IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2018

CORAM

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.NO.1113 of 2009 & W.M.P.No.2 of 2009

Kalyani .... Petitioner
wife and Legal representative of Late
N.Kumkarasamy, prop of Sri Amman Mills

Vs

The Assistant Commissioner (CT)
Kangeyam. .... Respondent

For Petitioner : Mr.S.Rajasekar
For Respondent : Ms.G.Dhana Madhri
Government Advocate (Taxes)

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the respondent in his proceedings in CST No.601616/2000-2001 dated 22.4.2008 and quash the same.

O R D E R

The present writ petition is filed challenging the order of assessment passed by the respondent dated 22.4.2008 in respect of the assessment year 2000-2001.

2. Heard both sides and perused the materials placed before this Court.

3. The writ petitioner is the wife of one N.Kumarasamy, who was the sole proprietor of Sri Amman Mills, No.17, Dharapuram Road, Vellakovil - 638 111. The petitioner's husband was a registered dealer both under the Tamil Nadu General Sales Tax Act and Central Sales Tax Act. In respect of assessment year 2000-2001, after issuing a notice of proposal dated 27.03.2006, the respondent confirmed the proposal by the impugned order dated 22.4.2008. The present writ petition is filed by the wife of the said dealer, mainly by contending that the assessment order was issued on a dead person since her husband died as early as on 03.03.2002 much earlier to the issuance of the notice dated 27.03.2006 followed by the impugned order dated 22.04.2008. Therefore, it is contended that the impugned order of assessment has to be set aside.

4. On the other hand, the learned Government Advocate appearing for the respondent invited this Court's attention to Section 15 of the Tamil Nadu General Sales Tax Act, 1959 and submitted that the petitioner being the legal representative of the deceased dealer, cannot escape her liability to the extent of the assets of the deceased in her hands. Section 15 of the said Act reads as follows;-

> ''Assessment of Legal Representatives :- Where the dealier dies, his executor, administrator or other legal representatives shall be deemed to be the dealer for the purpose of this Act, and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that, in respect of any tax or fee assessed is payable by any such dealer or any tax or fee which would have been payable by him under this Act if he had not died, the executor, administrator or other legal representative shall be liable, only to the extent of the assets of the deceased in his hands.''

5. Upon hearing both sides, it is evident that even on the date of issuance of the notice of proposal dated 27.03.2006, the assessee viz., the husband of the petitioner was not alive, as he passed away much earlier on 03.03.2002 itself. It is also seen that the notice of proposal sent was returned with endorsement ''no claim'. Therefore, the assessing officer proceeded to pass the impugned order of assessment on the reason that the assessee has not filed any reply inspite of serving such notice by affixure later on 31.03.2006.

6. The above stated facts would disclose that the order of assessment came to be passed on a dead person that too without giving an opportunity of hearing to the legal representative of the said dead person. It is stated by the learned Government Advocate that the petitioner has not intimated the factum of death of the assessee to the respondent assessing authority and therefore he cannot be found fault with.

7. Considering these facts and circumstances and more particularly the fact that the assessment order was passed without discussion of the merits of the matter and only on the reason that the assesee has not filed any reply, this Court is inclined to give an opportunity to the petitioner to face the assessment proceedings once again afresh in the

place of her husband by filing a suitable reply. Accordingly, this writ petition is disposed of with the following terms.

(a) The petitioner as well as the respondent shall treat the impugned order as the notice of proposal.
(b) The petitioner shall give her reply / explanation to the said notice of proposal within a period of three weeks from the date of receipt of copy of this order.
(c) On receipt of such reply, the respondent shall pass fresh order of assessment on merits and in accordance with law after affording an opportunity of hearing to the petitioner.

(d) Such exercise shall be done by the respondent within a period of six weeks from the date of receipt of a copy of the explanation.

8. The writ petition is disposed of on the above terms.Connected W.M.P.No.2 of 2009 is closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

KST

To
The Assistant Commissioner (CT)
Kangeyam.

+1 C.C. to M/S.R.HEMALATHA Advocate SR.NO. 54828

+1 CC TO SPECIAL GOVERNMENT PLEADER SR.NO. 55100

W.P.No.1113 of 2009

GJ(CO)
ASK(21/08/2018)