IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.25243 and 25247 of 2024
and W.M.P.Nos.27570, 27571, 27575 and 27577 of 2024

M/s.Chakrawoods Private Limited,
Represented by its Director T.R.S.Muthukumar,
No-16, Krishna Street,
T.Nagar, Chennai - 600 017. ... Petitioner
in W.P.No.25243 of 2024

T.R.S.Muthukumar ... Petitioner
in W.P.No.25247 of 2024

Vs.

1. The Assistant Commissioner of GST & Central Excise,
Service Tax Range, Ponnagar,
Medical College Road,
Thangavur - 613 007.

2. The Branch Manager,
Indian Overseas Bank,
377, North Main Road,
Thanjavur - 613 009. ... Respondents
in both W.Ps.

PRAYER in W.P.No.25243 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, to direct the respondents to lift the bank attachment in Indian Overseas Bank having Account No.136402000000789, attached vide Notice dated 14.08.2024 having DIN 20240839XN0301000B37.

PRAYER in W.P.No.25247 of 2024: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, to direct the respondents to lift the bank attachment in Indian Overseas Bank having Account No.1364010000200004, attached vide Notice dated 14.08.2024 having DIN 20240839XN0301000B37.

For Petitioner in both W.Ps.	:	Mr.N.V.Balaji
For Respondents in both W.Ps.	:	Mr.B.Ramanakumar Senior Standing Counsel

- - - - -

COMMON ORDER

These Writ Petitions have been filed against the impugned attachment order passed against the petitioners dated 14.08.2024.

2. The learned counsel for the petitioner would submit that one of the petitioners in the present case is the Private Limited Company. The first

respondent had passed an *ex parte* assessment order against M/s.Sakthi Power Solutions Private Limited. The said Company, according to the petitioner, was dissolved as early as in the year 2021. The impugned attachment order was passed subsequent to the dissolution of M/s.Sakthi Power Solutions Private Limited. Hence, this order was passed against the dead person. The learned counsel for the petitioner would fairly submit that in the present case, the Directors have decided to dissolve the Company and therefore, by virtue of the resolution passed by the Directors, the Company was dissolved.

3. The learned counsel for the petitioner would submit that at the time of dissolution of the Company, the Directors have undertaken to pay the future payments. Therefore, he would submit that the respondents can proceed with the Director, and not against the Director of the dissolved Company, where he is also the Director of another Company. The said Company is a separate legal entity. Therefore, the separate legal entity cannot be proceeded with for the dues of other Company, unless and otherwise, the corporate veil will be lifted. In the present case, the corporate veil is not at all lifted. Under this circumstance, the present Writ Petitions are filed.

4. Per contra, the learned Senior Standing Counsel appearing for the respondents would submit that in the present case, the order was passed on 27.12.2022 and now only, the respondents came to know that the said Company was dissolved as early as in the year 2021. He would fairly submit that the impugned attachment order was passed subsequent to the dissolution. However, he would submit that the respondents can very well proceed with the Directors and appropriate orders may be passed directing the petitioners to file a reply to the Show Cause Notice.

5. In reply, the learned counsel for the petitioners would submit that upon payment of 10% of the disputed tax demand, the impugned order may be set aside and in which case, the petitioner in W.P.No.25247 of 2024, who was the Director of the Company dissolved, against which the impugned assessment order was passed, may be directed to file a reply.

6. I have given careful consideration to the submissions made by the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the respondent.

7. In the present case, admittedly, the impugned order was passed on 27.12.2022 and the Company was dissolved in the year 2021. After the dissolution of the Company, the impugned order came to be passed. However, in the event, if any liability arises, subsequent to the dissolution, since at the time of dissolution, the Directors of the Company have undertaken for future liabilities of the Company, the Directors are liable for the same. However, in the present case, no opportunity was provided to the Directors to file a reply and no opportunity for personal hearing was afforded.

8. Therefore, taking into consideration of all these aspects, the attachment order passed against M/s.Chakrawoods Private Limited is not sustainable since it is a separate legal entity. Merely because, one of the Directors of the dissolved Company is also the Director, the attachment recovery proceedings cannot be proceeded with, unless and otherwise, the Department is satisfied that the dissolved Company and M/s.Chakrawoods Private Limited are one and the same. For that also, the respondents have to proceed with the recovery, they have to lift the corporate veil otherwise, they cannot proceed with. Under these circumstances, this Court is inclined to set aside the impugned attachment order dated 14.08.2024 and accordingly, the same is set aside subject to the following conditions:-

(i) The petitioners shall pay a sum of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand Only) within a period of four (4) weeks from the date of receipt of a copy of this order and the petitioner in W.P.No.25247 of 2024 is directed to file a reply to the show cause notice issued against the Company, which was dissolved in the year 2021 within a period of four (4) weeks thereafter;

(ii) After affording an opportunity of personal hearing to the petitioner in W.P.No.25247 of 2024, the respondents shall pass final orders on merits and in accordance with law;

(iii) The attachment of bank account shall stand lifted subject to production of proof for the payment of Rs.1,50,000/-. The respondents can proceed with T.R.S.Muthukumar, who was the Director of the dissolved Company, and not against M/s.Chakrawoods Private Limited, unless and until the corporate veil is lifted.

With the above directions, these Writ Petitions are disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

29.08.2024

asi

To

1. The Assistant Commissioner of GST & Central Excise,
   Service Tax Range, Ponnagar,
   Medical College Road,
   Thangavur - 613 007.

2. The Branch Manager,
   Indian Overseas Bank,
   377, North Main Road,
   Thanjavur - 613 009.

KRISHNAN RAMASAMY, J.

asi

W.P.Nos.25243 and 25247 of 2024 and
W.M.P.Nos.27570, 27571, 27575 and 27577 of 2024

29.08.2024