



भारतीय दिवाला और शोधन अक्षमता बोर्ड  
Insolvency and Bankruptcy Board of India

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02<sup>nd</sup> November, 2023

***Subject: Judgment<sup>1</sup> dated 31<sup>st</sup> October 2023 of Hon'ble High Court of Madras in the matter of Smt. K. Malathi Vs. State Tax Officer & Anr. [W.P. No 19728 of 2020 and 484 of 2021 ].***

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***Brief Facts-***

Liquidation was ordered against Corporate Debtor (CD) *vide* order dated 07.09.2017 of AA. Thereafter, the State GST Officer visited the factory premises of the CD for inspection and seized certain documents. Subsequently, a show cause notice dated 15.06.2020, was issued under section 74 of the CGST & SGST Act, regarding certain allegations and demanded recovery of input tax for the year 2018-19. Despite opportunity given by the Sales Tax Department, none defended the suspended directors or official liquidator. Later order dated 28.9.2020 was passed by the Sales Tax Department imposing tax liability along with interest and penalties on the CD. Sections 88(3) of the CGST Act contemplates vicarious liability of the directors of the CD in case the tax liability could not recovered, the same could be jointly and severally be recovered. Aggrieved by the order of Sales Tax Department, Suspended director filed the above Writ.

***Issues Before Hon'ble HC:***

Whether a demand under CGST & SGST Act for tax, interest, or penalty for the period before initiation of CIRP, can be levied on suspended directors of CD after liquidation.

***Findings & Observations of Hon'ble HC:***

HC allowed such writ petition and set aside order of Sales Tax Department and made following observation: -

- Since said order demand was passed based on the irregularities that had taken place prior to the period of commencement of CIRP against CD, the right course available for the respondents is to file appropriate claim before the official liquidator.
- HC apprised that in case no funds are available with the liquidator for disbursement of the claims tax department, a new cause of action would arise to recover the sales tax dues from the suspended directors. In the present case non-availability of funds with the liquidator is yet to be decided, as such, HC held that there is no cause of action to initiate recovery of sales tax dues against the suspended director.

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