BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.15079 of 2020

C.R.Tamilvanan ... Petitioner

Vs.

1. The Assistant Commissioner (ST) (FAC),
Dindigul Rural Assessment Circle,
CT Buildings, Dindigul.

2. The Branch Manager,
Bank of Baroda,
Palani Main Road,
Dindigul - 624 001. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the 1st Respondent to refund the amount of Rs.2,32,365/- (Rupees Two Lakhs Thirty Two Thousand Three Hundred and Sixty Five only) which was illegally collected by the 1st Respondent by attaching and debiting the petitioner's Savings Bank Account No.25460100010796 maintained with the 2nd Respondent Bank.

For Petitioner	:	Mr.K.Soundararajan
For Respondents	:	Mr.P.Subbaraj Spl. Govt. Pleader for R1 Mr.M.Prakash for R2

ORDER

This Writ Petition has been filed to direct the 1st Respondent to refund the amount of Rs.2,32,365/- (Rupees Two Lakhs Thirty Two Thousand Three Hundred and Sixty Five only) which was illegally collected by the 1st Respondent by attaching and debiting the Petitioner's Savings Bank Account No.25460100010796 maintained with the 2nd Respondent Bank.

2. The Petitioner has challenged the withdrawal of the amount of a sum of Rs.2,32,365/- (Rupees Two Lakhs Thirty Two Thousand Three Hundred and Sixty Five only) from his Savings Bank Account bearing Account No. 25460100010796 maintained with the 2nd Respondent Bank for the alleged dues of the Company M/s.C.R.T.Grand Granites Private Limited in respect of the assessment years 2011-12 and 2012-13 respectively.

3. The learned counsel for the Petitioner submitted that Petitioner was one of the Directors of M/s.C.R.T.Grand Granites Private Limited, a company incorporated under the Companies Act, 1956. Subsequently, the

Petitioner resigned from his Directorship and there are five Directors managing the day-to-day affairs of the said Company. He further submitted that even under the Revenue Recovery Act, the 1st Respondent has to send a valid demand before making any recovery proceedings. Further, the 1st Respondent had not communicated the attachment order to the Petitioner and no opportunity has been provided to the Petitioner. Without following the procedure, the 1st Respondent had arbitrarily attached the Petitioner's account for the arrears of the Company registered under the Companies Act. In view of the foregoing reasons, the action initiated by the 1st Respondent against the Petitioner's personal Bank Account is without authority of law.

4. He further submitted that as per Section 37 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'the Act'), the Director can be proceeded against for recovery of the dues of a Company which is wound up. It is thus not open to proceed against the Director before the Company is wound up and subject to the circumstances set out in Section 37 of the Act exist. Further, he relied on Section 45(b) of the Act which enables "any person who holds or may subsequently hold money for, or on account

of the dealer or other person who has become liable to pay any amount due under this Act."

5. The Petitioner, in the present case, had resigned from his Directorship on 31.03.2019. It is thus clear that it may not be permissible to proceed against the Director / share holder of the Company for the liability of the Company. It is relevant to refer to the decision of the Division Bench of this Court in the case of ***R.Vasinathan and others vs. Commercial Tax Officer (FAC), Ambattur Assessment Circle, Villiwakkam, Chennai and another*** reported in ***(2009) 23 VST 82 (Mad)*** and the same is extracted hereunder:

> *"It deals with liability on persons in a case where the dealer is a "private company" is wound up. Every person, who was a director of such company at the time of such winding up, irrespective of winding up, is held to be jointly and severally liable for payment of tax, penalty and other assessment made, whether prior to or after the winding up. Thus it can be given effect to even with regard to the assessment for a period prior up to November 6, 1997, irrespective of the fact*

whether such assessment has already been made or is to be made. The question of applicability of this wound up. As we have already noticed and the first respondent has also accepted that the company has not yet been wound up, merely because the renewal of licences of the company under the TNGST Act and the CST Act have not been made, it cannot be presumed that the second respondent company has been wound up. In this background, no action can be taken by authorities against the ex-directors, including ex-directors under Section 19B of the TNGST Act."

6. In view of the same, this Writ Petition is allowed and 1st Respondent is directed to refund the amount of Rs.2,32,365/- (Rupees Two Lakhs Thirty Two Thousand Three Hundred and Sixty Five only) within a period of three weeks from the date of receipt of a copy of this order. The 1st Respondent is at liberty to proceed for recovery of the dues of the Company in accordance with law. No costs.

27.09.2022

Index : Yes / No
Speaking Order : Yes / No
vji

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MOHAMMED SHAFFIQ, J.

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