



Crl.O.P.Nos.23615, 23019 and 23439 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.04.2023

Pronounced on : 20.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.Nos.23615, 23439 and 23019 of 2019

and

Crl.M.P.Nos.12033, 12315, 12448 and 12450 of 2019

1.M/s.Mehala Machines India limited, Inb
36, Harvey road,
Tirupur – 641 602.

2.Shri.C.Subramaniam
Director of M/s.Mehala Machines India Limited,
39, Cauvery Street, Odakkadu,
Tirupur – 641 602.

3.Shri.R.Selvan,
Director of M/s.Mehala Machines India Limited,
147/14, Valayankadu main road,
Kumar nagar, Tirupur – 641 602.



4.Shri.S.Carthic,

Director of M/s.Mehala Machines India limited,

39, Cauvery Street, Odakkadu,

Tirupur – 641 602.

5.Shri.N.P.Elango,

Director of M/s.Mehala Machines India limited,

12, Ganga Nagar,

Second street, Avinashi road,

Tripur – 641 602.

6.Shri.S.Dharani

Director of M/s.Mehala Machines India limited,

39, Cauvery street, Odakkadu,

Tirupur – 641 602.

7.Shri.S.Bharath

Director of M/s.Mehala Machines India limited,

39, Cauvery Street, Odakkadu,

Tirupur – 641 602.

...Petitioners / Accused
in all Crl.O.Ps

Vs.

1.The Income Tax Officer,

TDS ward, Tirupur,

Income Tax office,



Crl.O.P.Nos.23615, 23019 and 23439 of 2019

Adams Plaza, 1st floor,
121, 60 feet road,
Tirupur – 641 602.

2.The Commissioner of Income Tax (TDS) (i/c)
1510, Mayflower midcity, trichy road,
Coimbatore – 641018.

... Respondents in all Crl.O.Ps

COMMON PRAYER : Criminal Original Petitions have been filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the complaint in C.C.Nos.47, 49 and 51 of 2019 on the files of Judicial Magistrate - I, Tirupur.

For Petitioners in
all Crl.O.Ps : M/s.V.Srikanth

For Respondents in all
Crl.O.Ps : Mr.G.Navin Karthikeyan
Special Public Prosecutor

COMMON ORDER

The petitions have been filed challenging the complaints on the file of learned Judicial Magistrate No.1, Tirupur, under Section 276 B r/w 278 B of the Income Tax Act, 1961.



2. It is alleged in the complaints that the petitioners had deducted tax from the payments made to various parties and failed to deposit the tax to the credit of the Central Government within the prescribed time. The impugned complaints pertain to three different assessment years. It is alleged that in all three assessment years, the petitioners had delayed the deposit of tax deducted at source and therefore were liable for offences under Section 276 B r/w 278 B of Income Tax Act.

3. The learned counsel for the petitioners submitted that the assessing officer had not issued a notice under Section 2 (35) of the Income Tax Act to the Directors of the Company before the impugned prosecution was launched and hence the impugned complaint is liable to be quashed. He relied upon the Judgment of this Court in ***Income-Tax Officer vs. Roshini Cold Storage (P.) Ltd., and others*** reported in ***[2000] 245 ITR 322 (Mad)***. The Judgment of this Court in ***Sujatha Venkateshwaran vs. Assistant Commissioner of Income – Tax (Prosecution)*** reported in ***2018 SCC online Madras 13731*** wherein this Court had observed that a notice under Section 2 (35) of Income Tax is a requirement for the prosecution of Directors for the offences under Section 276 B of the Income Tax Act. The learned counsel further



submitted that the Commissioner of Income Tax had granted sanction nearly 18 months after the show cause notice was issued, which is in violation of the instructions issued by the Board under Section 119 of the Income Tax Act.

4. The learned counsel appearing for the respondents, on the contrary submitted that:-

(a) The Hon'ble Supreme Court in *Madhumilan Syntex Ltd., and others vs. Union of India and another* reported in (2007) 11 SCC 297, held that when there is an allegation in the complaint that the Directors are principal officers and persons incharge of and responsible to the company for the conduct of its business and no separate notice is necessary under Section 2 (35) of the Income Tax Act.

(b) The learned counsel further submitted that the Commissioner of Income Tax did not grant sanction immediately since the petitioners had submitted the reply belatedly. The time taken for reply has to be excluded as per the instructions relied upon by the petitioners. Hence, the delay cannot be attributed to the respondents.



5.This Court finds that the Company and its Directors have been prosecuted for the offence under Section 276 B of the Income Tax Act.

The contention of the learned counsel for the petitioners that no notice was issued to the Directors as mandated under Section 2 (35) of the Income Tax cannot be accepted. The Hon'ble Apex Court in ***Madhumilan Syntex Ltd., and others vs. Union of India and another*** (cited supra) had held as follows:

"43. From the statutory provisions, it is clear that to hold a person responsible under the Act, it must be shown that he/she is a "principal officer" under Section 2(35) of the Act or is "in charge of" and "responsible for the business of the Company or firm. It is also clear from the cases referred to above that where necessary averments have been made in the complaint, initiation of criminal proceedings, issuance of summons or framing of charge, cannot be held illegal and the court would not inquire into or decide correctness or otherwise of the allegations levelled or averments made by the complainant. It is a matter of evidence and an appropriate order can be passed at the trial.

44. In the case on hand, in the show-cause notice dated 11-3-1991 issued under Section



276-B read with Section 278-B of the Act, it was expressly stated by the Income Tax Officer (TDS), Bhopal that the Directors were considered to be principal officers under Section 2(35) of the Act. In the complaint dated 26-2-1992 filed by Respondent 2 Commissioner also, it was stated that the appellants were considered as principal officers. In the above view of the matter, in our opinion, contention of the learned counsel for the appellants cannot be accepted that the complaint filed against the appellants, particularly against Appellants 2-4 is ill-founded or not maintainable.

45. It was urged that a separate notice and/or communication ought to have been issued before issuance of show-cause notice under Section 276-B read with Section 278-B of the Act that the Directors were to be treated as principal officers under the Act. In our opinion, however, no such independent and separate notice is necessary and when in the show-cause notice it was stated that the Directors were to be considered as principal officers under the Act and a complaint was filed, such complaint is entertainable by a court provided it is otherwise maintainable."



In view of the above Judgment, the impugned complaints cannot be quashed on the ground that no notice under Section 2 (35) of the Income Act was issued to the Directors. Further, the question as to whether the Directors were in charge of and responsible to the Company for its business is factual and has to be agitated only before the trial Court.

6. As regards, the ground raised by the petitioner that the sanction to prosecute was given belatedly in violation of the Standard Operating Procedure given by the Board which prescribed the time limit for granting sanction of prosecution for the offence under Section 276 B of Income Tax Act as sixty days. It is seen that the instructions further provide that the time taken for a reply by the Assessee has to be excluded. The question of whether the Assessee had taken time to give the reply or whether there was a delay by the sanctioning authority is again factual in nature.

7. Hence, this Court is of the view that the points raised by the petitioners have to be adjudicated only before the trial Court, and this Court is not inclined to entertain this quash petition.



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8. However considering the age of the petitioners, their appearance before the trial Court is dispensed with unless the learned Magistrate considers their presence necessary for the progress of the trial.

9. Accordingly, the Criminal Original Petitions are dismissed.
Consequently, the connected Miscellaneous Petitions are closed.

20.04.2023

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NCC :Yes/No

Index : Yes/No

Speaking/Non Speaking Order

To

1.The Judicial Magistrate – I,
Tirupur

2.The Income Tax Officer,
TDS ward, Tirupur,
Income Tax office,
Aadams Plaza, 1st floor,
121, 60 feet road,
Tirupur – 641 602.



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SUNDER MOHAN. J,
dk

3.The Commissioner of Income Tax (TDS) (i/c)
1510, Mayflower midcity, Trichy road,
Coimbatore – 641018.

Pre Delivery Order in
Crl.O.P.Nos.23615, 23439 and 23019 of 2019
and
Crl.M.P.Nos.12033, 12315, 12448 and 12450 of 2019

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