IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :07.04.2025

CORAM

**THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY**

**W.P.No.37771 of 2024 &**
**W.M.P.Nos.40843 and 40844 of 2024**

YESAN INDUSTRIAL SERVICES LLP
Represented by its Partner
Sathyanarayanan P
S/o Sivasankara Menon
No.4-243-1, Judge Road,
Kannankurichi Post, Salem,
Tamil Nadu-636008. ... Petitioner

Vs.

1. Assistant Commissioner (ST),
Mettur Assessment Circle, Raman Nagar,
Mettur-636403.

2. The Branch Manager,
Indian Bank,
Dharmapuri Main Road,
Chemrajpet, Mecheri,
Mechery-636 451. ... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in Impugned Notice and order bearing Reference

GSTIN:33AAMCS3255L1Z1/2023/A3/ dated 19.11.2024 and quash the same and consequently direct the 1st respondent to refund a sum of Rs.94,52,175/- to the petitioner's bank account No.6905186891, Indian Bank, Mecheri Bank.

For Petitioner : Mr.S.Karthikei Balan

For Respondents : Ms.Amirtha PoonkodiDinakaran (R1)
Government Advocate (Taxes)

**ORDER**

Ms.Amirthapoonkodi Dinakaran, learned Government Advocate (Taxes) takes notice on behalf of the 1st respondent.

2. The challenge in this writ petition is to the order dated 19.11.2024 passed by the 1st respondent, demanding tax dues from the petitioner to the extent of Rs.88,56,127/-.

3.The learned counsel for the petitioner would submit that petitioner and his wife are the partners of the Petitioner-Firm which is a Limited Liability Partnership (LLP) and they are also the Directors of SMIS Industrial Consultancy Services Pvt. Ltd.,. The impugned order is challenged on the ground that the 1st respondent by invoking Section 79(1)(c)(i) of Central Goods and Services Tax, 2017 (in short 'the Act') seeks to recover the tax dues from a separate entity i.e,SMIS Industrial Consultancy Services Pvt. Ltd. in which the petitioner and his wife were merely Directors with no financial obligations linking the Petitioner Firm to the Company. That apart the 1st Respondent, without jurisdiction issued a garnishee order and directed the freezing of the Petitioner's bank account, disrupting its operations and preventing payment of salary to around 800 employees and this action was taken without giving an opportunity of hearing to the petitioner.

**3.1.** It is also submitted by the learned counsel for the petitioner that Section 79(1)(c)(i) of the Act applies only when a third party holds funds due to the assessee in default. Since neither the petitioner nor its partners owe any money to M/s. SMIS Industrial Consultancy Services Pvt. Ltd, invoking this provision is unjustified. If the respondent wants to recover the tax dues from the Directors of the Company, they ought to have invoked Section 89 of the Act. But without doing so, the 1st respondent has erroneously attached the bank account of the petitioner firm and recovered the tax dues from the same. He therefore prays to set aside the impugned order.

**4.** The learned Government Advocate (Taxes) for the 1st respondent submitted that in this case the partners of the Petitioner Firm are also the Directors of M/s. SMIS Industrial Consultancy Services Pvt. Ltd. and the Directors are liable to pay the tax dues as per Section 89 of the Act. Therefore, impugned notice came to be issued. Since the Directors have not paid the tax dues, the same was recovered from the bank account of the Petitioner-Firm.

5. Heard both sides. Perused the records.

6. In this context, it would be apposite to extract Section 89 (1) of the Act and the same is extracted hereunder:

> ***"89. Liability of directors of private company***
> *(1) Notwithstanding anything contained in the Companies Act, 2013(18 of 2013), where any tax, interest or penalty due from a private company in*

> *respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty 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."*

7. A reading of the aforesaid provisions clearly shows that once the Company fails to pay tax, immediately the Directors of the company are jointly and severally liable to pay the same unless if they prove that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on their part in relation to the affairs of the Company.

8. In the case on hand, no such action has come into play. It appears that a judicial notice was issued against the Directors. Since they have not paid the tax dues, the bank account of the Petitioner-Firm in which the Directors are the partners was attached and a sum of Rs.94,52,175/- was also recovered. The Petitioner- Firm is a separate entity and the Department can take action against the petitioner firm for recovery of tax dues pertaining to M/s. SMIS Industrial Consultancy Services Pvt. Ltd. only in

the event if the partnership Firm distributes profit in the name of the partners. That apart, in the event of dissolution or settlement of the parnters of the partnership firm, if there is excess assets available, the GST authorities can insist upon payment the tax dues or attach those assets. Except in those situations, the Department shall not have any authority to attach the bank account or property of the Petitioner partnership Firm. Therefore, demanding the Petitioner Firm to pay tax dues with respect to M/s. SMIS Industrial Consultancy Services Pvt. Ltd. and recovering a sum of Rs.94,52,175/- by attaching the account of the petitioner's is illegal and the same is liable to be quashed.

9. In the result, the impugned order dated 19.11.2024 is set aside. As far as refund of a sum of Rs.94,52,175/- is concerned, it is stated that since the petitioner is a man power agency, the said amount is kept for payment of salary to 800 persons. Therefore, the petitioner is at liberty to file necessary refund application in accordance with law and in which case, the 1st respondent is directed to refund the said amount within a period of one week thereafter.

This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

07.04.2025

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Index : yes/no
Neutral Citation : yes/no

To

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   Chemrajpet, Mecheri,
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**Krishnan Ramasamy,J.,**

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