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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/396/2024
MOREPLUS MERCHANTS PRIVATE LIMITED FORMERLY KNOWN AS BULLPOWER SUPPLIERS PRIVATE LIMITED
VS
INCOME TAX OFFICER WARD 5/1 KOLKATA AND OTHERS

BEFORE :
HON'BLE JUSTICE RAJA BASU CHOWDHURY
DATE : 14TH MAY, 2024.

Appearance :
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
….for petitioner
Mr. Soumen Bhattacharjee, Adv.
….for defendant

The Court :-

1. The present application has been filed inter alia challenging the initiation of proceedings under Section 148 of the Income Tax Act, 1961 for the assessment year 2017-2018 (hereinafter referred to as the "said Act").

2. Mrs. Swapna Das, learned Advocate representing the petitioner by drawing attention of this Court to the order dated 23rd March, 2021

passed by the National Company Law Tribunal, Kolkata Bench in CP No. 706/KB/2020 and CA No. 216/KB/2020 submits that the National Company Law Tribunal (hereinafter referred to as the "said Tribunal") has been pleased to order amalgamation of the petitioner with ten other companies (hereinafter referred to as the "transferor companies"). As a result of the aforesaid amalgamation, the assets and liabilities of the transferor companies on and from the appointed date being 1st April, 2019 stands transferred unto and in favour of the petitioner company being the transferee company. It is submitted that the transferor companies consequent upon passing of the aforesaid order cease to exist for all practical purpose. Notwithstanding the aforesaid, a notice under Section 148A(b) of the said Act dated 27th March, 2024 had been issued. Despite the fact that the petitioner in response to the same, by its communication dated 6th April, 2024 had brought the factum of the aforesaid amalgamation to the notice of the authorities, the authorities by glossing over the same has purported to pass the impugned order dated 19th April, 2024 under Section 148A(d) of the said Act. In furtherance to the aforesaid a notice under Section 148 of the said Act for the assessment year 2017-2018 dated 19th April, 2024 has also been issued. Ms. Das, submits that entire proceeding including the notice issued under Section 148A(b) of the said Act, by the authorities are nonest as no proceeding could have been initiated against a non existing company. She prays for quashing of the aforesaid proceeding including the notice and the order under Section 148A(b) and 148A(d) of the said Act as well the notice dated 19th April, 2024 issued under Section 148 of the said Act.

3. Mr. Soumen Bhattacharjee, learned Advocate enters appearance on behalf of the respondents. He submits that the aforesaid proceeding is a result of failure to keep the authorities informed with regard to the amalgamation proceeding which culminated in the order dated 23rd March, 2021 passed by the said Tribunal.

4. Heard the learned Advocates for the respective parties. Considered the materials on record. In this case, it is noticed that on the basis and in terms of the order passed by the said Tribunal on 23rd March, 2021, ten several companies stood amalgamated with the petitioner. As would appear from paragraph 1.2 of the scheme of amalgamation forming part of the order of amalgamation dated 23rd March, 2021 that on and from the appointed date, all liabilities of the transferor companies stood transferred and vested unto and in favour of the

transferee company being the petitioner herein. It would also appear that in terms of paragraph 7 of the above scheme, all tax liabilities under the said Act relating to the business of the transferor companies to the extent not covered by the tax provision in the accounts made as on the date immediately preceding appointed date, stood transferred to the transferee company. It would further appear from the aforesaid order that the appointed date being 1st April, 2019 is the date on which the said amalgamation has been given effect to.

5. Having regard to the aforesaid, I am of the view that no proceeding could have been initiated against the transferor companies beyond the appointed date. In view thereof, the notice under Section 148A(b) of the said Act dated 27th March, 2024, the order passed under Section 148A(d) of the said Act dated 19th April, 2024 including the notice under Section 148 of the said Act dated 19th April, 2024 stands set aside. This order, shall, however, not stand in the way of the respondent authorities from initiating proceeding in respect of any liability of the transferor companies against the transferee company, in accordance with law.

6. Since, no affidavit in opposition has been called upon to be filed by the respondents the allegations contained in the petition are deemed not to have been admitted by the respondents.
7. With the above observations and directions the writ petition stands disposed of. There shall, however, be no order as to costs.
8. Urgent Photostat copy of this order, if applied for, be made available to the parties on completion of formalities.

(RAJA BASU CHOWDHURY, J.)

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