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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.11.2020**

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.5549 of 2020

and W.M.P.(MD) Nos.4851 & 4852 of 2020

(Through Video Conference)

V.Radha Bhai ... Petitioner

Vs

The Assistant Commissioner (CT),
Vengalakadai Street Circle,
Commercial Tax Buildings,
Madurai. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent in TIN 33294860311/2009-10 dated 28.06.2018 and consequential distraint notice in TIN 33294860311/2009-10 ந.க. எண். 691/18/அ3 dated 04.07.2019 and quash the both are wholly without jurisdiction since the same was passed against the dead person and barred by limitation under section 27(2) of the Tamil Nadu Value Added Tax Act 2006.

For Petitioner : Mr.S.Karunakar

For Respondent : Mrs.J.Padmavathi Devi, Special Government Pleader

O R D E R

Mrs.J.Padmavathi Devi, learned Special Government Pleader accepts notice for the respondent. By consent of both sides, this writ petition is taken up for final disposal at the stage of admission itself.

2. This writ petition has been filed challenging the assessment order passed under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006 and also the consequential distraint notice, dated 04.07.2019 issued by the respondent. The petitioner has challenged the impugned assessment order dated 28.06.2018 and distraint notice, dated 04.07.2019 on the ground that she has not received any notice from the respondent in the assessment proceedings under section 27 (2) of the Tamil Nadu Value Added Tax Act, 2006.

3. It is the case of the petitioner that her husband M.Vijayanathan was the proprietor of M/s.Super Packers and he died on 16.11.2014. Therefore, according to her, an assessment order cannot be passed against a dead person and therefore, it is a nullity. In such circumstances, she has challenged the distraint

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notice issued on her by the respondent on 04.07.2019 and she has also challenged the assessment order dated 28.06.2018 passed by the respondent under section 27(2) of Tamil Nadu Value Added Tax Act, 2006, which is the basis for issuance of the distraint notice, dated 04.07.2019 on the petitioner.

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4. A counter affidavit has also been filed by the respondent denying the contentions of the petitioner. In the counter affidavit, the respondent has reiterated the contents of the impugned assessment order dated 28.06.2018. The respondent has also stated that notice was duly served on the Assessee in the impugned assessment proceedings. Therefore, according to the respondent, the writ petition is not maintainable.

5. Heard Mr.S.Karunakar, learned counsel for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader.

6. This Court has perused and examined the Death Certificate of Mr.M.Vijayanathan, the proprietor of M/s.Super Packers. As seen from the Death Certificate, M.Vijayanathan died on 16.11.2014. This Court has also perused and examined the impugned assessment order dated 28.06.2018. In the said impugned assessment order, the respondent has observed that, the notice to the Assessee/Dealer has been served. It is not possible to serve the notice on the Assessee/ Dealer on 14.05.2018, as on that date, M.Vijayanathan the Assessee/Dealer was no more, as he died as early as on 16.11.2014. Further, no documentary evidence has been placed before this Court by the respondent to prove that, notice was duly served in the impugned assessment proceedings on the Assessee /Dealer.

7. The impugned assessment order, dated 28.06.2018 has also been sent by the respondent only to M.Vijayanathan, who is also a Assessee/ Dealer and not to the petitioner. Therefore, the contention of the petitioner that the impugned assessment order dated 28.06.2018 is a nullity has to be accepted in view of the fact that M.Vijayanathan died as early as on 16.11.2014, whereas the impugned assessment order was passed only on 28.06.2018.

8. As seen from the impugned assessment proceedings, the petitioner, who is the wife of the Assessee/Dealer has not been afforded with an opportunity to defend the assessment proceedings initiated under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006. As seen from the impugned assessment proceedings, no notice has been served on the petitioner and no personal hearing has been afforded to her in the said assessment proceedings. It is clear that, principles of natural justice has been violated by the respondent before passing of the impugned assessment order dated 28.06.2018 and the consequential distraint notice dated 04.07.2019 issued to the petitioner is only based on the impugned assessment order dated 28.06.2018 and therefore, the said distraint notice is also not in accordance with law.

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9. For the foregoing reasons, the impugned assessment order, dated 28.06.2018 as well as the impugned distraint notice, dated 04.07.2019 are hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders on merits and in accordance with law after affording sufficient opportunity to the petitioner and other legal heirs of the deceased M.Vijayanathan, including granting them the right of personal hearing and pass final orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

10. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

The Assistant Commissioner (CT),
Vengalakadai Street Circle,
Commercial Tax Buildings,
Madurai.

+1 CC to Mr.S.KARUNAKAR, Advocate (SR-22470[F] dated 23/11/2020)

W.P.(MD)No.5549 of 2020
19.11.2020

VB (03.12.2020) 3P 3C

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