

6. Though the petitioner has filed two writ petitions, the issue raised in both the cases are one and the same. There cannot be any dispute that there is a strong continuation of Muthu's business through his wife Saraswathy. Of course except her name, in all respects it is the very same business that is being continued.

7. Mr.Armugam, Assessing Officer pointed out that when Muthu closed down his business, the independent closing stock was transferred in favour of Sree Saraswathy Tyres. Of course, the learned counsel appearing for the petitioner does not have any instruction on this aspect. It is also pointed out by the assessing

officer that the machinery belonging to M/s.MRF Limited worth about Rs.13,00,000/- has been left in the custody of M/s.Sree Saraswathy Tyres.

8. I made it clear that I would consider granting relief only if a fair stand is taken by the petitioner. Thereupon, the learned counsel appearing for the petitioner on instructions stated as follows:-

a) The petitioner has no objection for the authorities to proceed against the properties which were settled in favour of Saraswathy by her husband Muthu on 17.04.2015.

b) Since it is stated by the assessing officer that Sree Saraswathy Tyres had taken the entire closing stock of M/s.Iyyappa Tyres, their value as on date of taking over will be quantified by the assessing officer after due notice to the petitioner and the petitioner Saraswathy is obliged to pay the same to the Department. Likewise the value of erstwhile assets of M/s.Iyyappa Tyres left in the custody of Saraswathy also will have to be paid by Saraswathy to the Department.

9. I make it clear that the properties that were purchased by Saraswathy way back in the year 1981-1984 cannot of course be proceeded against. Likewise there is no question of passing any Garnishee order against M/s.MRF Limited as far as M/s.Sree Saraswathy Tyres is concerned. However till the liability as mentioned above is liquidated by Saraswathy, the attachment order in respect of Saraswathy's immovable properties will remain. It is open to Saraswathy to pay the monetary value and get them raised.

10. The assessing authority is directed to effect recovery of the sales tax arrears of M/s.Iyyappa Tyres in terms of the undertaking now given by Tmt.M.Saraswathy before this Court. It is of course open to the respondent to proceed against Thiru.Muthu also.

11. In this view of the matter, the impugned order dated 01.12.2016 in W.P.(MD)No.7805 of 2017 is quashed. W.P.(MD)No.7805 of 2017 is allowed. No costs. W.P.(MD) No.5518 of 2020 is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

To:

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai – 600 005.

2. The Commercial Tax Officer,
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3. The No.1 Joint Sub-Registrar,
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   Karaikudi,
   Sivagangai District – 630 001.

+1 CC to M/s.SPL GP (SR-9173[F] dated 05/03/2021)

+2 CC to Mr.B.ROOBAN, Advocate (SR-9242,9243[F] dated 05/03/2021)

W.P.(MD)No.7805 of 2017 and
W.P.(MD)No.5518 of 2020
04.03.2021

VB (30.03.2021) 5P 7C