IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18341 of 2021
and
W.M.P.No.19548 of 2021
(Through Video Conferencing)

Tvl.Prabha Industries,
Represented by its Legal Heir,
A.Chandarr,
60, Fort Main Road,
Shevapet, Salem-636 002. ...Petitioner

Vs

1. The Assistant Commissioner (ST),
Shevapet Assessment Circle,
Salem.

2. The State Tax Officer,
Shevapet Assessment Circle,
Salem. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the 2nd respondent in TNGST : 2640215/2000-2001 dated **(*)20.04.2021** and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.D.Ravichander,
Government Counsel

ORDER

This writ petition has been filed by the legal heirs of A.Swayamprabha, the Proprietrix of Tvl.Prabha Industries. Mr.A.Chandarr, who claims to be the legal representative of late Swayamprabha, on the ground that the impugned order has been passed against the dead person and therefore, the impugned order is liable to be quashed.

2. Appearing on behalf of the respondents, the learned counsel for the respondents has placed reliance on the decision of the Division Bench of this Court in The State of Madras v. M.Rangarajan reported in 1968 (21) STC 186.

3. The learned counsel for the respondent has also filed a copy of another order passed in The State of Madras v. Smt.K.A.Valliammal and Others reported in (1973) 31 STC 581, wherein, the decision of the Division Bench in The State of Madras vs. M.Rangarajan reported in 1968 (21) STC 186 is referred to. Attention was drawn to paragraph No.7, which reads as under:

> ''7. In State of Madras v. M.Rangarajan, though the question which came up for consideration was different, the following observations made in that case as to the scope of section 15 are apposite:
>
> ''Section 15 directs that when a dealer dies his legal representative shall be deemed to be a dealer for the purposes of the Act. In view of this deeming provision, one cannot boggle with one's imagination and notwithstanding the deeming, revert to putative State of affairs and imagine an assessment on a legal representative as such. For purposes of the Act, a legal representative of a deceased should be taken as a dealer and it will be so for purposes of section 12(3). All the provisions of the Act will apply to the deemed dealer in respect of the business of the deceased dealer. Section 15 further provides that in respect of any tax or fee assessed as payable by such dealer or any tax or fee which would have been payable by him under the Act if he had not died, the executor, administrator or other legal representative shall be liable to the extent of the assets of the deceased in his hands.''

4. Heard the learned counsel for the petitioner and the learned Government Counsel for the respondents.

5. It is relevant to extract Section 15 of the TNGST Act, 1959, reads as under:

> ''15. Assessment of legal representatives.- Where a dealer dies, his executor, administrator, Assessment or other legal representative shall be deemed to be the dealer of legal representatives. For the purposes 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 as 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.''

6. The reading of the above provision makes it clear that no separate assessment order is required to be passed merely because the dealer dies as his executors, administrators and other legal representatives are deemed to be a dealer for the purposes of the Act and the only protection that is available to such dealer is that though they are deemed to be dealer, the liability that can be fastened on such deemed dealer i.e., the executor, administrator or other legal representatives of the deceased dealer is restricted to the extent of the assets of the deceased in his hands.

7. Therefore, I find no merits in the present writ petition merely because the impugned order has been passed in the name of Tvl.Prabha Industries.

8. The deponent in the affidavit Thiru A.Chandarr has also participated in the proceedings and therefore, the impugned order cannot be questioned on the ground that the order has been passed in the name of his deceased father's proprietary concern.

9. Therefore, this writ petition is dismissed with liberty to the petitioner to file statutory appeal before the Appellate Commissioner under the provisions of TNGST Act against the impugned order within 30 days from the date of receipt of a copy of this order. In case, the petitioner files such appeal within such time before the Appellate Commissioner, the Appellate Commissioner shall dispose the appeal on merits and in accordance with law within a period of 90 days. Needless to state the petitioner shall also pre-deposit the amounts as is requested under law for entertaining the appeal. In case the petitioner has inherited any assets of the deceased dealer such assets will be subject to tax recovery proceedings under the Act. Registry is directed to return original impugned order to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)
(03.01.2022)

***Corrected as per Letter dated 21.03.2022**

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Assistant Commissioner (ST),
   Shevapet Assessment Circle,
   Salem.

2. The State Tax Officer,
   Shevapet Assessment Circle,
   Salem.

To be substituted the order already despatched on 12.01.2022

COPY TO:

1.The Appellate Commissioner (ST),
Shevapet Assessment Circle,
Salem.

2.The Section Officer,
ER Section,
High Court,Madras
(within direction to return original impugned order)

W.P.No.18341 of 2021
and
W.M.P.No.19548 of 2021

AD(CO)
A.SK(04.01.2022)

RGA(25/03/2022)