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W.P.No.4485 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2023

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The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.4485 of 2023 and W.M.P. No.4507 of 2023

KJK Poly Diamonds International P Ltd.,
rep. by its Managing Director
K.Jayakumar

... Petitioner

VS

1.The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai -31.

2.The Branch Manager,
State Bank of India,
320, Valluvarkottam High Road,
Nungambakkam,
Chennai -34.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records of the first respondent Proceedings in TIN/33410461489/2023/A3 dated 30.01.2023 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar

For first respondent : Mr.V.Prasanth Kiran,
Government Advocate



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ORDER

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The petitioner has challenged the impugned Communication dated 30.01.2023, sent by the first respondent to the second respondent Bank, pertaining to the assessment years 2006-07 to 2016-17, under which the first respondent has directed the second respondent Bank to attach a sum of Rs.69,70,561/-, which according to the first respondent is a tax liability of the petitioner under CST and TNVAT Act 2006.

2.The first respondent has exercised its power under Section 45 of the Tamil Nadu Value Added Tax Act, 2006 by requesting the second respondent to withhold the aforesaid amount, available in the petitioner's Bank account and pay the same to the office of the first respondent by way of Demand Draft or Pay Order, favouring the first respondent.

3.The petitioner has challenged the impugned proceedings dated 30.01.2023 on the ground that even without passing an assessment order for the respective assessment years, the impugned proceedings dated 30.01.2023 has been issued by the first respondent, exercising its power under Section 45 of the TNVAT Act 2006, which according to the petitioner is arbitrary and illegal.



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4. Admittedly, only after passing the assessment orders, any coercive recovery proceedings can be initiated by the first respondent against the petitioner.

5. This Court requested the learned Government Advocate appearing for the first respondent to get instructions as to whether any assessment orders were passed in respect of the respective assessment years prior to issuing the impugned proceedings dated 30.01.2023.

6. As directed by this Court, the learned Government Advocate appearing for the first respondent has placed before this Court a Tabular Column, giving details of the assessment years, where assessment orders were passed in respect of some of the assessment years and where the assessment orders are yet to be passed. The Tabular Column is extracted hereunder:



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Tvl.KJK POLYDIAMONDS INTERNATIONAL PRIVATE LIMITED

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2006-07 to 2016-17

Sl.No.	Assessment Year	Date of original orders passed	Date of services	W.P. Filed details	Revised Orders passed	Date of services	Demand Rs.
1	2006-07	26.02.2019	04.03.2019 received authorised person signed with seal	W.P. No.8593/2019 dated 20.06.2019 remanded	24.08.2021	27.08.2021 by RPAD	12,00,047
2	2007-08	13.03.2014	14.03.2014 received authorised person signed with seal	No.W.P. Filed	-	-	7,76,521
3	2008-09	27.02.2014	06.03.2014 received authorised person signed with seal	No.W.P. Filed	-	-	4,28,097
4	2009-10	27.02.2014	06.03.2014 received authorised person signed with seal	No.W.P. Filed	-	-	8,81,579
5		27.02.2014	06.03.2014 received authorised person signed with seal	No.W.P. Filed	-	-	9,84,085
6	2011-12	05.06.2018	05.06.2018 received authorised person signed with seal	No.W.P. Filed	-	-	9,00,477
7	2012-13	19.07.2018	19.07.2018 received authorised person signed with seal	W.P.No.21171/2018 dt.20.08.2018 remanded	14.12.2018	18.12.2018 received authorised person signed with seal	16,19,157
8	2013-14	19.07.2018	19.07.2018 received authorised person signed with seal	No.W.P. Filed	-	-	3,36,757
9	2014-15	19.07.2018	19.07.2018 received authorised person signed	W.P.No.21172/2018 dt.20.08.2018 remanded	24.08.2021	27.08.2021 by RPAD	2,09,046



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Sl.No.	Assessment Year	Date of original orders passed	Date of services	W.P. Filed details	Revised Orders passed	Date of services	Demand Rs.
			with seal				
10	2015-16	19.07.2018	21.02.2018 received authorised person signed with seal	W.P.No.7163/2018 dt.27.03.2018 remanded	17.12.2018	18.12.2018 received authorised person signed with seal	2,29,349
11	2016-17	02.03.2018	05.03.2018 received authorised person signed with seal	W.P.No.7164/2018 dt.27.03.2018	17.12.2018	18.12.2018 received authorised person signed with seal	4,83,643
					Total		80,48,758

Assistant Commissioner (ST)

Nungambakkam Assessment Circle.

7.As seen from the Tabular Column extracted supra, it is clear that only for some of the assessment years, assessment orders were passed by the first respondent. However, as seen from the impugned proceedings dated 30.01.2023, wherein the first respondent has communicated the second respondent Bank to withhold the amount to the extent of Rs.69,70,561/-, available in the petitioner's account and pay the same to the office of the first respondent, pertaining to the assessment years 2006-07 to 2016-17, without passing the assessment orders with respect to some of the assessment years, the first respondent has attached the funds, belonging to the petitioner, which is lying with the Bank account, maintained with the second respondent Bank. Unless and until the assessment orders are passed in respect of all the assessment years, for



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which the attachment order has been passed, which is the subject matter of challenge in this writ petition, the first respondent cannot exercise its power under Section 45 of the Tamil Nadu Value Added Tax Act, 2006 to enforce the sums alleged to be due and payable by the petitioner towards tax liability. If at all, the first respondent can take coercive steps against the petitioner under Section 45 of the TNVAT Act only in respect of the assessment years, where the assessment orders are passed. But being a single proceeding dated 30.01.2023, covering all the assessment years right from 2006-07 to 2016-17, it/the proceeding has to be declared as invalid as in respect of some of the assessment years, mentioned in the impugned proceeding dated 30.01.2023, no assessment orders were passed by the first respondent prior to the issuance of the impugned proceedings.

8.The petitioner also categorically contends that in respect of all the assessment years, for which the impugned proceedings dated 30.01.2023 has been passed, the respondents have not passed any assessment order. Necessarily for the aforementioned reasons, the impugned proceedings dated 30.01.2023 passed by the first respondent has to be quashed and the writ petition will have to be allowed.



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9. Accordingly, the impugned proceedings dated 30.01.2023, issued by the first respondent is hereby quashed and the writ petition is allowed.

10. It is made clear that in respect of the assessment years, for which the assessment order has already been passed, the first respondent is at liberty to enforce the same against the petitioner in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

21.02.2023

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To

1. The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
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2. The Branch Manager,
State Bank of India,
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ABDUL QUDDHOSE, J.

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