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**(2014) 08 KL CK 0184**

**In the High Court Of Kerala**

**Case No : WP (C). No. 16514 of 2009 (H)**

BRD Finance Limited

APPELLANT

Vs

The District Collector

RESPONDENT

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**Date of Decision : 01-08-2014**

**Acts Referred:**

Companies Act, 1956 — Section 529A, 530  
Kerala General Sales Tax Act, 1963 — Section 26A, 26B

**Citation :** (2014) 4 ILR 441 : (2014) 3 KHC 535 : (2014) 3 KLJ 652 : (2014) 3 KLT 576 : (2015) 82 VST 341

**Hon'ble Judges :** P.B. Suresh Kumar, J

**Bench :** Single Bench

**Advocate :** Binoy Vasudevan, Advocate for the Appellant; Jose Aedaodi, Government Pleader, Advocate for the Respondent

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## **Judgement**

P.B. Suresh Kumar, J.—The petitioner is a public limited company. They purchased an item of property owned by M/s. Oriental Plastic and Lamination Ltd., a company in liquidation, in accordance with the provisions contained in the Companies Act, 1956 (hereinafter referred to as "the Act"). The sale of the property was pursuant Ext. P1 tender notice issued by the Official Liquidator and the sale was confirmed by this Court as per Ext. P2 order. As per Ext. P2 order, this Court directed the Official Liquidator to execute the sale deed in respect of the property in favour of the petitioner and Ext. P3 sale deed was accordingly executed in their favour by the Official Liquidator on 16.08.2004.

2. According to the petitioner, they propose to establish an industrial unit in the property, for which clearances are required to be obtained from various authorities. It is stated by the petitioner in the writ petition that for the purpose of getting the clearances, they were asked to produce the possession certificate, location certificate and location sketch of the property and the third respondent is not issuing the said certificates. Instead, the third respondent has issued Ext. P10 communication, stating that revenue recovery proceedings were pending against the company in liquidation for recovery of its sales tax dues when the

property was purchased by the petitioner and therefore, the validity of the transaction in favour of the petitioner need to be examined before the certificates sought for by the petitioner are issued. Petitioner is challenging Ext. P10 communication in this writ petition. They are also seeking a direction to the respondents to issue the certificates sought for by them.

3. A counter affidavit has been filed by respondents 2 and 3. It is stated in the counter affidavit that certificates for recovery of the sales tax dues of the company in liquidation were issued as early as on 20.02.1992, 21.10.1992 and 10.09.1997 and a sum of Rs. 62,49,813/- with interest is due in terms of the said certificates from them. It is also stated in the counter affidavit that the property purchased by the petitioner was a property attached for the recovery of the said amount in accordance with the provisions contained in the Revenue Recovery Act. Section 26A of the Kerala General Sales Tax Act is also referred to in the counter affidavit. The averments in the counter affidavit indicate that the contention of respondents 2 and 3 is that the sale deed obtained by the petitioner is hit by Section 26A of the Kerala General Sales Tax Act and therefore, not binding on the State.

4. I have heard Sri. Binoy Vasudevan, the learned counsel for the petitioner and the learned Government Pleader for the State.

5. The learned counsel for the petitioner pointed out that as far as a company in liquidation is concerned, the provision applicable for payment of taxes is Section 530 of the Act, which provides that payment of taxes is subject to the provisions in Section 529A of the Act and Section 529A of the Act provides that notwithstanding anything contained in any other law, in the winding-up of the company, workmens' dues and debts due to the secured creditors shall be paid *pari passu* in priority to other debts. In other words, according to the learned counsel, sales tax dues are to be recovered by the State from the sale proceeds in accordance with the provisions in Section 529A of the Act. He has also contended that Section 26A of the Kerala General Sales Tax Act cannot prevail when it comes into collision with the mandates of Section 529A of the Act. The learned counsel has relied on the decision of the Division Bench of this Court in Assistant Commissioner (Assessment), Kollam and Others Vs. Official Liquidator, High Court of Kerala and Another, , in support of his contention.

6. The facts dealt with in the decision referred to above are identical to the facts of the case in hand. The decision was rendered in a case where a similarly placed purchaser of the property of a company in liquidation approached the Company Court for deletion of the entries regarding the revenue recovery proceedings against the company in liquidation, from the revenue records pertaining to the property. In the said case also, proceedings for recovery of the sales tax dues of the company in liquidation were pending and the property was under attachment, when the property was sold in accordance with the provisions of the Act. The contention raised by the State Government in the said case was that in view of the provisions in Section 26B of the Kerala General Sales Tax Act, a first

charge was created over the properties of the company in liquidation for recovery of its sales tax dues and therefore, notwithstanding the sale of the property in accordance with the Act, the sales tax dues of the company in liquidation can be recovered from the property of the company. The said contention was repelled by this Court. The relevant extracts of the judgment read thus:

12. xxxxxxxx xxxxxxxx

We are of the view that while it was indeed open to the State Legislature to enact S. 26B giving first charge to the amounts due under the State Sales Tax Act, it cannot prevail when it comes into collision with the mandates of S. 529A. It is S. 529A which must prevail. In other words, it is not as if S. 26B is any way void or of no use. Indeed it will have full force otherwise. But pit it against the mandate of S. 529A read with S. 530 S. 26B must indeed pale into inefficacy and insignificance. They cannot stand together. If they are allowed to stand together, then necessarily there is irreconcilable conflict and that conflict can only be resolved in favour of the parliamentary legislation. The resultant position is that, as Parliament has declared that in the case of a company which is being wound up, proceeds of its assets must ensure firstly to the secured creditors and workers and it is to be distributed pari passu among them and then, if any proceeds remain, it is to be distributed among others including the State which may be creditors with unsatisfied demands following assessments which have been made under the Sales tax law as in this case. Giving effect to S. 26B will thwart the Parliamentary law.

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17. x x x x x x x x x In this connection, we must notice that it is a case where the sale was effected free of all encumbrances. It is brought to our notice by the learned counsel for the respondents that if sale is held not free from encumbrances, it will prejudice the interests of the company shareholders and its creditors including the workers. Such auction may not fetch a proper price. Still we would also think that there is no challenge by the State to the sale held as free of encumbrances. The sale held by the Company Court is for the benefit of all the creditors. The manner in which sale proceeds is to be shared among the various creditors is indicated in the provisions contained in Companies Act. They include Ss. 529A and 530 of the Act. The priority itself is to be decided by the Company Court under S. 446(2)(d). If the State is allowed to proceed against the property, despite the sale held as free of encumbrances, the result would be that the sale would become vulnerable and it would also be against what had been held out to the auction purchaser under the aegis of the Company court that the sale is being held free of encumbrances. Having regard to the provisions contained in Ss. 529A and 530, the intention is clear that the law of land is that the claim of the State must with regard to the amounts due as taxes be subject to the amounts due to the secured creditors and workers. If the sale is held free

of encumbrances and if the State is allowed to pursue its claim as against the property, it would naturally bring the sale under a cloud and there would be no end to the litigation which would in the ultimate analysis be not only against the interests of persons whose interests are sought to be secured by the Companies Act on the basis of priority, but against the scheme of the Companies Act.

7. The reasons given by the Division Bench for the conclusion arrived at in that case, squarely applies to the facts of this case, as the distinction on facts is only that in the present case, the provision in Section 26A of the Kerala General Sales Tax Act is set up as a defence, whereas in the case referred to above, the provision in Section 26B of the Kerala General Sales Tax Act is set up as a defence. Section 26B of the Kerala General Sales Tax Act creates a charge, for the sales tax dues, on the properties of the dealer, whereas Section 26A of the said Act makes the transactions in respect of the properties of the dealer during the pendency of the proceedings for determination of the dues and after its culmination, void, as against the claim in respect of the dues payable under the said Act. While Section 26B of the Kerala General Sales Tax Act enables the State to ignore the transactions in respect of the properties of the dealer after the dues under the said Act became due, Section 26A of the said Act enables the State to ignore the transactions in respect of the properties of the dealer from the date of commencement of the proceedings for determination of the dues under the said Act. As such, like Section 26B of the Kerala General Sales Tax Act, Section 26A of the said Act also cannot prevail, when it comes into collision with the mandates of Section 529A of the Companies Act.

The petitioner, in the circumstances, is entitled to succeed. Ext. P10 communication of the third respondent is quashed. Respondents 1 to 3 are directed to issue the certificates sought for by the petitioner as per Ext. P7 request, within a period of six weeks from the date of the receipt of a copy of this judgment.