IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **27.02.2023**

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.Nos.5264, 5268 & 5273 of 2023 and W.M.P. Nos. 5289, 5290, 5292, 5293, 5299, 5300, 5303 & 5304 of 2023

Madan Kumar Subramanian ... Petitioner in W.P. No.5264 of 2023

L.Shankar ... Petitioner in W.P. No.5268 of 2023

Srividya Kasturi ... Petitioner in W.P. No.5273 of 2023

Vs.

1.The Assistant Commissioner (ST),
Nandambakkam Assessment Circle,
Room No.308, Third Floor,
Integrated Regn & C&T Building,
Nandanam,
Chennai – 600 035.

2.The Branch Manager,
ICICI Bank Limited,
No.15/19, Dr.Muthulakshmi Road,
L.B.Road, Adyar,
Chennai – 600 020. ... Respondents in W.P. No.5264 of 2023

The Assistant Commissioner (ST),
Nandambakkam Assessment Circle,
Room No.308, Third Floor,
Integrated Regn & C&T Building,
Nandanam,
Chennai – 600 035. ... Respondent in W.P. Nos.5268 & 5273 of 2023

Prayer in W.P. No.5264 of 2023: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in Roc. No.156/A3/2022 dated 06.01.2023 and the Form U dated 06.01.2023 addressed to the second respondent to attach the petitioner's personal bank account for the alleged dues of M/s.Clean Switch India Pvt. Ltd. in which the petitioner is a Director and quash both the proceedings as contrary to Section 37 of the TNVAT Act, 2006 and the law laid down by this Court in a catena of judgments and further direct the first respondent to refund the sum of Rs.6,76,613/- taken from the petitioner Account Number :055501503943 on 19.01.2023 lying with the second respondent bank pursuant to the impugned proceedings of the first respondent in Roc.No.156/A3/2022 dated 06.01.2023 and the Form U dated 06.01.2023.

Prayer in W.P. Nos.5268 & 5273 of 2023: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned Urgent Notice issued by the respondent in TIN:33970907769/ 2014-15 to 2016-17 dated 29.11.2022 to the petitioner demanding the alleged dues of the Company M/s.Clean Switch India Pvt. Ltd. in which the petitioner is a Director and quash the impugned Urgent Notice as contrary to Section 37 of the TNVAT Act, 2006 and the law laid down by this Court in a catena of judgments.

For Petitioner	:	Mr.P.Rajkumar
For Respondents	:	Mr.V.Prasanth Kiran, Government Advocate for R1 in W.P. No.5264 of 2023 and respondent in W.P. Nos.5268 & 5273 of 2023

COMMON ORDER

The only issue that arises for consideration in these writ petitions is whether the funds lying in the bank account of the Directors of the Company in their individual accounts can be attached for the dues payable by the Company as per the assessment orders passed under the Tamil Nadu Value Added Tax Act 2006. These petitioners have filed the following writ petitions, the details are given hereunder:

Sl.Nos.	Writ Petitioners	W.P. Nos.	Impugned Proceedings
1.	Madan Kumar Subramanian	5264 of 2023	06.01.2023 (Bank Attachment Notice)
2.	L.Shankar	5268 of 2023	29.11.2022 (Recovery Notice)
3.	Srividya Kasturi	5273 of 2023	29.11.2022 (Recovery Notice)

2.In all these matters, admittedly, the Directors funds have been attached. The defaulter is a Company by name, M/s.Clean Switch India Private Limited and these petitioners are the Directors in the said Company. Section 37 of the Tamil Nadu Value Added Tax Act 2006 reads as follows:

> *'37.Liability to tax private Company on winding up – Where a dealer is a private company and such company is wound up, every person who was a director of such company at the time of such winding up shall, notwithstanding such winding up, be jointly and severally liable for the payment of*

tax, penalty or other amount payable under this Act by such company whether assessment is made prior to or after such winding up unless he proves that the non-payment of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.'

3.The Division Bench of this Court, after giving due consideration to Section 19B of the TNGST Act, which is para materia to Section 37 of the TNVAT Act 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) has held that only in cases of winding up of a Company, proceedings can be initiated against the Directors for the dues payable by the Company, which is under liquidation. The aforementioned proposition is also not disputed by the learned Government Advocate appearing for the first respondent in W.P. No.5264 of 2023 and respondent in W.P. Nos.5268 & 5273 of 2023. Therefore, the impugned attachment orders as well as the recovery notices issued in respect of the petitioners, who are the Directors in the subject Company will necessarily have to fall.

4.It is now brought to the notice of this Court by the learned

Government Advocate that inadvertently, the first respondent in W.P. No.5264 of 2023 and respondent in W.P. Nos.5268 & 5273 of 2023 had committed mistake by giving the PAN numbers of the petitioners in the attachment orders. The said submission made by the learned Government Advocate is recorded.

5.In view of the settled law as laid down in the decision of the Division Bench of this Court referred to supra, the attachment orders as well as the recovery notices, which are challenged in these writ petitions, will have to be quashed insofar as the petitioners alone are concerned and the respondents are at liberty to proceed against the Company, namely, M/s.Clean Switch India Private Limited seeking enforcement of the dues payable by them in accordance with law.

6.It is pointed out by the learned counsel for the petitioners that a sum of Rs.6,76,613/- has been erroneously transferred from the account of the petitioner in W.P. No.5264 of 2023 (Madan Kumar Subramanian) to the account of the Assistant Commissioner (ST) Nandanam erroneously despite the settled position of law that funds of the Directors cannot be attached before winding up of the Company in respect of the individual Bank accounts held by the respective Directors.

7.In view of the settled law as observed earlier, the amount of Rs.6,76,613/- transferred from the Bank Account of the petitioner in W.P. No.5264 of 2023 (Madan Kumar Subramanian) has to be necessarily refunded back to him by the respondents.

8.The learned Government Advocate has also not raised any serious objection with regard to the submissions made by the learned counsel for the petitioners insofar as the refund of the aforementioned amount is concerned.

9.For the foregoing reasons, these writ petitions are disposed of by clarifying that the impugned recovery notices as well as the impugned attachment orders cannot be enforced against these petitioners and they can be enforced only against the Company, namely, M/s.Clean Switch India Private Limited. Since a sum of Rs.6,76,613/- has been erroneously debited from the account of the petitioner in W.P. No.5264 of 2023 (Madan Kumar Subramanian), a direction is issued to the respondents to refund the said sum to him within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected W.M.Ps. stand closed. No costs.

27.02.2023

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To

The Assistant Commissioner (ST),
Nandambakkam Assessment Circle,
Room No.308, Third Floor,
Integrated Regn & C&T Building,
Nandanam, Chennai – 600 035.

ABDUL QUDDHOSE, J.

vga

W.P.Nos.5264, 5268 & 5273 of 2023 and W.M.P. Nos. 5289, 5290, 5292, 5293, 5299, 5300, 5303 & 5304 of 2023

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