BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.10.2021
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)Nos.18248, 18249 and 18250 of 2021
and
W.M.P.(MD)Nos.15094, 15095, 15098, 15100, 15104 and 15105 of 2021

N.Santhi Lakshmi .. Petitioner in all writ petitions

Vs.

The Assistant Commissioner(ST),
Madurai Rural (South) Circle,
Madurai-20. ..Respondent in all writ petitions

Common Prayer: Writ Petitions are filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN:33955164431/2012-13, 2013-14 and 2014-15 respectively, dated 05.07.2021, and quash the same as illegal, unsustainable and against the Principles of Natural Justice.

In all cases:

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.R.Suresh Kumar
Government Advocate

COMMON ORDER

Prayer sought for herein is for a Writ of Certiorari, calling for the records on the file of the respondent in TIN Nos:33955164431/2012-13, 2013-14 and 2014-15 respectively, dated 05.07.2021, and quash the same as illegal and unsustainable.

2.Since the issue raised in all these writ petitions is one and the same, as it relates to different Assessment Years, that is, 2012-13, 2013-14 and 2014-15, filed by the same petitioner, with the consent of the learned counsel appearing for both sides, these writ petitions are heard together and are disposed of by this common order.

3.The petitioner's husband, namely, M.Naryanan, was the proprietor of one 'Kumaran Borewells'. He registered his business under the Tamil Nadu Value Added Tax Act, 2006, with TIN:33955164431 for the years 2012-13, 2013-14 and 2014-15.

4.He had been undertaking various works of digging borewells to the Madurai Corporation and in this regard, the petitioner's husband, according to the petitioner, had filed the returns regularly with the respondent Department.

5.However, the petitioner's husband, Naryanan, died unfortunately on 19.01.2019. Thereafter, the petitioner, when checked up with the joint account she maintained along with her husband in the bank, she recently came to know that, there has been an order of assessment passed for the aforesaid three Assessment Years, on 05.07.2021, pursuant to which, the orders of attachment of the bank account, seems to have been made by the respondent Department. Based on these developments only, the petitioner has come to know that some reassessment proceedings were initiated and concluded by the respondent Department, through the order, dated 05.07.2021 for the afore-stated three Assessment Years, which have been passed against a dead person, that too, without giving any opportunity to the legalheir, that is, the petitioner by way of notice, therefore, on that ground, these impugned orders are vitiated. Therefore, challenging the impugned orders of assessment passed by the respondent, dated 05.07.2021, these writ petitions are filed.

6.Mr.A.Chandrasekaran, learned counsel appearing for the petitioner, having reiterated the aforesaid, would submit that, since the petitioner's husband was doing the work of digging borewells only to the Madurai Corporation, for which, the bill was raised and received by the petitioner's husband. All those bills were released only after deducting the tax by way of TDS and therefore, in the credit of the petitioner's husband in the respondent Department, those payment had been made. Without verifying the same, since these orders have been passed, that too, against a dead person, the orders impugned can be interfered with and set aside, and if at all the respondent wants to proceed against the petitioner, an opportunity of being heard can be given to the petitioner, so that the petitioner would be in a position to produce all necessary documents pertaining to the payment already been made in respect of the three Assessment Years, which are in question and after considering the same, the revised final order can be passed by the respondent Department, he submitted.

7.Heard Mr.R.Suresh Kumar, learned Government Advocate, appearing for the respondents, who, on instructions, would submit that, though notice had been given to the taxpayer, that is, the husband of the petitioner, since the same has not been responded, the respondent revenue thought that the original taxpayer did not respond to the notice, therefore, the Department proceeded in accordance with law and passed the orders, which are impugned herein, dated 05.07.2021, and subsequently only, the petitioner approached the respondent and stated that the original taxpayer, who is the husband of the petitioner is no more even at the time of issuance of the notice, and therefore, the respondents are ready and willing to reconsider the issue by proceeding against the petitioner, in accordance with law.

8. I have considered the said submissions made by the learned counsel appearing for the parties and have noted the factual matrix projected by the petitioner.

9. In view of the fair stand taken by the respondent Department, as has been stated by the learned Government Advocate appearing for the respondent, since, admittedly, the impugned orders have been passed against a dead person, this Court feel that the impugned orders cannot be sustained. In that view of the matter, this Court feel that, after setting aside the impugned orders, the matters can be remitted back to the respondent for reconsideration. While reconsidering the same, it is open to the respondent to proceed against the petitioner, if they advised to do so, in the manner known to law.

10. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

> "that the impugned orders in these writ petitions are hereby set aside, and the matters are remitted back to the respondent, where it is open to the respondent to issue a fresh notice against the petitioner, after giving a reasonable opportunity, including the personal hearing to the petitioner, so that the petitioner can produce all documents at her hands to the respondent to establish that the tax due claimed by the respondent Department, had already been paid by the petitioner's husband, and thereafter, pass orders on merits and in accordance with law.
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> It is further made clear that, in view of the orders passed by this Court, where the impugned orders having been quashed, all consequential proceedings including any attachments made in respect of any bank account or properties of the petitioner, that will also be equally unlawful, and therefore, the same shall not have any effect, and if any attachment of the bank account of the petitioner is made, the same shall be restored."

11. With these observations and directions, all these writ petitions are ordered to the terms as indicated above and disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Per.Admn)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

To

The Assistant Commissioner(ST),
Madurai Rural (South) Circle,
Madurai-20.

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-31328[F] dated 06/10/2021)

+1 CC to M/s.SPL.GP (SR-31521[F] dated 07/10/2021)

W.P.(MD) No.18248, 18249
and 18250 of 2021
06.10.2021

SRR(CO)
GC/JC(08.11.2021) 4P 4C