IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.01.2026
Coram

The Honourable **Mr.Justice C.Saravanan**

W.P.Nos.33490 & 33637 & of 2023
and
W.M.P.Nos.33327, 33329, 33478 & 33479 of 2025

1. Mr.Ramdev Polisetty ...Petitioner in W.P.No.33490 of 2023

2. CHANDRASEKHAR KONDA ...Petitioner in W.P.No.33637 of 2023

Vs.

1 ASSISTANT COMMISSIONER (ST)
AYNAVARAM ASSESSMENT CIRCLE,
F.50,3RD FLOOR 1ST AVENUE
ANNA NAGAR (EAST) CHENNAI - 600 102

2 THE BRANCH MANAGER
HDFC BANK NO. 40
NUNGAMBAKKAM HIGH ROAD
CHENNAI 600 034. ...Respondents

Common Prayer :-

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned Order bearing Reference Number Reference 33AADCK1298C1ZU / 2017-18 and 2019-20 dated 22.08.2023 passed by the First Respondent and to quash the same

For Petitioner in both W.Ps. : Mr.Sivaraman Jayasankar
For Respondent-1 : Mr.C.Harsha Raj
Special Government Pleader

For Respondent-2 : Mr.C.Mohan and
M/s.Rexy Josephine Mary
for M/s.King and Partridge

Common Order

By this Common Order, both these Writ Petitions are disposed of.

2. In these Writ Petitions, the Petitioners have challenged the recovery notices dated 22.08.2023 issued to the Petitioners, whereby, the Bank Accounts of the Petitioners were attached for the tax liability of one Tvl.KLN Motor Agencies Pvt. Ltd.,

3. The Petitioners are the Directors of Tvl.KLN Motor Agencies Pvt. Ltd, which is in arrears of GST. It appears that the said Company has also been ordered to be wound-up by the National Company Law Tribunal, Chennai (in short, NCLT) vide Order dated 07.03.2024 in CP/34/CHE/2023.

4. The case of the Petitioners is that the impugned Orders dated 22.08.2023 passed by the first Respondent seeking to attach the Bank

Account of the respective Petitioners for dues of the aforesaid Company is without jurisdiction, as no notice was issued to the Petitioners.

5. The learned counsel for the Petitioners drew the attention of this Court to Section 89 of the respective GST Enactments and the decision of this Court and two decisions of the Hon'ble Gujarat High Court to substantiate the contention that the impugned Recovery Proceedings initiated by the first Respondent were in gross violation of Principles of Natural Justice, as no notice was issued to the Petitioners before proceeding to attach the Bank Account of the Petitioners for the tax liability of One Tvl.KLN Motor Agencies Pvt. Ltd, under liquidation, which has been ordered to be wound-up by NCLT vide Order dated 07.03.2024.

6. The decisions relied on by the learned counsel for the Petitioner are as follows:-

i) **K.Chandrasekaran Vs. TRO, International Taxation,** reported in **(2018) 8 TMI 1731;**

ii) Devendra Babulal Jain Vs. ITO, reported in **2023 (2) TMI 1073 and**

iii) Maganbhai Hansrajbhai Patel Vs. ACIT repored in **2012 (11) TMI 189**

7. Mr.C.Harsha Raj, learned Special Government Pleader for the first Respondent, on the other hand, would submit that the decisions cited by the learned counsel for the Petitioners are distinguishable to the facts of the present case. It is submitted that though the aforesaid decisions dealt with similar provisions under Income Tax Act, 1961, the facts are not identical in all respects, inasmuch as, the Directors were Directors of a Public Limited Company. Specifically, a reference has been made by the learned Special Government Pleader for the first Respondent to Paragraph No.21 of the decision rendered by the Hon'ble Gujarat High Court in **Maganbhai Hansrajbhai Patel Vs. ACIT (cited supra),** which reads as follows:-

> ''To our mind, the authority completely failed to appreciate in proper perspective the requirement of section 179(1) of the Act. We may recall that said provision provides for a vicarious liability of the director of a public company for payment of tax dues which cannot be recovered from the company. However, such liability could be avoided if the director

proves that the non recovery cannot be attributed to any gross negligence, misfeasance or breach of duty on his part in relation to the affairs of the company. It is of-course true that the responsibility of establishing such facts is cast upon the director. Therefore, once it is shown that there is a private company whose tax dues have remained outstanding and same cannot be recovered, any person who was a director of such a company at the relevant time would be liable to pay such dues. However, such liability can be avoided if he proves that the non recovery cannot be attributed to the three factors mentioned above. Thus the responsibility to establish such facts are on the director. However, once the director places before the authority his reasons why it should be held that non recovery cannot be attributed to any of the the three factors, the authority would have to examine such grounds and come to a conclusion in this respect. Significantly, the question of lack of gross negligence, misfeasance or breach of duty on part of the director is to be viewed in the context of non recovery of the tax dues of the company. In other words, as long as the director establishes that the non recovery of the tax cannot be attributed to his gross neglect, etc., his liability under section 179(1) of the Act would not arise. Here again the legislature advisedly used the word gross neglect and not a mere neglect on his part. The entire focus and discussion of the Assistant

Commissioner in the impugned order is with respect to the petitioner's neglect in functioning of the company when the company was functional. Nothing came to be stated by him regarding the gross negligence on part of the petitioner due to which the tax dues from the company could not be recovered. In absence of any such consideration, the Assistant Commissioner could not have ordered recovery of dues of the company from the director. We would clarify that in the present case the petitioner had putforth a strong representation to the proposal of recovery of tax from him under section 179 of the Act. In such representation, he had detailed the steps taken by him and the circumstances due to which non recovery of tax cannot be attributed to his gross neglect. It was this representation and the factors which the petitioner had putforth before the Assistant Commissioner which had to be taken into account before the order could be passed. It is not even the case of the department that the petitioner paid the dues of other creditors of the company in preference to the tax dues of the department. It is not the case of the department that the petitioner negligently frittered away the assets of the company due to which the dues of the department could not be recovered. To suggest that the petitioner did not oppose the GSFC's auction sale is begging the question. GSFC had sold the property after several attempts through auction. It is not the case of the department that proper price was not fetched.''

8. It is the specific case of the learned counsel for the Petitioners that the impugned Orders dated 22.08.2023 passed by the first Respondent suffer from gross violation of Principles of Natural Justice, as the respective Petitioners were not issued with any notice before impugned Orders attaching the bank account of the Petitioners were passed.

9. The impugned notices are challenged on the ground that in respect of the tax liability of the Company, viz, Tvl.KLN Motor Agencies Pvt. Ltd, which has been ordered to be wound-up by NCLT vide Order dated 07.03.2024, the petitioner cannot be held liable.

10. In response to a specific query as to amount that is said to be lying in the respective Petitioner's accounts, the learned counsel for the Petitioners submitted that the amounts are only in few thousands.

11. I have considered the submissions made by the learned counsel for the Petitioners and the learned Special Government Pleader for the Respondents.

12. The Petitioners cannot be mulcted with any liability towards tax, penalty or interest, merely because, they were Directors of the said Company, unless, the conditions in Section 88 (3) of the respective GST Enactments are satisfied. The Petitioners deserve a chance to explain that amounts cannot be recovered from them.

13. Therefore, these Writ Petitions are disposed of by remitting the cases back to the first Respondent to pass a fresh order on merits, subject to the Petitioners filing a proper representation together with proper details substantiating that non-recovery of tax cannot be attributed to them on account of gross negligence, misfeasance or breach of duty on their part.

14. In case, the Petitioners file such representation, the same shall be considered on merits and disposed of in accordance with law by the first Respondent.

15. Needless to state, the Petitioners shall be heard before passing any such orders.

16. These Writ Petitions are disposed of with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

22.01.2026

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Index : yes/no
Neutral Citation : yes/no
To

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