BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.3019 of 2012
and
M.P(MD)Nos.1 & 2 of 2012

M/s. Sun Engineering,
Represented by its Partner,
Mr.S.Kathiresan. ... Petitioner

Vs.

1. The Assistant Commissioner (Commercial Tax),
Office of the Assistant Commissioner (Commercial Tax),
Pudukottai,
Pudukottai District

2. The Tamilnadu Industrial Investment Corporation Limited,
(Sponsored by the Government of Tamilnadu)
B.O.2430/31, Mena Complex 1st Floor,
West Main Street,
Pudukkottai.

3. The Project Officer,
SIPCOT Project Office,
SIPCOT Industrial Complex,
Pudukkottai – 622 001. ... Respondents

[R-2 is impleaded vide Order of this Court, dated 09.04.2012.]

[R-3 is impleaded vide Order of this Court, dated 19.06.2023]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari***, calling for the records relating to the impugned notification of the respondent, dated 15.02.2012 which was published in the Tamil Newspaper Dhinamalar, dated 23.02.2012 and quash the same.

For Petitioner	:	Mr.J.Anandkumar
For R-1	:	Mr.B.Saravanan Additional Government Pleader
For R-2	:	Mr.S.Suresh, for M/s.Aiyor & Dolia
For R-3	:	Mr.M.Gangatharan

ORDER

This writ petition has been filed challenging the impugned notification, dated 15.02.2012 which was published in the Tamil Newspaper Dinamalar, dated 23.02.2012.

2. The petitioner has participated in the auction on 26.08.2010 and declared as successful bidder and the petitioner has paid the entire auction amount. On receipt of the amount the SIPCOT has handed over the possession to the petitioner and thereafter the petitioner is in possession and enjoyment of the property.

3. The first respondent / Assistant Commissioner of Commercial Tax has issued the impugned notification. The manufacturer, namely, M/s.Vikram Oil Foods, SIPCOT Industrial Estate, Pudukkottai, has failed to pay Commercial Tax and a defaulter. Challenging the said notification, the present writ petition is filed.

4. Heard Mr.J.Anandkumar, the Learned Counsel appearing for the petitioner, Mr.B.Saravanan, the Learned Additional Government Pleader appearing for the 1st respondent, Mr.S.Suresh, for M/s.Aiyor & Dolia the Learned Counsel appearing for the 2nd respondent and Mr.M.Gangatharan the Learned Counsel appearing for the 3rd respondent. Perused the material documents placed on record.

5. It is seen that the TIIC has sanctioned loan to a company namely M/s.Vikram Oil & Foods Pvt. Ltd. Since the said company had defaulted repayment the TIIC has taken possession of the mortgaged assets of the company on 25.05.1999. The property was brought to sale and the petitioner was the successful bidder and the sale was confirmed on 26.08.2010 and the possession was handed over to the petitioner on 26.08.2010.

6. The said company M/s.Vikram Oil & Foods Pvt. Ltd. was granted waiver from tax to promote industrialization in backward District to enjoy the tax holiday for five years period from 01.02.1996 to 31.01.2001. But the said company violated the terms and conditions, hence the wavier was cancelled vide proceedings dated 10.09.2004. The said company closed down its business in 1998-1999 and so the registration was also cancelled on 10.10.1999 by the Commercial Tax Department. The CT Department had issued Gazette Notification dated 14.04.2002 to bring the property for auction. Since, action was initiated by the 1st respondent against the defaulter, the 1st respondent prayed to dismiss the writ petition.

7. It is seen that the TIIC has created mortgage on 17.02.1993, which is even prior to the tax liability which arises from 01.02.1996. The sale was conducted by TIIC on 26.08.2010 which is prior to the public auction Notification dated 13.03.2012 issued by the Commercial Tax Department. Once the mortgage is executed then the TIIC would become the secured creditor and TIIC has first charge over the property. Only when there is a specific provision in the statute granting first charge over the property, then only the respondents 1 and 2 will have power to deal with the property. For which the Learned

Counsel appearing for the petitioner has relied on the judgment rendered in Tamilnad Mercantile Bank Ltd. Vs. the Commercial Tax Officer reported in 2009-2-L.W.979, wherein it is held under section 24(2) of the Tamil Nadu General Sales Tax Act there is no specific mention that the Commercial Tax Department has first charge over the property. The said section only states that the tax will have priority over all other claims. Hence, the Hon'ble Court has held that

> *"By holding so, the provision by itself does not create the first charge as in the other enactments and the claim of the State has to subserve the claim of the secured creditor, who by the anterior charge created in his favour has the first claim over even the State claim".*

As stated supra the TIIC has created mortgage even prior to the tax liability, hence become secured creditor and has become first charge holder. Therefore, the impugned notification for sale is illegal and the same is liable to be quashed.

8. The issue is also considered by Hon'ble Full Bench in ***UTI Bank Limited, Vs. The Deputy Commissioner of Central Excise, Chennai II Division***, reported in ***2007-1-L.W.50*** and the relevant portion is extracted hereunder:

...

"26. In the light of the above discussion, we conclude,

(i). Generally, the dues to Government, i.e., tax, duties, etc. (Crown's debts) get priority over ordinary debts,

(ii) Only when there is a specific provision in the statute claiming 'first charge' over the property, the Crown's debt is entitled to have priority over the claim of others.

(iii) Since there is no specific provision claiming 'first charge' in the Central Excise Act and the Customs Act, the claim of the Central Excise Department cannot have precedence over the claim of secured creditor, viz., the petitioner Bank.

(iv) In the absence of such specific provision in the Central Excise Act as well as in Customs Act, we hold that the claim of secured creditor will prevail over Crown's debts".

In view of our above conclusion, the petitioner UTI Bank, being a secured creditor is entitled to have preference over the claim of the Deputy Commissioner of Central Excise, first respondent herein".

As held supra under section 24 the Commercial Tax Department has no first charge over the property, then the secured creditor will have first charge over the property. Hence the TIIC will have first charge over the property. Hence the impugned notification, dated 15.02.2012 is liable to be quashed and the same is hereby quashed.

9. For the reasons stated supra, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

18.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To

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   Pudukottai District

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S.SRIMATHY, J.

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