BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.25296 of 2018
and
W.M.P.(MD)Nos.22896 & 22897 of 2018

R.Balaji ... Petitioner

-Vs-

The Assistant Commissioner (CT) (FAC),
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 33504860050/2008-09 dated 27.06.2018 and quash the same is 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.N.Sudalai Muthu
for Mr.S.Karunakar
For Respondent : Mr.G.Arjunan
Government Advocate

ORDER

Heard the learned counsel on either side.

2.M/s.Srinivasa Mart, had registered themselves as a dealer with the respondent. Their case was taken up for random scrutiny and summons dated 16.04.2018 was issued for production of the relevant records. The petitioner herein gave a reply dated 23.04.2018 informing the respondents that the original proprietor Sri.R.Renganathan had passed away as early as on 28.02.2011 and the firm had been closed and that the Registration Certificate has also been surrendered.

3.The grievance of the petitioner is that without reference to the same, pre-revision notice dated 27.06.2018 was issued and thereafter, the impugned order came to be passed levying tax and penalty. Challenging the same, this writ petition came to be filed.

4.The respondent has filed a detailed counter affidavit pointing out that all the principles of natural justice have been scrupulously followed and that this writ petition filed without exhausting the alternative remedy of appeal is not maintainable.

5.Icarefully considered the rival contentions and went through the materials on record. It is true that the petitioner R.Balaji is running a proprietary concerned in the name and style of M/s.Srinivasa Mart at Door No.90/64, East Avani Moola Street, Madurai. But it is stated by the petitioner that this is the different entity and not the one that was run by Thiru.Renganathan. Thiru.Renganathan was also running the proprietary concerned in the very same name and at the very same place. But that bore a different tin number. Since the petitioner Thiru.Balaji is the grand-son of Thiru.Renganathan, he has chosen to have the very same name for his business. But that will not mean that M/s.Srinivasa Mart having the TIN No.33554861526 run by Thiru.Renganathan is the very same entity run by the present petitioner herein. When the respondent has been informed that Thiru.Renganathan had passed away as early as on 28.02.2011, the assessing authority ought to have issued notice in the name of the legal heirs of Thiru.Renganathan. The legal heirs of Thiru.Renganathan will be liable for any liability that may be eventually determined to the extent of their inheritance. In the case on hand, no such separate proceedings has been issued. It has been held that vide order dated 07.06.2018 in W.P.No.30060 of 2017, an assessment made in the name of a dead person is not a valid one. Of-course, in the case on hand, the impugned order has been passed against M/s.Srinivasa Mart, but, there is no distinction in law between the proprietary concern and the proprietor. The Proprietor Thiru.Renganathan had died long ago. Therefore, the order passed in the name of the proprietary concern, when the proprietor had died, is again not valid.

6.However, I hold that the proceedings have been initiated well within the limitation period and therefore, it is open to the respondent to continue the same against the legal heirs of the deceased Renganathan. By granting this liberty, the order impugned in the writ petition is quashed. It is open to the respondent to initiate proceedings afresh against the legal heirs of the deceased Renganathan. In other words, the respondent will issue a fresh pre-revision notice and after hearing the objections of the legal heirs and after affording them an opportunity of personal hearing, pass orders afresh in accordance with law. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

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To

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

+1 CC to M/s.SPL GP (SR-10572[F] dated 11/03/2021)

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-10452[F] dated 11/03/2021)

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