



W.P.No.25005 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25005 of 2021

and

W.M.P.No.26330 of 2021

S.Ramasamy

... Petitioner

Vs.

The Assistant Commissioner (CT),
Kuniyamuthur Assessment Circle,
Dr.Balasundaram Road,
Coimbatore.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in his proceedings in N.K.No.110/2019/A1, quash the recovery notice dated 23.09.2021 issued therein.

For Petitioner : Mr.C.Subramanian

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

The petitioner has filed this Writ Petition challenging the Impugned Recovery Notice bearing Na.Ka.No.110/2019/A1 dated 23.09.2021 passed by the respondent.



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WEB COPY 2. The petitioner is the Director of M/s.Vijayalakshmi Mills Limited which stood merged with M/s.RSL Industries Limited by an Order of this Court dated 18.10.1997 in C.P.Nos.211 and 212 of 1997. The petitioner is before this Court against the Impugned Recovery Notice dated 23.09.2021 without jurisdiction and contrary to Section 19-B of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as “TNGST Act”).

3. The specific case of the petitioner is that the said M/s.Vijayalakshmi Mills Limited Company although ceased to exist was not wound up and that the petitioner is no longer the Director of the aforesaid Company and therefore the petitioner cannot be made liable for tax liability of the aforesaid Company which was taken over by M/s.RSL Textiles (India) Limited. It is submitted that liability of M/s.Vijayalakshmi Mills Limited Company, can be enforced against M/s.RSL Industries Limited under Section 19-B of TNGST Act, 1959.

4. The dispute relates to tax arrears of the said Company viz., M/s.Vijayalakshmi Mills Limited Company for the Assessment Years 1990-1991, 1992-1993, 1993-1994 and 1997-1998 under TNGST Act and for the



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Assessment Year 1990-1991 to 1994-1995 under the Central Sales Tax Act, 1956 (hereinafter referred to as “CST Act”).

5. It is submitted that presently the petitioner is the Director of M/s.Ramco Super Leathers Limited with effect from 01.01.2001 and therefore, the petitioner cannot be saddled with tax liability under Section 19-B of TNGST Act.

6. Defending the Impugned Recovery Notice dated 23.09.2021, learned Government Advocate for the respondent submits that there is no merits in the present writ petition.

7. It is further submitted that the said M/s.Vijayalakshmi Mills Limited stood merged with M/s.RSL Industries Limited and was wound up pursuant to Order dated 18.10.1997 in C.P.Nos.211 and 212 of 1997.

8. That apart, it is submitted that the said M/s.Vijayalakshmi Mills Limited had suffered adverse orders in the hands of the Assessing Officer in respect of the tax dues both under TNGST Act and CST Act as on 30.03.2012



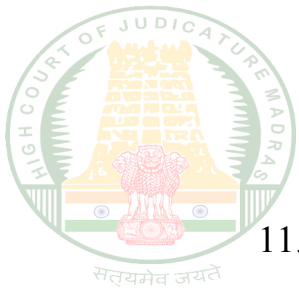
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for its failure to produce both Form-C and Form-F. The said

WEB C M/s.Vijayalakshmi Mills Limited had successfully challenged the same before this Court in W.P.Nos.14833 of 2012 etc batch and by an Order dated 26.06.2012, this Court had set aside the Assessment Order dated 30.03.2012 and remitted the case back to the respondent to pass appropriate orders.

9. It is further submitted that subsequently yet 2 other orders were passed on 19.02.2018 under TNGST Act for the aforesaid Assessment Years and on 21.02.2018 under CST Act for the Assessment Years in question which was also again challenged before this Court in W.P.Nos.5956 to 5964 of 2018, which was allowed by this Court on 09.07.2018 with certain directions.

10. It is further submitted that Order was passed subject to the petitioner complying with the directions contained therein. It is submitted that since the petitioner failed to comply with the directions/orders passed on 19.02.2018 and on 21.02.2018, it stood revised as per Order dated 09.07.2018 in W.P.Nos.5956 to 5964 of 2018.



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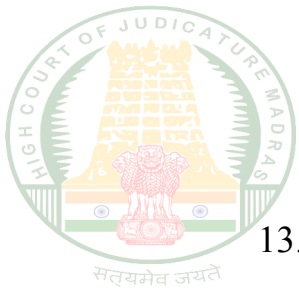
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11. It is further submitted that the petitioner was issued with notices dated 24.08.2018, 26.09.2018 and finally on 25.10.2018. However, the petitioner failed to pay the amount in respect of the tax arrears of the Company namely, M/s.Vijayalakshmi Mills Limited for the Assessment Years in question.

12. Learned Government Advocate for the respondent has also placed reliance on the decision of this Court rendered in **P.Chockalingam Vs. Deputy Commercial Tax Officer, Nagercoil (Rural), Kanyakumari District and another**, (1988) 71 STC 308. Specifically, a reference was made to Paragraph 5 from the said decision, which is reproduced below:-

“5.

It is contended on behalf of the petitioner that in case of misfeasance or breach of duty only the petitioner can be compelled to pay the penalty or the tax. Since he was not an active director, he cannot be now called upon to pay the tax as well as the penalty. This contention is untenable, because at no point of time, it has been proved that it was due to misfeasance or breach of duty he had been called upon to pay the tax amount or penalty. All the directors were issued notices and he, as one among the directors, is liable to pay under the Act. Thus, we find that there is no merit in the writ petition. Hence, it is dismissed. Under the circumstances, there is no order as to costs.”



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13. Similarly, the learned Government Advocate for the respondent has also drew attention to yet another decision of this Court rendered in **Sri Durga Impex, Represented by its Proprietor Vs. The Assistant Commissioner (ST) FAC, Chennai** on 09.02.2023.

14. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

15. When a Transferor Company gets amalgamated with a Transferee Company, the affairs of the Transferor Company stands merged with the Transferee Company. However, its assets are not normally liquidated. The assets and liabilities of the Transferor Company are taken over by the Transferee Company with which the Transferor Company gets merged.

16. A reading of the Order dated 18.10.1997 of the Company Court in C.P.Nos.211 and 212 of 1997 makes it clear that though the Scheme of amalgamation was sanctioned, the Transferor Company namely M/s.Vijayalakshmi Mills Limited was required to file a notice with the Official Liquidator, High Court of Madras regarding “**winding up**” of the Company.



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The Official Liquidator was to file a report within 12 weeks i.e., on or before

10.01.1998.

17. Therefore, there is no dispute that the said Company namely M/s.Vijayalakshmi Mills Limited merged with M/s.RSL Industries Limited pursuant to Order dated 18.10.1997 in C.P.Nos.211 and 212 of 1997. However, it was subject to certain conditions.

18. Although this Court had earlier dismissed the Writ Petition after hearing the learned counsel for the petitioner on 08.11.2024, and had call for the bundle for dictating a detailed order in the Chamber. While finalizing the final order it was felt that petitioner may have a case for the relief sought for and therefore to verify the same, the Registry was directed to transmit the Court bundle in C.P.Nos.211 and 212 of 1997.

19. Accordingly, the Court bundle in C.P.Nos.211 and 212 of 1997 was transmitted and thereafter the case was listed for further clarification on 09.01.2025.



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WEB COPY 20. A reading of the order of the Company Court in C.P.Nos.211 and 212 of 1997 indicates that The Vijayalakshmi Mills Limited of which the petitioner was formerly a Director was dissolved without wound up. The image copy of the order of the Company Court in C.P.Nos.211 and 212 of 1997 is re-produced below:-

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORIGINAL JURISDICTION)
Tuesday the 8th day of September 1998
The Hon'ble Mr. Justice S. THANGARAJ
COMPANY PETITION NOS. 211 AND 212 of 1997
C.P. No. 211 of 1997:- .. In the matter of Companies Act, 1956
and
In the matter of the Vijayalakshmi
Mills Limited.
The Vijayalakshmi Mills Limited,
Registered Office at Kuniyamuthur P.O., ..Petitioner
Coimbatore-641 008.
C.P. No. 212 of 1997:- .. In the matter of Companies
Act, 1956; and
In the matter of RSL Indus-
tries Limited.
RSL Industries Limited, Sethu House, 28,
Dr. Alagappa Road, Chennai- 600 084. ..Petitioner.
Company Petition on Report of the Official
Liquidator praying that this Court be pleased to pass
an order in terms of sub clause (iv) of sub Section (1)
of Section 394 of Companies, 1956, for dissolution of
The Vijayalakshmi Mills Limited, transferor Company
without winding up.
These Company Petitions on report of the
Official Liquidator, High Court, Madras coming on this
day before this Court for hearing in the presence of
the Official Liquidator, High Court, Madras appearing
in person and upon reading the Common Order dated 18.10.97



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and the report of the Official Liquidator, High Court, Madras filed herein, It is Ordered:-

That the transferor Company viz., The Vijayalakshmi Mills Limited the petitioner in Company Petition No. 211 of 1997 be and is hereby dissolved without winding up.

Witness the Hon'ble Thiru Man Mohan Singh Liberhan, Chief Justice at Madras, aforesaid this the 8th day of September, 1998.

GV.

ASSISTANT REGISTRAR (O.S.)

20 A. Since the Transferor company namely The Vijayalakshmi Mills Limited was dissolved without winding up, liability cannot be fastened on its director.

21. For easy reference, Section 19 and Section 19B of TNGST Act and Section 18 of CST Act are tabulated below:-

19 of TNGST Act	18 of CST Act
19. Liability of Firms.-	18. Liability of Directors of Private Company in liquidation.-
(1) Where any firm is liable to pay any tax or other amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.	Notwithstanding anything contained in the Companies Act, 1956, when any private Company is wound up after the commencement of this Act, and
(2) Where a partner of a firm liable to pay any tax or any	any tax assessed on the Company under this Act for any



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19 of TNGST Act	18 of CST Act
amount under this Act retires, he shall, notwithstanding any contract to the contrary, be liable to pay the tax or other amount remaining unpaid at the time of his retirement and any tax or other amount due up to the date of retirement, though unassessed.	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
19-B. 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.	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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WEB COPY 22. A reading of the above provision makes it clear that only where a dealer is a private Company and such Private 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.

23. Thus, this is not a case where the Vijayalakshmi Mills Limited was wound up pursuant to order of this Court. It was dissolved without being wound up. The liability on a Director of a Private Limited Company would arise only where the company is wound up when such private limited company was in arrears of the tax. As The Vijayalakshmi Mills Limited was been wound up and was merged and dissolved without winding up, tax liability of the said The Vijayalakshmi Mills Limited is to be recovered only from the transferee company namely M/s.RSL Industries Limited or any other company



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which was subsequently taken over the said company. Therefore, this Writ

WEB PETITION is deserves to be allowed and is accordingly allowed.

24. This Writ Petition stands allowed. No costs. Consequently,
connected Writ Miscellaneous Petition is closed.

09.01.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
arb/jas

To

The Assistant Commissioner (CT),
Kuniyamuthur Assessment Circle,
Dr.Balasundaram Road,
Coimbatore.



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C.SARAVANAN, J.

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W.M.P.No.26330 of 2021

09.01.2025