IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.4976 of 2023 &
W.M.P.No.4988 of 2023

Hotel Sakithyan,
Rep. by its Partner, P.E.Vijayakumar,
42, Thanikachalam Road,
Chennai - 600 017. ... Petitioner

vs.

1.Assistant Commissioner (Sales Tax),
T.Nagar Assessment Circle,
46, Greenways Road, Chennai - 600 028.

2.The Branch Manager,
Indian Overseas Bank,
31, Venkatnaryaana Road,
Opp. Tirumala Tirupathi Devasthanam,
Chennai - 600 017.

3.The Appellate Deputy Commissioner of Commercial Taxes,
Chennai (East).
(R3 impleaded Suo Motu vide
order of this Court dated
20.02.2023).
...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorarified Mandamus calling for the records of the first respondent herein in TIN/33871581586/2012-13 to 2016-17/A3 and quash the proceedings dt.13.02.2023 issued therein and further direct the first respondent to refund the sum of Rs.40,96,402/- collected by the first respondent from the Bank Account NO.169102000000067 maintained by the petitioner herein with the second respondent herein.

For Petitioner	: Mrs.Hema Muralikrishnan
For Respondent 1	: Mr.V.Prasanth Kiran, Government Advocate

ORDER

The petitioner has challenged the impugned proceedings dated 13.02.2023 of the first respondent.

2. Mr.V.Prasanth Kiran, learned Government Advocate accepts notice on behalf of the first respondent. Since no adverse orders are going to be passed against the second respondent, notice to the second respondent is dispensed with by this Court.

3. Heard Mrs.Hema Muralikrishnan, learned counsel for the petitioner and Mr.V.Prasanth Kiran, learned Government Advocate appearing for the first respondent.

4. Under the impugned proceedings, the first respondent has communicated to the second respondent bank that a sum of Rs.40,96,402/- is due and payable by the petitioner towards arrears of tax and penalty under the TNVAT Act, 2006 and the arrears pertain to the years 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17.

5. The petitioner has already filed a statutory appeal as against the assessment order dated 20.01.2021 passed under section 27 of the TNVAT Act, 2006 which is pending on the file of the Appellate Deputy Commissioner of Commercial Taxes on 30.04.2021. The petitioner has also made the statutory pre-deposit amount before the Appellate Authority and also filed a stay application seeking stay of the assessment order dated 20.01.2021. However, according to the petitioner, despite the pendency of the appeal as well as the stay petition, the first respondent has recovered a sum of Rs.28,49,000/- which was lying to the credit of the petitioner's bank

account maintained with the second respondent bank and the said amount was debited from the petitioner's bank account on 13.02.2023.

6. The petitioner apprehends that the penalty amount of Rs.20,48,201/- is likely to be recovered by the first respondent from the amount lying to the credit of the petitioner's bank account with the second respondent bank. The petitioner has challenged the impugned proceedings of the first respondent dated 13.02.2023 communicated to the second respondent bank on the ground that arbitrarily and illegally despite the fact that the statutory appeal is pending and despite the fact that the stay petition is also pending before the appellate authority, the first respondent has recovered the alleged outstanding dues in respect of tax and penalty amount as per the communication sent to the second respondent bank by the first respondent, from the amount lying to the credit of the petitioner's bank account maintained with the second respondent bank.

7. Admittedly, a statutory appeal has been filed as against the assessment order dated 20.01.2021 passed under section 27 of the TNVAT Act by the petitioner which is under consideration by the Appellate Deputy

Commissioner of Commercial Taxes and the petitioner has also paid the pre-deposit amount as required for filing the statutory appeal. The petitioner has also filed a stay petition seeking stay of the impugned assessment order. While that be so, the first respondent has recovered a sum of Rs.28,49,000/- from the amount lying in the petitioner's bank account maintained with the second respondent bank. The said amount covers the tax liability as determined by the first respondent in the assessment orders which is the subject matter of the appeal before the Statutory appellate authority.

8. As per the assessment orders, apart from the tax liability, the petitioner is also liable to pay an equal sum towards penalty amount. The petitioner apprehends that the said penalty amount, despite the appeal having been filed, will also be recovered from the bank account of the petitioner maintained with the second respondent bank. When an appeal has already been filed which is still pending and the statutory pre-deposit amount has also been made by the petitioner and that too, when the first respondent has already recovered the tax liability amount from the petitioner, as per the assessment orders, no further sums can be recovered by the first respondent from the petitioner. Since the Statutory appellate authority being

a necessary party, has not been made as a party respondent in this writ petition, this Court suo motu impleads the Apellate Deputy Commissioner (CT), Chennai (East) as the third respondent in this writ petition.

9. This Court after giving due consideration to the fact that the statutory appeal has already been filed by the petitioner by making statutory pre- deposit amount and the first respondent has also recovered the sum of Rs.28,49,000/- from the petitioner's bank account lying with the second respondent after filing of the statutory appeal by the petitioner, is inclined to grant stay of any further recovery from the petitioner either from the amount lying to the credit of the second respondent bank or from any other source till the statutory appeal, pending on the file of the newly impleaded third respondent is disposed of on merits and in accordance with law.

10. No prejudice would be caused to the respondents, if such a direction is issued.

11. For the foregoing reasons, this writ petition is **disposed of** by

directing the third respondent to pass final orders on merits and in accordance with law on the petitioner's statutory appeal dated 13.04.2021 filed challenging the assessment orders within a period of twelve weeks from the date of receipt of a copy of this order. Till the final orders are passed by the statutory appellate authority, no coercive steps shall be taken against the petitioner pursuant to the impugned proceedings dated 13.02.2023 for the recovery of the amounts mentioned therein. Since the first respondent has already recovered the tax liability amount and that too, when the statutory appeal is pending consideration, by the third respondent viz., statutory appellate authority, the attachments effected on the petitioner's bank account maintained with the second respondent is directed to be lifted and the petitioner is permitted to operate their bank account maintained with the second respondent bank. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2023

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Note: Registry is directed to issue order copy on 22.02.2023 after carrying out necessary amendment in the cause title.

To

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Opp. Tirumala Tirupathi Devasthanam,
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ABDUL QUDDHOSE, J.

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