



WEB COPY

W.P.Nos.33613 to 33616 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.Nos.33613 to 33616 of 2007
and M.P.Nos.1,1,1,1,2,2 and 2 of 2007

Lakshana Cotton Spinning Mills Limited
represented by its Managing Director
J.Madusudana Rao
Chinna Maddampalay,
Coimbatore - 641 019.

.. Petitioner in the above W.Ps.

Vs

1. The Commercial Tax Officer,
P.N.Palayam Assessment Circle,
Coimbatore - 641 018.

.... Respondent in the above W.Ps.

2. The Appellate Assistant Commissioner (CT),
Main, Coimbatore.

3. The Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench,
represented by its Secretary,
CT Buildings, Dr.Balasundaram Road,
Coimbatore - 18.

.. Respondents in W.P.Nos.33613 & 33615 of 2007



W.P.Nos.33613 to 33616 of 2007

PRAYER in W.P.Nos.33613 & 33615 of 2007: PETITIONs filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records on the files of the third respondent herein in C.T.A.No.67/00 (CST) and 31/00 (TNGST), both dated 13.10.2005 and quash the same.

PRAYER in W.P.Nos.33614 & 33616 of 2007: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records on the files of the respondent herein in TNGST No.2160284/95-96 and CST No.575100/95-96, both dated 30.6.1998 and quash the same.

In all W.Ps.

For Petitioner : Mr.N.Prasad

For Respondents : Ms.Amirta Dinakaran
Government Advocate - R1 and R2
Ms.B.Ambili
Deputy Official Liquidator

COMMON ORDER

(Order of the Court was made by Dr.ANITA SUMANTH..J)

We have heard Mr.N.Prasad, learned counsel for Lakshana Cotton Spinning Mills Ltd., petitioner/assessee. Originally, the petitioner in these Writ Petitions was wound up by an order of this Court in C.P.No.299 of 1999 on 27.7.2000 and an Official Liquidator had been appointed as the Liquidator of the Company.



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2. An appeal was filed in C.A.Nos.2400 to 2402 of 2000 and the order of winding up had been initially stayed for a period of two weeks, extended thereafter till disposal of the Company Appeals. The order of winding up had been set aside on 26.02.2001 and thereafter on 04.11.2009 in C.P.No.299 of 1999 an Official Liquidator was appointed as Liquidator with a direction to take charge of all assets and effects of the company.

3. We have heard Ms.Ambili, Deputy Official Liquidator. Status report dated 08.10.2024 has been filed that reveals that there were only movable assets taken over by the Official Liquidator. Those assets were sold to settle the dues of the Provident Fund and Employees State Insurance authorities. Thus, the assessee stood dissolved by order dated 20.12.2017 in C.A.No.1218 of 2013.

5. The Supreme Court in a recent decision in *Principal Commissioner of Income-Tax V. Mahagun Realtors (P) Ltd.* (443 ITR 194), in the context of the Income Tax Act, 1961 has reiterated the settled difference between amalgamation and winding up of a company.

6. While in the case of amalgamation, it is only the apparent and outer shell of the company which is destroyed, the core or the corporate venture continues in the hands of the transferee by whom it has been taken



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over. However, in line with the judgment in the case of *Saraswati Industrial Syndicate Ltd. V. CIT* (186 ITR 278) and other judgments, they state that in the case of dissolution, the entity wholly ceases to exist.

7. Ms.Amirta Dinakaran, learned counsel appearing for the respondents has filed a reply to the status report, where they take cognizance of the status of the assessee. In conclusion and succumbing to the status of the assessee which, as on date, is non-existent, they seek liberty to proceed with recovery action against the Directors of the company, if any, under the provisions of the Tamil Nadu General Sales Tax Act, 1959, Central Sales Tax Act, 1956 and Revenue Recovery Act.

8. We are of the considered view that such specific liberty as sought for is not liable to be granted. We may, at best, grant liberty to the Department to take recourse to such action as may be provided in accordance with law and in line with the applicable statutory provisions.

9. Recording the aforesaid position, all Writ Petitions and the connected Miscellaneous Petitions are closed. No costs.

[A.S.M., J] [G.A.M., J]
04.11.2024

sl
Index:Yes/No
Speaking order
Neutral Citation:Yes



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