IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-01-2024

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

WP No.25012 of 2014
And
MP No.1 of 2014

1.R.Renganathan

2.C.Thangavelu @ Chellappan

3.C.Ramasamy .. Petitioners

-vs-

1.The District Collector,
Salem District,
Salem.

2.The Tahsildar,
Sankari Taluk Office,
Sankari Taluk,
Salem District.

3.The Assistant Commissioner of Central Excise,
Salem-II Division,
No.21, Theerthamalai Arcot,
Veerapandianar Nagar,
2nd Cross,
Salem-636 004.

4.The Commercial Tax Officer,
Sankari, Sankari Taluk,
Salem District. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Certiorari, calling for the records comprised in impugned order in S.R.Na.Ka.991/2013 dated 01.09.2014 on the file of the second respondent and quash the same.

For Petitioners	:	Mr.K.Magesh
For Respondents-1 and 2	:	Mr.G.Ameedius, Government Advocate.
For Respondent-3	:	Mr.V.Sundareswaran, Senior Panel Counsel.
For Respondent-4	:	Mr.M.Venkateswaran, Special Government Pleader (Taxes).

O R D E R

The present writ petition has been filed challenging the show cause notice issued by the second respondent-Tahsildar, Sankari under the provisions of Revenue Recovery Act.

2. The action under Revenue Recovery Act, was initiated based on the order passed by the Central Excise Department, Government of India.

3. The learned counsel for the petitioners would submit that the property has been already attached by the Commercial Taxes Department of the State Government and therefore, the present notice issued under the Revenue Recovery Act, is untenable.

4. Admittedly, the order-in-original was passed by the Central Excise Department, Government of India on 23.09.2004. The appeal filed by the writ petitioner was rejected on 28.10.2008. Thus the petitioners had

exhausted the statutory remedies and therefore, the Central Excise Authorities have initiated action to recover the dues through the Competent Authorities under the Revenue Recovery Act, as provided.

5. Once the order-in-original was confirmed by the Appellate Authority and thereafter restraint order has been passed, the present writ petition has been filed challenging the show cause notice issued under Revenue Recovery Act, is untenable.

6. It is only recovery proceedings initiated based on the order-in-original passed by the Central Excise Authority. Therefore, the scope of interference by the High Court in the writ proceedings would be limited.

7. In the present case, the petitioners have not established any ground warranting interference by this Court in respect of the impugned show cause notice issued under Revenue Recovery Act.

8. In this context, the learned counsel for the third respondent would submit that under the provisions of the Finance Act, 1994 by Act

No.8 of 2011 with effect from 08.04.2011, which is the primary intention of the Legislature to create the first charge over the property of the defaulter over all other charges irrespective of any Central or State Acts (exception is SARFAESI and RBA).

9. Therefore, in the present case, under Section 11-E of the Finance Act, 2011, the Central Excise Department hold that the first charge over the property and thus, they are entitled to recover the dues by invoking the provisions under Revenue Recovery Act.

10. The petitioners, admittedly, had exhausted the appellate remedy and the order-in-original passed by the Central Excise Authority stands confirmed by the Appellate Authority and thereafter restraint order has been passed. Thus, the petitioners are not entitled for any relief as such sought for in the present writ petition and the respondents shall proceed for realisation of the dues by following the procedures as contemplated.

11. With the above observations, the present writ petition stands dismissed. However, there shall be no order as to costs.

Consequently, the connected miscellaneous petition is also dismissed.

29-01-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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S.M.SUBRAMANIAM, J.

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