IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.9354 of 2016 and
W.M.P.No.8355 of 2016

B.Gayathri ... Petitioner

Vs.

1. The Assistant Commissioner (CT),
   JJ Nagar Assessment Circle,
   No.38 & 39, JJ Complex,
   Thirumangalam,
   Chennai - 600 040.

2. The Assistant Commissioner (CT),
   Koyembedu Assessment Circle,
   Chennai. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records of the 1st respondent in Form No.4 dated 02.02.2016 and quash the same as issued in violation of Section 26 of the TNVAT Act and also against the principles of natural justice and pass orders in accordance with law.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.S.Kanmani Annamalai,
Addl Government Pleader (Tax)

सत्यमेव जयते

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorari to call for the records of the 1st respondent in Form No.4 dated 02.02.2016 and quash the same.

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2.It is the case of the petitioner that her husband had died on 17.09.2013 and after the death of her husband, the 2nd respondent issued pre-revision notice dated 27.02.2014 for the assessment years 2006-07 and 2007-08 in the name of the Proprietary Firm of the petitioner's husband. The petitioner informed about the death of her husband to the 2nd respondent and about the closure of his business with effect from 25.02.2014.

Thereafter, nothing was heard from the respondents, but all of a sudden, the petitioner received the notice dated 31.12.2015 issued by the 1st respondent asking for details, which the petitioner provided. On 02.02.2016, the 1st respondent served the impugned Form No.4 attaching the lands belonging to the petitioner's late husband towards the alleged arrears of a sum of Rs.1,03,12,291/- for the assessment years 2006-07 and 2007-08 without sending any notice or assessment order passed in accordance with law under Section 26 of the TNVAT Act.

3.Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax) taking notice for the respondents submitted that since the respondents had not issued any notice or assessment order passed in accordance with law under Section 26 of the TNVAT Act, the legal heir of the assessee is entitled to the notice or assessment order served on her. Therefore, the impugned order dated 02.02.2016 may be set aside and remand the matter to the respondents for fresh consideration.

4.Since the 1st respondent had not served any notice or assessment order on the petitioner prior to the passing of the impugned order dated 02.02.2016, the same is liable to be set aside on the ground of violation of principles of natural justice. Accordingly, the impugned Form No.4 dated 02.02.2016 is set aside and the matter is remanded to the 1st respondent for fresh consideration. The 1st respondent is directed to issue notice and also serve a copy of the assessment order on the petitioner and after affording due opportunity of personal hearing to her, shall decide the matter afresh, on merits and in accordance with law.

5.With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.
va

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Assistant Commissioner (CT),
   JJ Nagar Assessment Circle,
   No.38 & 39, JJ Complex,
   Thirumangalam, Chennai - 600 040.

2. The Assistant Commissioner (CT),
   Koyembedu Assessment Circle,
   Chennai.

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+ 1 cc to Mr.P.Rajkumar, Advocate, SR 15999

+ 1 cc to Govt.Pleader, High Court, Madras SR 16146

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