IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **27.02.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.29869 of 2019
and
W.M.P.No.29784 of 2019

1.Shanthamanie
2.S.R.Ramakhanthun ... Petitioners

Vs.

1.The Assistant Commissioner (ST),
Thudialur Assessment Circle,
Coimbatore.
(Now Allotted to Assistant Commissioner (ST),
Perinaickenpalayam Circle,
Coimbatore).

2.The Sub Registrar,
Perinaickenpalayam,
Coimbatore.

3.The Manager,
City Union Bank,
Pappanaickenpalayam Branch,
Coimbatore. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent in Na.Ka.No.932/2018/A3 dated 08.07.2019 and Na.Ka.No.932/2001/A3 dated 08.07.2019 addressed to the second and third respondents respectively and quash the same.

For Petitioners	:	Mr.S.Raveekumar
For Respondents	:	Mr.V.Prashanth Kiran Government Advocate For R1 and R2 Mr.R.Sivaraman For R3

ORDER

This Writ Petition has been filed challenging the attachment proceedings dated 08.07.2019 issued by the first respondent under Section 19-B of the Tamil Nadu General Sales Tax Act, 1959 ***(Hereinafter referred to as TNGST Act)*** read with Section 18 of the Central Sales Tax Act, 1956 ***(Hereinafter referred to as CST Act)*** on the ground that the first respondent is not empowered to attach the property owned by the first petitioner for the dues payable by the Company and also on the ground that before winding up of the Company, the first respondent is not empowered to attach the funds belonging to the Directors of the Company.

2. According to the petitioners, by total non application of mind to Section 19-B of the TNGST Act read with Section 18 of the CST Act, the impugned attachment proceeding has been issued by the first respondent. The first petitioner is the wife and the second petitioner is her husband. The second petitioner is a Director of M/s.Auracon Energy Machines Pvt. Ltd. and the first petitioner is not a Director of the said Company.

3. The first petitioner has purchased two properties, which are the subject matters of the impugned attachment proceedings, as early as on 14.02.1982 under two different Sale Deeds both dated 14.02.1982, registered as Doc.Nos.305 of 1982 and 306 of 1982 respectively. The second petitioner who is the first petitioner's husband has also executed a settlement deed dated 06.12.2004 in respect of another property in favour of the first petitioner vide Registered Document No.8025 of 2004. The properties, which are the subject matter of the aforementioned documents, have been attached by the respondents under the impugned proceeding.

4. The petitioners have challenged the impugned proceedings on the ground that by total non application of mind to Section 19-B of the TNGST Act read with Section 18 of the CST Act, which does not enable the respondents to attach the properties belonging to Directors or any other third party when there is no winding up of the Company, the respondents have passed the impugned order.

5. A Status report was called for from the respondents by this Court. Accordingly, the learned Special Government Pleader (Taxes) has received the status report from the respondents through his communication dated 23.02.2023 which is placed on record before this Court. The said status report is taken on record and as seen from the said status report, the details of the properties and its ownership as stated by the petitioners in this Writ Petition have not been disputed. Therefore, it is an admitted fact that the subject properties which are attached, pursuant to the impugned proceedings, are not the properties of the Company, but are the properties belonging to the first petitioner herein, who is not a Director of the Company which is liable to pay dues to the respondents.

6. The issue that is raised in this Writ Petition is well settled by a Division Bench Judgment of this Court in the case of ***R.Vasinathan and Others Vs. Commercial Tax Officer (FAC), Ambattur Assessment Circle, Villiwakkam, Chennai and Another*** reported in ***2009 (23) VST 82 (Mad)*** wherein it has been held, after giving due consideration to Section 19-B of the TNGST Act that, only in cases where the Company has been wound up, the properties belonging to the Directors of the said Company can be attached or proceeded with.

7. In view of the settled law, the question of attaching the properties belonging to a Director or to any other third party as in the instant case, the wife of the second petitioner, who is a Director, will not arise. However, arbitrarily, by total non application of mind to Section 19-B of the TNGST Act, the properties belonging to the first petitioner who is not a Director of the subject Company has been attached.

8. Further, as seen from the documents, the first petitioner has purchased two properties in the year 1982 itself and has got another property by virtue of settlement deed executed in her favour by her husband,

the second petitioner herein, in the year 2004. The impugned attachment proceeding has been issued on 08.07.2019 after a lapse of several years from the date of purchase of the properties by the first petitioner who is not a Director of the subject Company which is liable to pay dues to the respondents.

9. For the foregoing reasons, the impugned order dated 08.07.2019 is hereby quashed and the Writ Petition is allowed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

27.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
ab

To

1.The Assistant Commissioner (ST),
Thudialur Assessment Circle,
Coimbatore.
(Now Allotted to Assistant Commissioner (ST),
Perinaickenpalayam Circle,
Coimbatore).

2.The Sub Registrar,
Perinaickenpalayam,
Coimbatore.

ABDUL QUDDHOSE. J.,

ab

W.P.No.29869 of 2019

27.02.2023
(1/3)