

In the High Court of Judicature at Madras

Dated : 03.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.15909 of 2018 &
WMP.Nos.18901 & 18902 of 2018

R.Jayalakshmi

...Petitioner

Vs

1. The Commercial Tax Officer,
Namakkal Town.
 2. The Assistant Commissioner,
State Tax Office (CT),
Namakkal Town.
 3. The State of Tamil Nadu, rep.
By the Secretary to Government,
Commercial Taxes Department,
Fort.St.George, Chennai-9.
- ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Na.Ka.No.3383/1998 Aa3.Va.Vi.No.758016/1987-88 dated 23.3.2018 with interest towards the alleged sales tax demand for 1987-88 of Rs.2,29,500/-, quash the same and consequently direct the respondents to release the property document offered as security by petitioner's husband V.Raju to the petitioner.

For Petitioner : Mr.K.Krishnan

For Respondents : Mr.M.Hariharan, AGP

ORDER

Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner challenged a recovery notice issued by the second respondent dated 23.3.2018 directing that the dealer should pay the arrears of tax payable pursuant to the assessment order dated 30.1.1989 passed by the Deputy Commercial Tax Officer, Namakkal Town for the year 1987-88 under the provisions of the Tamil Nadu General Sales Tax Act, 1959.

3. The dealer - one Mr.V.Raju - the husband of the petitioner died on 11.6.2006 and consequently, proceedings could not be initiated against a dead person. What is to be noted is that the said Mr.V.Raju challenged the assessment order dated 30.1.1989 as well as the consequential demand notice dated 30.9.2003 by filing W.P.No.36715 of 2004. In the said writ petition, several grounds were raised and a conditional interim order was granted on 13.12.2004. However, when the said writ petition was heard finally on 29.6.2016, it was stated that one of the counsel, who was on record, died and that the writ petitioner therein also died. These facts were not placed before this Court and hence, the said writ petition was dismissed for non prosecution. Thus, the grounds raised by the assessee in the said writ petition were never adjudicated. The dealer, in the said writ petition, contended that he did only labour works for building body of lorries and that the same could not be stated to be a manufacturing process nor there was an element of sale involved. Thus, without adjudicating the said issue, the second respondent cannot proceed to recover the amount, that too, by issuing a notice against a dead person. Hence, the impugned notice is held to be not sustainable in law.

4. For all the above reasons, the writ petition is allowed and the impugned order is quashed. However, it is open to the second respondent to proceed in accordance with law, if so advised. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Commercial Tax Officer, Namakkal Town.

2.The Assistant Commissioner, State Tax Office (CT),
Namakkal Town.

3.The Secretary to Government of Tamil Nadu,
Commercial Taxes Department, Fort.St.George, Chennai-9.

+2cc to Mr.K.Krishnan, Advocate, S.R.No.42888,43400.

+1cc to The Government Pleader, (Taxes) S.R.No.43097

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BM 12/07/2018