IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-08-2025

CORAM

THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 26049 of 2005
AND
WPMP NO. 28474 OF 2005

1.S.Soundarajan

2.S.Velu

3.S.Saraswathy

4.V. Kanagamani
All are Residing At No.24,
Balasundaram St., K.R.Puram,
Coimbatore.

5.Tvl. Surfine Tools
Athipalayam Road, Chinnavedampatti,
Coimbatore,
Rep. By Its Partner S. Sriram.

Petitioner(s)

Vs

1.The Commercial Tax Officer,
Commercial Tax Office.
Ganapathy Circle, Coimbatore.

2.Debts Recovery Tribunal,
No.1670, Trichy Road,
Ramanatha Puram, Coimbatore-45.

Respondent(s)

PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, praying for an issuance of Writ of Certiorari, to call for the records of the 1st respondent made in his proceedings No. Na.Ka.No.777/98/A3 dated 12.07.2005 and the consequential Form B-6 notice issued under Rule 18(8) of the Tamilnadu General Sales Tax Rules 1959 and quash the same.

For Petitioner(s): Mr.S. Silambanan,
Sr. Counsel
Assisted by Mr.M. Babu Parveez

For Respondent(s): M/s.Amirta Poonkodi Dinakaran,
Govt. Advocate(T)

ORDER

This writ petition has been filed by the petitioner seeking to call for the records of the 1st respondent made in his proceedings No.Na.Ka.No.777/98/A3 dated 12.07.2005 and the consequential Form B-6 notice issued under Rule 18(8) of the Tamilnadu General Sales Tax Rules 1959 and quash the same.

2.Mr.S.Silambanan, learned Senior Counsel assisted Mr.M.Babu Parveez, learned counsel for the petitioners would submit that, in the present case, the subject property measuring to an extent of 83.8 Cents with factory building measuring to an extent of 4429 sq.ft in the re-survey Nos.72/2B2, 72/2C, 71/3, Chinna Vedampatti Village, Coimbatore District was mortgaged by one M/s. Kausalya Textiles with the Syndicate Bank in the year 1983. Since the said M/s.Kausalya Textiles defaulted in making payment, the subject property was brought for auction through the 2nd respondent and ultimately sold on 20.02.2004 to the petitioner, who was a successful bitter. Under such circumstances, the 1st respondent vide proceedings dated 12.07.2005, called upon the 1st petitioner to remit the amount of Rs.4,27,553/-, being the amount payable by M/s.Kausalya Textiles towards their Sales Tax arrears, failing which the property would be brought for public auction and a consequential Form B-6 notice has also been issued to the 5th respondent, who is the tenant in the subject property, directing him to pay the monthly rent to the 1st respondent.

3.Learned Senior Counsel would further submit that in the present case, the property was mortgaged by the Kausalya Textiles on 15.03.1983. The claim of the 1st respondent is pertaining to the Tamil Nadu Sales Tax arrears for the Years 1983-1984 to 1988-89 and 1993-94 i.e subsequent to the mortgage. Therefore, the learned Senior Counsel would submit that the Syndicate Bank was the first charge holder and the 1st respondent was the second charge holder. Therefore, once the property was brought into sale by operation of law, the amount realized from the sale of property has to be paid to the first charge holder and the remaining amount has to distributed to the second charge holder and any other subsequent charge holder. Thus, in the present case, the second charge holder can only receive a proceeds of the assets which remains after the first charge holder's debt is fully paid. Hence, the impugned proceedings initiated by the 1st respondent is not substantial in law and prayed to set aside the impugned proceedings and the consequential Form B-6 notice.

4.To buttress his submission, learned Senior Counsel referred the order of this Court made in ***W.P.No.3441 of 2013 dated 22.06.2022***, in the case of

M.Sundaram vs. The Assistant Commissioner and the order passed by the Hon'ble Division Bench of this Court in the case of ***M/s.Gupta & Company vs. The Commercial Tax Officer*** made in ***W.P.No.6267 of 2006 dated 09.03.2018.***

5.Per contra, learned Government Advocate appearing for the 1st respondent would submit that since the statutory charge was created by operation of law, it would subsist and continue even after the sale of the property by the 2nd respondent to settle the dues of the first charge holder namely Syndicate Bank, as there is a condition that unless the settlement of the dues of the department in full, the charge would continue even if the property is sold and hence, prayed to dismiss the present writ petition.

6.To buttress her submission, learned Government Advocate referred the judgment referred by the High Court of Bombay in the case of ***Shailesh K.Bothra and Others vs. State of Maharashtra and Others*** reported in ***2023 SCC OnLine Bom 1394 : (2023) 118 GSTR 204***.

7.Heard Mr.S. Silambanan, learned Senior Counsel for the petitioner as well as the learned Government Advocate appearing for the 1st respondent and perused the materials available on record.

8.Upon hearing and perusal of the records would show that the M/s.Kausalya Textiles has mortgaged their property to the Syndicate Bank on 15.03.1983 and obtained a loan. Therefore, the charge was created on the assets of the Kausalya Textiles with effect from 15.03.1983. However, the Commercial Tax arrears of the Kausalya Textiles pertains to the years 1983-1984 to 1988-89 and 1993-94, which is subsequent to the creation of first charge i.e from 01.04.1983, since any charge by operation of law for the dues of the Government would start from the 1st April of that specific year. Therefore, in the present case, the charge of the Government has to be considered as a second charge since the Kausalya Textiles have already mortgaged the subject property with the Syndicate Bank for the dues of their borrowings on 15.03.1983. Therefore, the Syndicate Bank was the first charge holder and the 1st respondent was the second charge holder. Thus, the Syndicate Bank, who was the first charge holder is empowered to bring the petitioner's property for public auction in case of default committed by the Kausalaya Textiles and out of sale proceeds the Syndicate Bank can adjust their dues and after adjusting their dues the remaining amount will go to the second charge holder.

9.For better appreciation, the provision of Section 26(6) of the Tamil Nadu General Sales Tax Act , 1959 is reads as follows:-

> "Any amount which a person is required to pay to the assessing authority or for which he is personally liable to the assessing authority under this section shall, if it remains unpaid, be a charge on the properties of the said person and may be recovered as if it were an arrears of land revenue.
>
> Explanation-For the purpose of this section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claims, if any, as may have fallen due for payment by such dealer to such person and as may be lawfully subsisting."

Upon reading the above provision, it is clear that the statutory charge will be created against the assets of the assessee to the extent if anything is unencumbered. Thus, by operation of law, the Department will get the first charge if the property is unencumbered. If the assets of the assessee has already been encumbered and any further charge by operation of law in terms of Section 26(6) of the Tamil Nadu General Sales Tax Act, the Department will only be arrayed as a second charge holder against the said property.

10.Thus, once the property was brought into sale through public auction, by the first charge holder and the same was purchased by the auction purchaser, the attachment against the said property shall get automatically lifted and the charge holders will be entitled to share the sale proceeds. After the settlement of the first charge holder, unless and otherwise the sale itself challenged by any of the parties concerned, the subsequent charge holder will be entitled for the remaining sale proceeds, if anything is left after the settlement of the first charge holder.

11.Hence, since there is no amount left after paying the first charge holder and any subsequent charge holders receives nothing from the sale proceeds of the subject property. Further, as held by the Hon'ble Division of this Court in the case of ***M/s.Gupta & Company vs The Commercial Tax Officer*** (cited supra), since there is no specific condition in the sale notice that, arrears of tax due and payable by M/s.Kausalya Textiles, has to be paid by the auction purchaser, the petitioner should be treated as a bonafide purchaser, without notice.

12.Hence, on the facts and circumstances of the case and in the light of the aforesaid decision, this Court hold that the petitioner is a bonafide purchaser and he should not be imposed with any liability to pay arrears of tax, payable by M/s.Kausalya Textiles and the impugned proceedings and the consequential Form B-6 notice are liable to be set aside and accordingly set aside.

13.In the result, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

21-08-2025

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

To

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KRISHNAN RAMASAMY J.

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