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W.P.No.5033 of 20\_\_



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 21.01.2025**

**Coram:**

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.P.No.5033 of 2022  
and W.M.P.Nos.5146 & 5149 of 2022**

K.Hari Krishnan Nair

...Petitioner

Versus

1.The State Tax Officer,  
Hosur (North) I, Hosur – 635 109.

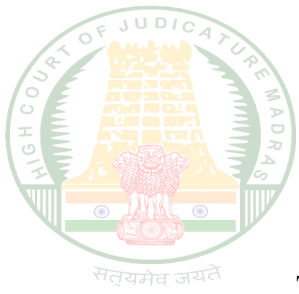
2.Branch Manager,  
AXIS Bank, The Salvation Army,  
South Western Territory,  
Thiruvananthapuram – 695 003.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the impugned proceedings vide Bank Attachment Notice in TNGST No.3320995 dated 15.03.2021 and quash the same and direct the first respondent to withdraw the impugned bank attachment notice issued to the second respondent herein.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.V.Prashanth Kiran,  
Government Advocate



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**ORDER**

The relief sought for in this writ petition is to quash the Bank Attachment Notice in dated 15.03.2021 bearing TNGST No.3320995 and to direct the 1<sup>st</sup> respondent to withdraw the said Bank Attachment Notice dated 15.03.2021 issued to the 2<sup>nd</sup> Respondent.

2. The brief facts of the case are that the Petitioner is one of the Directors of a company viz., Aarkeyan Granites Private Limited. It appears that the said company was having arrears of tax amounting to Rs.42,69,731/- from the Assessment Years 1999-2000. While so, the 1<sup>st</sup> Respondent had issued a Notice dated 17.11.2020 bearing TIN: 3320995/99-2000 and CST: 448602/99-2000 to the Petitioner, directing the Petitioner to pay the tax arrears to be paid by the said company viz., Aarkeyan Granites Private Limited, within three days from the date of receipt of the Notice dated 17.11.2020.

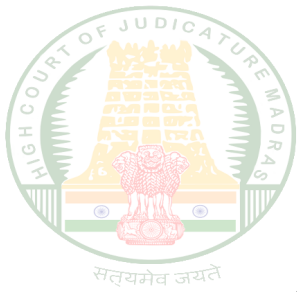
3. Upon receipt of the aforesaid Notice, the Petitioner sent his reply vide Letter dated 23.11.2020 to the 1<sup>st</sup> Respondent. However, without considering the reply of Petitioner, the 1<sup>st</sup> Respondent issued the impugned



Bank Attachment Notice dated 15.03.2021 to the 2<sup>nd</sup> Respondent Bank to realise the alleged tax arrears to be paid by the Aarkeyan Granites Private Limited company from the personal bank account of the Petitioner. Aggrieved by the same, the Petitioner has filed this writ petition for the relief stated *supra*.

4. The learned counsel for the Petitioner submitted that since the Aarkeyan Granites Private Limited company incurred huge loss, it did not file the Returns of Income. Hence, the name of Aarkeyan Granites Private Limited was struck off from the Register of Companies by the Ministry of Corporate Affairs under Section 248 of the Companies Act, 2013.

4.1. It is submitted by the learned counsel for the Petitioner that Section 19B of the Tamil Nadu General Sales Tax Act, 1959 (for brevity, “1959 Act”) and Section 18 of the Central Sales Tax Act, 1956 (for brevity, “1956 Act”) would apply only to companies which have been wound up and the same would not apply to the situation where the name of the company was struck off from the Register of Companies under the provisions of Companies Act, 2013.



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4.2. In this connection, the learned counsel for the Petitioner has also placed reliance on the following decisions:

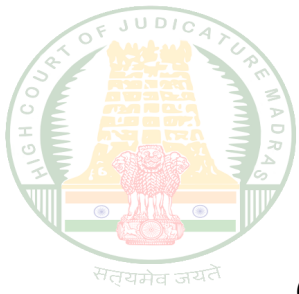
(i) ***In R.Vasinathan & Ors. Vs. The Commercial Tax Officer (FAC) & Ors. (2010) 102 SCL 117 (Madras)***, a Full Bench of this Court held as follows:

*“10. So far as lifting of corporate veil is concerned, in absence of any material fact before us, no finding can be given Further, as no winding up order or any other order has been passed under the Companies Act, it cannot be presumed that the company has been wound up. Even, if it is accepted that one or other petitioners are related to each other, in the capacity as ex-directors of shareholder, no notice can be issued against them under Section 19-B of the TNGST Act.*

11. ....

*12. From the impugned notice dated 17.02.2004, it will be evident that the 1<sup>st</sup> respondent issued the notice on presumption that the 2<sup>nd</sup> respondent is a 'firm'. In the 2<sup>nd</sup> paragraph, it is stated that the petitioners being “shareholders of a defunct firm” are liable to pay tax arrears lies upon them also, though admittedly the 2<sup>nd</sup> respondent is not a firm, nor the petitioners are shareholders of a defunct firm. The impugned notice having issued on such misconception and having issued without jurisdiction, we set aside the impugned notice dated 17<sup>th</sup> Feb 2004, though it will be open to the concerned authority to take recourse to any action, if permitted under any law. For the same reason, we also set aside the interim conditional order dated 7<sup>th</sup> September 2006 passed by learned Single Judge.*

*Both the writ petition and the writ appeal are allowed with the aforesaid observation. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.”*



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(ii) ***In W.P.No.3590 of 2019 dated 26.07.2022***, a Division Bench of Bombay High Court held as under:

*“16. The orders impugned are also unsustainable on another ground. Power under Section 179 of the Act can be exercised against the Directors upon satisfaction of certain conditions only if the tax dues cannot be recovered from the private company. To justify that the tax dues cannot be recovered, the Assessing Officer has to enumerate the steps taken towards recovery of tax dues from the company. For example, attachment of the accounts of the company as also, its movable and immovable assets, efforts made by the Assessing Officer in identification of the various movable and immovable assets of the company and so on and so forth.*

*The Show Cause Notice under Section 179 of the Act, dated 24.01.2018, on the other hand, reads as under:*

*“1. In the case of M/s.Crest Paper Mills Limited (PAN: AAACCC4343D), the demand of Rs.3,98,19,430/- is outstanding.*

*2. The aforesaid demands have been raised vide order giving effect to the order of CIT (A) u/s. 250 of the IT Act and have been outstanding since long but the same has not been paid by the assessee company so far....”*”

5. Opposing the prayer sought for in this writ petition, the learned Government Advocate for the Respondents submitted that the decision of the Hon'ble Supreme Court in ***Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited 2019 (416) ITR 613 (SC)*** is not relevant in the context on the tax liability.



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5.1. Further, the learned Government Advocate drew the attention of this Court to Section 248 of the Companies Act, 2013 which deals with the power of Registrar to remove the name of a company from the Register of Companies. For the sake of clarity, Section 248 of the Companies Act, 2013 is reproduced hereunder:

***“248. Power of Registrar to remove name of company from register of companies.— (1) Where the Registrar has reasonable cause to believe that—***

*(a) a company has failed to commence its business within one year of its incorporation;*

\* \* \* \* \*

*(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455; or*

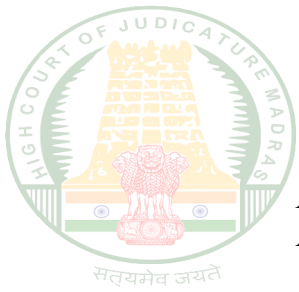
*(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or*

*(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.*

*he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.*

*(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:*

*Provided that in the case of a company regulated under a special*



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*Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.*

*(3) Nothing in sub-section (2) shall apply to a company registered under section 8.*

*(4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.*

*(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.*

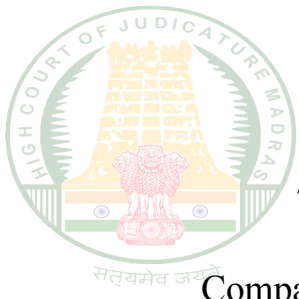
*(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:*

*Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.*

*(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.*

*(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies."*

6. Heard the learned counsel on either side and perused the materials available on record.



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7. The result of winding up of a company under the provisions of the Companies Act, 2013 and striking off the name of a company from the Register of Companies maintained by the Registrar of Companies are one and the same. They bring an end to the operations of the company incorporated under the Companies Act, 2013 as the case may be.

8. Once a company is wound up under the provisions of the Companies Act 2013, liquidation process has to be commenced by the Official Liquidator appointed by the National Company Law Tribunal.

9. The proviso to Section 248(7) of the Companies Act, 2013 makes it clear that the liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5) shall continue and may be enforced as if the company had not been dissolved.

10. As stated above, the effect of winding up of a company and striking off the name of a company from the Register of Companies are one and the same. Thus, the liability will therefore be automatically fasten on



the Directors of a Private Limited Company in terms of Section 19B of the 1959 Act and Section 18 of the 1956 Act

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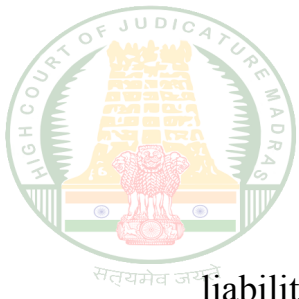
11. For the sake of clarity, Section 19B of the 1959 Act and Section 18 of the 1956 Act are reproduced hereunder:

**Section 19B of the 1959 Act:**

*“19-B. Liability to tax of 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.”*

**Section 18 of the 1956 Act:**

*“18. Liability of directors of private company in liquidation.— Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), when any private company is wound up after the commencement of this Act,. and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then, every person who was a director of the private company at any time during the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.”*



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12. In view of Section 248(7) of the Companies Act, 2013, the liability of the Petitioner as the Former Director of Aarkeyan Granites Private Limited company whose name was struck off from the Register of Companies by the Ministry of Corporate Affairs under Section 248 of the Companies Act, 2013, will continue and can be enforced. I find no merits in this writ petition. Therefore, this writ petition is liable to be dismissed.

13. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

**21.01.2025**

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The State Tax Officer,  
Hosur (North) I, Hosur – 635 109.

2.Branch Manager,  
AXIS Bank, The Salvation Army,  
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Thiruvananthapuram – 695 003.



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**C.SARAVANAN, J.**

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