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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 21479 of 2013

and

M.P.No.1 of 2013

T.G.Venkatesh

...Petitioner

Vs

The Deputy Salt Commissioner
No.26 Haddows Road,
P.B.No.706, Shastri Bhawan,
Chennai 600 006.

...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records pertaining to the Notice dated 17.07.2013 in C.No.12014(1)P/Ten/93/Vol.III/4938-42 issued by the respondent and quash the same.

For Petitioner	: Mr.Hari Radhakrishnan
For Respondent	: Mr.R.P.Pragadish Central Government Standing Counsel

O R D E R

The recovery notice dated 17.07.2013 issued by the respondent is under challenge in the present writ petition.

2. The impugned recovery notice was issued to collect the outstanding Government dues under the Revenue Recovery Act. The petitioner was one of the partners of the partnership firm M/s.Jeya Marine Products, having joined the firm vide partnership deed dated 08.02.2008, registered as document No.328/2008, with the office of the Sub-Registrar, Thiruporur.

3. The grievances of the writ petitioner is that he was inducted as a partner in the said partnership firm viz., M/s.Jeya Marine Products only in the year 2008. The lease deed between the partnership firm and the Deputy Salt Commissioner, Chennai, was executed on 06.04.1993. Therefore, the petitioner states that he cannot be held liable in respect of the Government dues as the induction of the writ petitioner as



partner was not approved by the competent authority of the Salt Department. In other words, the petitioner at no point of time was recognised as partner of the firm and therefore, the recovery notice issued is to be set aside.

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4. Clause 12 of the lease deed executed between the Deputy Salt Commissioner and M/s.Jeya Marine Products stipulates as follows:

" 12. Except with the written consent of the lessor first obtained, the lessee shall not assign, underlet or part with the possession of the demised premises or any portion thereof and shall not transfer by way of sale, gift, mortgage or otherwise the demise premises provided that nothing herein contained shall prevent the lessee at any time from taking any partner or partners into the business carried on by them under the present lease, after obtaining the previous approval in writing of the Salt Commissioner or of the Authorised Officer".

5. As per Clause 12, unless the induction of the new partner is approved by the competent authority viz., Deputy Salt Commissioner, the newly inducted partner cannot be held liable for Government dues. On the one hand, the respondent has not approved the induction of new partner and on the other hand, made a submission that the partners have changed in the firm and the petitioner is admittedly a partner inducted in the year 2008. Therefore, he is liable to pay the Government dues.

6. Once, the petitioner is not recognised as a party to the original lease deed, the partnership deed executed between the parties, then, the liability cannot be fixed by the Department. If at all any fraudulent activities occurred between the parties, it is for the Department to initiate all appropriate actions in the manner known to law and issuing an order of recovery only in respect of the inducted partner which was not approved, cannot be sustained.

7. This Court is of the considered opinion that as per the original lease deed of the year 1993, no new partner shall be inducted without the approval of the respondent. In the present case, the respondent has not approved the induction of the writ petitioner as partner in the year 2008. Therefore, the impugned recovery notice cannot be sustained.

8. Question arises, if the inducted partner is not liable, how the Government dues are to be recovered. In fact, the lease deed was executed in the year 1993. The partners were continuing the operation as per the lease deed till the year 2008. In 2008, the petitioner was inducted as new partner and the induction was



not approved by the Department and no proceedings are submitted before this Court to that effect. Under these circumstances, the respondent is empowered to recover the Government dues from the partners of M/s.Jeya Marine Products, who all are the parties to the lease deed executed in the year 1993. If at all those original partners relieved from the partnership firm, they are liable as per the lease agreement between the respondent and the partnership firm.

9. Under these circumstances, this Court is of the opinion that the respondent is bound to proceed against the original partners for recovery of dues in the manner known to law and therefore, the respondent is at liberty to recover the same from the original partners, who signed the lease deed of the year 1993 and at no point of time, the writ petitioner was recognised as a partner of M/s.Jeya Marine Products. Thus, the notice issued is untenable.

10. This Court is of the considered opinion that without recognising the induction of new partner, recovery notice cannot be issued. But, the recovery actions are bound to be initiated against the original partners as per the lease deed of the year 1993 and if any transfer of partner is made fraudulently or to evade payment of Government dues, then, all further actions can be initiated against the person concerned. However, the recovery of Government dues are concerned, the same cannot be recovered from the writ petitioner as he was not recognised as partner by the respondent at any point of time and even as per the lease conditions, such induction is impermissible

11. Therefore, this Court is inclined to consider the writ petition and consequently, the impugned order passed by the respondent in proceedings No.C.No.12014(1)P/Ten/93/Vol.III/4938-42 dated 17.07.2013, is quashed and the respondent is at liberty to proceed against the original partners as per the lease deed of the year 1993 for recovery of Government dues and in respect of any fraudulent activities, the respondent is at liberty to initiate all appropriate criminal action and other actions, in the manner known to law.

12. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

nti/gsk



To

The Deputy Salt Commissioner
No.26 Haddows Road,
P.B.No.706, Shastri Bhawan,
Chennai 600 006.

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