BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.(MD)No.3445 of 2025
and
W.M.P.(MD)Nos.2433 and 2435 of 2025

Kanthinathan Palani Kandasamy ... Petitioner

-vs-

1.The Assistant Commissioner,
Sales Tax, Tirunelveli Junction,
Tirunelveli – 2.

2.The Branch Manager,
City Union Bank,
No.78, Perumal Sannadhi Street,
Veeraraghavapuram,
Tirunelveli – 1. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to consider the petitioner's representation dated 01.10.2024 and to withdraw the said ROC No.A3/1801/15, dated 05.08.2022 and consequently the notice dated 05.08.2022, for recovery of money due in form U under rule 9(4) of VAT Rules as the petitioner's proprietorship concern of M/s.Annamalai Drug Agencies with TIN No.33545542229 is different from the partnership concern of M/s.Annamalai

Drug Agencies with TIN No.33085541609 and consequently, to direct the second respondent to defreeze the petitioner's bank Account No.512020010015385.

For Petitioner	:	Mr.P.Balamurugan
For R1	:	Mr.J.K.Jayaselan Government Advocate

ORDER

This Writ Petition has been filed seeking a direction to the first respondent to consider the petitioner's representation dated 01.10.2024 and to withdraw ROC No.A3/1801/15, dated 05.08.2022 and consequently, the notice dated 05.08.2022, for recovery of money due in Form - U under Rule 9(4) of VAT Rules, as the petitioner's proprietorship concern of M/s.Annamalai Drug Agencies with TIN No.33545542229 is different from the partnership concern of M/s.Annamalai Drug Agencies with TIN No.33085541609 and consequently, to direct the second respondent to defreeze the petitioner's Bank Account No.512020010015385.

2. With the consent of both sides, this Writ Petition is disposed of, at the admission stage itself.

3. According to the petitioner, he and his brother initially ran a partnership firm under the name and style of M/s.Annamalai Drug Agencies until September 2011. The firm was registered under TIN No.33085541609. However, in September 2011, the partnership was dissolved and the business transitioned into a sole proprietorship under the same name, with the petitioner acquiring all medical and drug products from the partnership.

4. The petitioner submits that when the partnership was dissolved, the tax liabilities of M/s.Annamalai Drug Agencies were cleared. The total tax due was paid on 20.10.2011 via Cheque No.729792 for the amount of Rs.14,336/-. Despite settling all outstanding dues, the petitioner faced an issue in the course of his business. On attempting to conduct business with the second respondent, he was informed that his bank account had been frozen. This was done based on letters from the second respondent, dated 08.10.2021 and 05.08.2022.

5. The petitioner submits that later he received a notice under ROC No.A3/1801/15 dated 05.08.2022 along with Form - U (Notice for recovery of money due). The said notice mentioned that the petitioner was allegedly in arrears of tax, amounting to Rs.11,55,880/- for the business under TIN No. 33085541609. It was implied that these arrears were due from the partnership concern of M/s.Annamalai Drug Agencies and not the petitioner's proprietorship concern.

6. The petitioner submits that there is a clear distinction between the defunct partnership concern (M/s.Annamalai Drug Agencies) and his proprietorship concern, which continued operations under the same name, but under a different TIN No.33545542229. Therefore, the alleged tax arrears cannot be attributed to the petitioner's sole proprietorship concern.

7. The petitioner further submits that the second respondent took the action of freezing the petitioner's bank account without any prior intimation and based on the erroneous claim related to the tax arrears for the partnership concern. Furthermore, the petitioner was directed to pay double interest for overdue loans related to these alleged arrears.

8. It is submitted that the burden of proof lies with the first respondent to establish that the petitioner is liable for the alleged tax arrears of Rs.11,55,880/-. The petitioner emphasizes that all dues for the partnership firm M/s.Annamalai Drug Agencies were paid on 20.10.2011 and the relevant documents to support this claim are available. On 01.10.2024, the petitioner sent a representation to the first respondent requesting the withdrawal of ROC No.A3/1801/15 and Form - U under Rule 9(4) of VAT Rules and also requested the second respondent to defreeze his bank account (Account No.512020010015385). However, so far, no action has been taken by either of the respondents, prompting the petitioner to file this writ petition.

9. Heard both sides.

10. It is needless to point out that whenever a representation of this nature is made to a Statutory Authority, there is a duty cast upon him to consider the same on its own merits and pass appropriate orders in one way or other, instead of keeping the same pending indefinitely. As such, non-consideration of the representation by the Statutory Authority would amount to dereliction of duty and hence, this Court will be justified in invoking its extraordinary powers under

Article 226 of the Constitution of India and direct them to consider the same within a stipulated time.

11. In the light of the above observations, there shall be a direction to the first respondent herein to consider the petitioner's representation dated 01.10.2024, on its own merits and pass a speaking order in accordance with law, after giving due opportunity to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that this Court has not expressed any of its views with regard to the merits of the matter and that it is open to the first respondent to consider the same on its own merits.

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

NCC : Yes / No
Index : Yes / No
smn2

06.02.2025

To:-

The Assistant Commissioner,
Sales Tax, Tirunelveli Junction,
Tirunelveli – 2.

VIVEK KUMAR SINGH, J.

smn2

W.P.(MD)No.3445 of 2025

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