IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9489 of 2015
and
M.P.No.1 of 2015

T.Palanisamy,
S/o.Thangavelu,
Kamaraj Nagar,
Salem Main Road,
Nallampalli,
Dharmapuri Taluk & District. ... Petitioner

Vs.

1.The Commercial Tax Officer,
Commercial Tax Department,
Dharmapuri.

2.The Assistant Commissioner (CT),
Commercial Tax Department,
Dharmapuri.

3.The District Revenue Officer,
Dharmapuri.

4.G.Venkatesan,
Proprietor – Swathi Cones,
Sy.No.55/1B1, Pagalahalli Village,
Salem Main Road,

Dharmapuri Taluk & District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the first respondent pertaining to the Demand Notice in the proceedings in Roc.No.A3/2131/1999 dated 07.01.2015 in respect of the property bearing Sy.No.55/1-B1, Pagalahalli Village, Salem Main Road, Dharmapuri Taluk and District and quash the same.

For Petitioner : Mr.P.Valliappan
Senior Counsel
for Mr.S.M.S.Shriram Narayanan

For Respondents :
For R1 to R3 : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

(Order of the Court was delivered by **C.SARAVANAN, J.**)

The petitioner has challenged the Impugned Communication/Order dated **07.01.2015** issued by the 1st respondent.

2. By the Impugned Communication dated **07.01.2015** addressed to the petitioner, the petitioner has been called upon to pay tax and interest upto **07.01.2015** of **Rs.6,64,011/-** (Tax of **Rs.1,25,102/-** and interest of **Rs.5,52,814/-**). Relevant portion of the Impugned Communication/Order dated **07.01.2015** issued purportedly under Section 24-A of Tamil Nadu General Sales

Tax (TNGST) Act, 1959, reads as under:-

> *"It was learnt that, you have purchased the immovable properties of the defaulters situated at Sy.No.55/1B, while pendency of charges, transfer of immovable, Pagalapalli Village, Dharmapuri Taluk and District property in favour of you was void as per Section 24A of TNGST Act, 1959 and also it is responsibility of the buyers to settle the entire Sales tax due held by the defaulted company namely Tvl.Swathi Cones, Sy.No.55/1B1, Pagalahalli Village, Salem Main Road, Dharmapuri Taluk and District.*
>
> *In this circumstances, the buyers of the immovable properties namely Tvl.T.Palanisamy is hereby directed to pay the tax and interest upto 07-01-2015 of Rs.6,64,011/- (Rupees Six Lakhs Sixty Four Thousand and Eleven only) (Tax of Rs.1,25,102/- and interest of Rs.5,52,814/- (as on 07-01-2015 and it will changes till the date of payment of principal of Rs.1,25,012/-) being the sales tax dues held by Tvl.Swathi Cones, Sy.No.55/1B1, Pagalahalli Village, Dharmapuri Taluk and District with Seven days from the date of receipt of this notice, failing which action will be initiated as per Section 24(2)(a) and Section 26 of TNGST Act, 1959."*

3. The petitioner herein has purchased the property from an assessee under default namely, one G.Venkatesan, Proprietor of M/s.Swathi Cones, who had avaied the benefit of Interest Free Sales Tax Deferral/Waiver Scheme for the period between **1992-1993** and **2000-2001** for a sum of **Rs.6.58 Lakhs** based on the Eligibility Certificate issued by the Tamil Nadu Industrial Investment Corporation Limited, Madras in their **Letter No.IFST/D/003/IX/N/DPI/92-93**

dated **01.06.1992**.

4. The said G.Venkatesan, Proprietor of M/s.Swathi Cones, was required to start paying tax from 2001 till 2010 i.e., 9th year from the commencement of availment of the Interest Free Sales Tax Deferral/Waiver Scheme. The said G.Venkatesan, Proprietor of M/s.Swathi Cones, however defaulted in making payments to the Commercial Tax Department and proceeded to sell his properties contrary to Agreement dated **19.08.1994** signed with the Assistant Commissioner (CT), Dharmapuri to the petitioner.

5. As per the Agreement dated **19.08.1994**, the said G.Venkatesan, Proprietor of M/s.Swathi Cones, agreed not to alienate/dispose/encumber/lease out the fixed assets until the Government loan i.e., Interest Free Loan was fully discharged/repaid under the Scheme. Similarly, under the Agreement, the movable and immovable properties of the Proprietary concern, were liable to be attached/proceeded towards the realization of the outstanding Government Loan under the Revenue Recovery Act, 1890 together with interest at 24% per annum (simple interest) calculated from the due date for repayment of loan.

6. The Agreement clearly states that in default of repayment of Government loan or cancellation of the deferral facility for violation of any of the conditions as mentioned in Paragraphs 3, 4, 5, 6 and 7 of the Agreement, such Government loan, tax and interest due shall be thereon recoverable in such manner as specified under the Revenue Recovery Act, 1890 for the loan, and Section 24-(2) of TNGST Act for the tax, and the amount is also liable for 24% interest per annum.

7. The case of the petitioner before this Court is that the petitioner is a *bona fide* purchaser of the property that belonged to the assessee in default namely, G.Venkatesan, Proprietor of M/s.Swathi Cones and therefore, the petitioner was entitled to the benefit of *Proviso* to Section 24-A of TNGST Act, 1959.

8. That apart, arguing the case of the petitioner, the learned Senior Counsel would submit that the petitioner has no objection to sell the property located in Survey No.55/1B1, Pagalahalli Village, Salem Main Road, Dharmapuri Taluk and District as the petitioner has purchased only two parcels of land in Survey No.56 (Survey No.56/2 and Survey No.56/2B) and in Survey No.54/1A vide **Sale Deed** dated **13.05.2014**.

9. It is the case of the petitioner that the Impugned Communication/Order of the 1st respondent has to be confined only to property of the defaulting assessee G.Venkatesan at Survey No.55/1B1 and not to the property in Survey No.56/2 and Survey No.54/1A vide **Sale Deed** dated **13.05.2014**.

10. In support of the submission, the learned Senior Counsel for the petitioner has placed reliance on the following decisions of the Hon'ble Supreme Court and that of this Court:-

i. **State of Karnataka and another** Vs. **Shreyas Papers Private Limited and others**, 2006 (1) CTC 290.

ii. **Deputy Commercial Tax Officer, Thudiyalu Assessment Circle, Coimbatore and another** Vs. **R.K.Steels**, 1998 (I) CTC 124.

iii. **D.Senthil Kumar and others** Vs. **Commercial Tax Officer, Erode and another**, 2006 (25) CTCOL 955 (Mad).

iv. **B.Suresh Chand** Vs. **State of Tamil Nadu, Represented by the Secretary, Revenue Department, Fort St. George, Madras – 9 and another**, 2006 (4) CTC 805.

v. **M.Nagarajan** Vs. **Deputy Commercial Tax Officer and State of Tamil**

Nadu, Represented by Secretary, Commercial Taxes Department, 2009 (10) CTCOL 761 (Mad).

vi. **A.Senthil Kumar and another** Vs. **Assistant Commissioner (CT), Chennai and others**, 2011 (1) CTC 828.

vii. **Sri Bakgyam Engineering Corporation by its Managing Partner, Coimbatore** Vs. **The Deputy Commercial Tax Officer, Coimbatore**, 2016 (2) CWC 85.

viii. **P.Sellammal** Vs. **The Commercial Tax Officer, Perundurai, Erode District and another** in W.P.No.17136 of 2003 dated 27.07.2017.

ix. **Supreme Power Equipment (P) Ltd., Chennai** Vs. **Commercial Tax Officer, Sriperumbudur Assessment Circle, Varadharajapuram**, 2018 (2) CWC 449.

x. **Gupta & Company, Represented by its Managing Director, Chennai** Vs. **Commercial Tax Officer, Alandur Assessment Circle, Chennai and others**, 2018 (3) CTC 740.

xi. **R.Dakshinamoorthy** Vs. **Deputy Commercial Tax Officer, Tirupur**, 2019 (3) CTC 292.

11. On the other hand, learned Government Advocate for the respondents has placed reliance on the Agreement signed between the said G.Venkatesan,

Proprietor of M/s.Swathi Cones and the Assistant Commissioner (CT), Dharmapuri dated 19.08.1994. It is further submitted that the petitioner has purchased the property from one M.Ethiraj on **13.05.2014** vide a registered **Sale Deed**.

12. Learned Senior Counsel for the petitioner has also made an attempt to rely on the Encumbrance Certificate to state that there was no encumbrance over the property purchased by the petitioner vide **Sale Deed** dated **13.05.2014**.

13. Learned Government Advocate for the respondents has relied on the decision of the Madurai Bench of this Court in **R.Kumar** Vs. **The Joint Commissioner of Commercial Taxes, Kumbakonam Region, Tanjavur District and others** in W.P.(MD) No.17315 of 2022 dated 08.04.2024.

14. We have heard the learned Senior Counsel for the petitioner and the learned Government Advocate for the respondents.

15. At the outset, this Court is of the view that the petitioner is not entitled to invoke jurisdiction of this Court to establish that the petitioner was a *bona fide* purchaser of the property as transfers if any made by the defaulting

assessee to the petitioner were *void ab initio* in terms of Section 24-A of TNGST Act, 1959. If at all, the petitioner wants to avail the benefit of proviso to Section 24-A of TNGST Act, 1959 which is an exception to Section 24-A of TNGST Act, 1959, it is for the petitioner to file a civil suit to establish that the sale was for adequate consideration and without notice of any pendency of the proceedings and without notice of such tax arrears or other sum payable by the defaulting dealer or with the previous permission of the Assessing Officer/Assessing Authority. There are no records to show that the petitioner had any previous permission from the Assessing Officer/Assessing Authority.

16. As far as Sub-Clause (i) to Section 24-A of TNGST Act, 1959, it is for the petitioner to prove that the purchase was made on **13.05.2014** for adequate consideration and without notice of pendency of the proceedings under Section 24-A of TNGST Act, 1959.

17. The records that have been filed before this Court indicate that the above-mentioned properties in **Survey No.55/1B1**, **Survey No.56 (Survey No.56/2)**, **Survey No.55/1B2** and **Survey No.54/1A** belonged to said G.Venkatesan, Proprietor of M/s.Swathi Cones. These properties were sold by two separate Sale Deeds, one **Sale Deed** dated **07.02.2002** vide registered

Doc.No.194/2002 and another **Sale Deed 23.03.2005** vide registered **Doc.No.538/2005** to one M.Ethiraj by one Saitha Begum, W/o.Munavar Basha and to one M.Ramachandran along with his two sons R.Premkumar and R.Karthik. The details of the Sale Deeds are as under:-

Sl. No.	Vendors name	Buyer Name	Last date of Inspection	Encumbrance Certificate No.
1	M.Ethiraj	T.Palanisamy	10.02.2015	954
2	M.Ethiraj	T.Palanisamy	10.02.2015	955

18. The Commercial Tax Department has already issued notices to the said Saitha Begum, W/o.Munavar Basha on **14.01.2003** and to the said M.Ethiraj on **25.02.2003** and **11.11.2003** respectively which have been acknowledged by the said Saitha Begum and M.Ethiraj.

19. The records that have been filed before this Court also indicate that the said Saitha Begum had purchased the property where the mill of defaulting assessee G.Venkatesan was situated at **Survey No.55/1B1** measuring total extent of 1 Acre 09 Cents of land and that the said Saitha Begam had been issued with notices by the Commercial Tax Department on **26.10.1999** and on **14.01.2003** asking her to pay the arrears of tax due from the defaulting assessee

namely G.Venkatesan, Proprietor of M/s.Swathi Cones.

20. The records further reveal that the assets/properties of the defaulting assessee namely G.Venkatesan, Proprietor of M/s.Swathi Cones was purchased by the said Saitha Begum and therefore the Commercial Tax Department had issued the following notices:-

Sl.No.	Roc.No./Na.Ka.No.	Date of issuance of notice
1	2131/99/A3	26.10.1999
2	2131/99/A3	13.08.2002
3	2131/99/A3	14.01.2003

21. Meanwhile, notices were also issued to the defaulting assessee namely G.Venkatesan, Proprietor of M/s.Swathi Cones primarily on the following dates:-

Sl.No.	Roc.No./Na.Ka.No.	Date of issuance of notice
1	2131/99/A3	26.10.1999
2	2131/99/A3	02.02.2001
3	2131/99/A3	06.02.2001

22. The said Saitha Begum sold an extent of 1 Acre 09 Cents of land in **Survey No.55/1B1** to one M.Ethiraj by a **Sale Deed** dated **07.02.2002** vide a registered **Doc.No.194/2002**.

23. By a **Sale Deed** dated **23.03.2005** registered as **Doc.No.538/2005**, M.Ethiraj purchased the land from M.Ramachandran along with his two sons namely R.Premkumar and R.Karthik. By virtue of **Sale Deed** dated **23.03.2005**, the following extent of lands were sold to M.Ethiraj.

Sl.No.	Survey No.	Extent of land
1	56 (56/2)	0.27 ½ cents
2	55/1B2	0.21 cents
3	54/1A	0.03 ½ cents

24. The petitioner in turn purchased the same property from M.Ethiraj by virtue of **Sale Deed** dated **13.05.2014**. It is not clear how the said M.Ramachandran and his two sons R.Premkumar and R.Karthik became owners of the property which was conveyed by M.Ramachandran to the said M.Ethiraj, who in turn sold the same to the petitioner. Therefore, unless the transactions are clear and *bona fide*, the petitioner cannot avail the benefit of *Proviso* to Section 24-A of TNGST Act, 1959.

25. As per Section 53 of TNGST Act, 1959, the said Saitha Begum was also a defaulting assessee. Disclosure Notice and several Notices were issued to M.Ethiraj, who had purchased two properties by a separate Sale Deed one from

Saitha Begum and one from M.Ramachandran along with his two sons namely R.Premkumar and R.Karthik. However, the said M.Ethiraj, refused to receive the notices on 30.06.2009 and later sold the properties to the petitioner. A Letter was also addressed by the Commercial Tax Department to create an Encumbrance over the property of the defaulting assessee G.Venkatesan, Proprietor of M/s.Swathi Cones.

26. The claim of the petitioner that he is entitled to perfect the title in terms of proviso to Section 24-A of TNGST Act, 1959 is barred under law before the Civil Court.

27. The argument of the learned Senior Counsel for the petitioner that Civil Suit is barred both under Section 49 and Section 51 of TNGST Act, 1959 is without any merits. These Sections are reproduced below:-

Section 49 of TNGST Act	Section 51 of TNGST Act
Bar of certain proceedings: (1) No suit, prosecution or other proceeding shall lie against any officer or servant of the Government for any act done or purporting to be done under this Act, without the previous sanction of the Government. (2) No officer or servant of the Government shall be liable in	**Bar of suits and proceedings to set aside or modify assessment except as provided in this Act**: (a) No suit or other proceeding shall, except as expressly provided under this Act be instituted in any Court to set aside or modify any assessment made under this Act. (b) No injunction shall be granted by

Section 49 of TNGST Act	Section 51 of TNGST Act
respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of the execution of duties or the discharge of function imposed by or under this Act.	any Court in respect of any assessment made, or to be made, or in respect of any action taken, or to be taken, in pursuance of any of the provisions of this Act.

28. A reading of the above provision indicates that Section 49 of TNGST Act, 1959, only bars suit, prosecution or other proceeding shall lie against any officer or servant of the Government for any act done or purporting to be done under TNGST Act, 1959, without the previous sanction of the Government and that no officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding if such act was done in good faith in the course of the execution of duties or the discharge of function imposed by or under TNGST Act, 1959.

29. Similarly, Section 51 of TNGST Act, 1959, only bars the suit or other proceeding except as expressly provided under the Act is instituted in any Court to set aside or modify any assessment made under TNGST Act, 1959.

30. The petitioner can establish his *bona fide* to avail the benefit of Proviso to Section 24-A of TNGST Act, 1959 only before the Trial Court by

instituting Civil Suit after proper trial.

31. That apart, in the said Civil Suit, the petitioner has to implead not only M.Ethiraj but also their vendors namely M.Ramachandran, R.Premkumar and R.Karthik as the first sale itself was not valid and void. The subsequent sale also would be invalid subject to the rider under *Proviso* to Section 24-A of TNGST Act, 1959.

32. Therefore, for the foregoing reasons, this Writ Petition is liable to be dismissed. It is, accordingly, dismissed. However, liberty is given to the petitioner to file a Civil Suit to establish his *bona fide* as purchaser of the property under **Sale Deed** dated **13.05.2014** from the said M.Ethiraj. No costs. Connected Miscellaneous Petition is closed.

[R.S.K., J.] **[C.S.N., J.]**

27.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

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Commercial Tax Department,
Dharmapuri.

2.The Assistant Commissioner (CT),
Commercial Tax Department,
Dharmapuri.

3.The District Revenue Officer,
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