BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON 09.01.2025	PRONOUNCED ON 28.02.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)Nos.27640 & 30792 of 2024
WMP.(MD).Nos.23461 of 2024

W.P.(MD).No.27640 of 2024
M.Saraswathy … Petitioner

vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The State Tax Officer,
Karaikudi Assessment Circle,
Commercial Taxes Office,
50/52, Jawahar Street,
Karaikudi, Sivagangai District – 630 001. ... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the impugned proceedings of the second respondent in TIN: 33106301399/ 2015-16 dated 04.09.2024 and quash the same and pass such further order.

W.P.(MD).No.30792 of 2024

M.Saraswathy ... Petitioner

vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The State Tax Officer,
Karaikudi Assessment Circle,
Commercial Taxes Office,
50/52, Jawahar Street,
Karaikudi, Sivagangai District – 630 001.

3.The No.1 Joint Sub-Registrar,
O/o The No.1 Joint Sub-Registrar,
Muthoorani Mudukku Lane,
Aruna Nagar, Oyyakondansiruvayal,
Karaikudi, Sivagangai District – 630 001. ... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the second respondent to raise the attachment made against the petitioner's immovable properties vide his proceedings in Na.Ka.No.A3/456/2015, dated 26.08.2016, registered with the third respondent by considering the petitioner's representation, dated 21.11.2024, within a specific time frame as may be fixed by this Court.

For Petitioner : Mr.B.Rooban in both W.Ps.,

For Respondents : Mr.R.Suresh Kumar AGP in
W.P.No.27640 of 2024

Mr.J.K.Jeyaseelan G.A., for RR1 &2
in W.P.No.30792 of 2024
Mr.M.Sarangan AGP for R3 in
W.P.No.30792 of 2024

COMMON ORDER

The challenge in W.P.(MD)No.27640 of 2024 is the impugned order passed by the second respondent demanding the petitioner to pay the amount of Rs.22,67,878/- at once towards the arrears of Tvl.Ayyappa Tyres. W.P.(MD) No.30792 of 2024 is to raise the attachment made against the petitioner's immovable properties vide the second respondent's proceedings dated 26.08.2016 by considering the representation of the petitioner.

2. Heard Mr.B.Rooban, learned counsel appearing for the petitioner in both Writ Petitions and Mr.Suresh Kumar learned Additional Government Pleader appearing for the respondent in W.P.No.27640 of 2024, Mr.J.K.Jeyaseelan, learned Government Advocate appearing for the first and second respondents in W.P.No.30792 of 2024 and Mr.M.Sarangan, learned Additional Government Pleader appearing for the third respondent.

3. The learned counsel appearing for the petitioner would submit that even though the petitioner had challenged the order of demand, as the said demand also envisaged recovery of the demand by initiating appropriate proceedings, the petitioner had requested this Court to extend the time to comply with the demand. Acceding to her request, this Court had granted time to make payment on or before 17.12.2024 and that pursuant to such extension of time, the petitioner had also made good the demand and he would rely upon the cheque issued by the petitioner in favour of the respondents. The receipt issued by the Department for the receipt of cheque and the statement of the petitioner's account for disbursing the same were also relied upon by the petitioner. Therefore, he would submit that the prayer sought for in the Writ Petition in W.P.(MD).No.27640 of 2024 had become infructuous.

4. He would further submit that in view of the fulfillment of the demand made by the respondent, the respondent is bound to raise the order of attachment and that having received the payment as early as on 27.11.2024, the respondent had failed to raise the order of attachment.

Hence, he had filed a subsequent Writ Petition seeking to raise the order of attachment and hence, he would seek appropriate relief.

5. On the other hand, the learned Additional Government Pleader would submit that one Mr.Muthu Proprietor of M/s.Ayyappa Tyres, who was an exclusive dealer of MRF Tyres, was in arrears of Rs.5,22,83,230/- for the assessment years from 2007-08 to 2013-14 and he had closed down his business on 20.04.2015 and transferred the business along with all properties to the petitioner herein, who is none other than his wife. It is a conspiracy between the said Muthu and the petitioner to cheat the Government. He would submit that the conduct of the petitioner also does not warrant any interference by this Court. He would submit that the petitioner in the earlier round of litigation had contended that there was no assessed transfer, but during the course of hearing, she had admitted that the business of transfer including the assets of her husband. Pursuant to the direction issued by the Court in the earlier round of litigation, an assessment was made and an order had been passed quantifying the closing stock of her husband at Rs.22,67,878/- against which the petitioner had preferred a Writ Petition, in W.P.No.27640 of 2024. He also acknowledged the payment of

the said demand made under the order impugned in the said Writ Petition. He would further submit that the Department had preferred an appeal in W.A.NO.1200 of 2024 and the same is pending consideration before this Court. Therefore, he would pray this Court to dismiss the Writ Petitions.

6. I have heard the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

7. It is to be noted that the petitioner had earlier filed a Writ Petition in W.P.(MD).No.7805 of 2017 and W.P.(MD).No.5518 of 2020. The challenge in the said Writ Petitions were to an impugned notice sent to MRF Tyres to attach the petitioner's account and challenging the impugned proceedings for attachment for a due of Rs.5,24,41,738/- from the petitioner and attaching her properties.

8. It is also to be noted that the learned Single Judge of this Court had held that for the dues of the concern that was managed by the petitioner's husband, the property belonging to the petitioner purchased much prior in time cannot be attached and therefore, had quashed the attachment. As

regards to the petitioner, a direction was issued to quantify the claim and such quantification had been made by the respondent in its proceedings dated 04.09.2024 and corrected by order dated 11.09.2024, which has been challenged by the petitioner. Even though, she had challenged the same, during the pendency of the Writ Petition, she had made good the payments. Hence, the prayer sought for in W.P.(MD).No.27640 of 2024 had become infructuous.

9. As regards the claim to raise the order of attachment, it is to be seen that the learned Single Judge had quashed the order of attachment made against the petitioner's property. A Writ Appeal seems to have been filed by the Department only as against the quashing of the notice issued to a third party garnishee and there is no appeal against the order passed by the learned Single Judge wherein he had held that the property belonging to the petitioner could not be attached. In such view of the matter, I do not find any impediment in ordering the Writ Petition in W.P.(MD).No.30792 of 2024.

10. In fine, the Writ Petition in W.P.(MD).No.27640 of 2024 is dismissed as infructuous and the Writ Petition in W.P(MD).No.30792 of 2024 is allowed and direction is issued to the respondents to raise the order of attachment. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

28.02.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
Pbn

To

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K.KUMARESH BABU.,J.

Pbn

A Pre-delivery order made in
W.P.(MD)Nos.27640 & 30792 of 2024
WMP.(MD).Nos.23461 of 2024

28.02.2025