IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.5163 of 2022
and
W.M.P.No.5266 of 2022

B.Subramanian ... Petitioner

Vs.

The Assistant Commissioner(ST),
Ambattur Assessment Circle,
Chennai – 600 035. ... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the respondent in its proceedings in TIN No.33691320270/2015-16, quash the assessment order dated 29.11.2021 and the consequential order 08.02.2022 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.M.Venkateswaran
Special Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorari, to call for the records of the respondent in its proceedings in TIN No.33691320270/2015-16, quash the assessment order dated 29.11.2021 and the consequential order dated 08.02.2022 passed therein.

2. In respect of the Proprietary concern by name M/s.Anand Engineering Works, the Proprietor name is S.Balasubramanian. He died on 30.01.2015 i.e., during the Assessment Year 2014-15.

3. However, insofar as the Assessment Year 2015-16, notice under Section 27 of the TNVAT Act was issued followed by the assessment order dated 29.11.2021 in the name of the present petitioner viz., B.Subramanian, who is one of the legal heir of

the erstwhile Proprietor viz., S.Balasubramanian.

4. Challenging the said assessment order dated 29.11.2021, Mr.P.V.Sudakar, learned counsel appearing for the petitioner would point out that, under Section 26 of the TNVAT Act, if at all any proceedings to be issued, when a dealer dies, that should be issued only to his executor, administrator or other legal representative who shall be deemed to be the dealer for the purposes of this Act and the provisions of the Act shall apply to him in respect of the business of the said deceased dealer.

5. Citing this provision, the learned counsel would contend that, since the Proprietor is no more since 30.01.2015 i.e., during the Assessment Year 2014-15, the question of issuing any notice for the subsequent Assessment Year i.e., 2015-16 against the present petitioner who is one of the legal heir, who subsequently floated a partnership firm does not arise.

6. On the other hand, Mr.M.Venkateswaran, learned Special Government Pleader appearing for the respondent, on instruction, would submit that, the petitioner has not come forward to divulge that the proprietor of the erstwhile Proprietary concern died on 30.01.2015. Had this being brought to the notice of the Revenue, definitely notice would have been issued and proceedings could have been issued only against the legal heir of the erstwhile Proprietor viz., S.Balasubramanian.

7. In the absence of any such information being supplied to the Revenue, the Revenue has proceeded against the present petitioner, who is one of the legal representative as if that he has been continuously running the business in a partnership firm, which is subsequently been floated and registered under the Act.

8. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9. Since it is a fact that the Proprietor of the erstwhile Proprietary concern died on 30.01.2015 in respect of such Proprietary concern if anything to be proceeded under the provisions of the Act, that shall be made only in accordance with Section 26 of the Act i.e. only in respect of administrator, executor or legal representative.

10. In this context, the legal heir certificate of the erstwhile Proprietor Balasubramanian has been filed before this Court, issued on 24.02.2015, where there are four legal heirs

viz., B.Krishnaveni (wife), B.Lakshmi Narasiman (son), B.Subramanian (son) and B.Divya (daughter).

11. Against these legal representatives, if at all any proceedings to be made against the erstwhile Proprietary concern for any violation for re-assessment under Section 27 of the Act, that could be made by the Revenue and not the present one. Therefore, on that ground, this Court feels that, the impugned order does not stand in the legal scrutiny.

12. In view of the above, this Court is inclined to dispose of this writ petition with the following orders :

i. That the impugned order is set aside. However, it is open to the Revenue to proceed against the legal heirs of the said S.Balasubramanian, who was the erstwhile Proprietary concern, in respect of the said Proprietary concern, whatever the tax due payable and whatever the new assessment has to be made under Section 27 of the Act, for which, necessary proceedings by way of notice under Section 27(1) of the Act can be issued only against the legal heirs of the said S.Balasubramanian in the manner known to law.

13. With these observations and liberty to the Revenue, this Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Sp/Sgl

To

The Assistant Commissioner(ST),
Ambattur Assessment Circle,
Chennai - 600 035.

+1cc to Mr.P.V.Sudakar, Advocate SR.No.15609
+1cc to the Special Government Pleader(Taxes) SR.No.15952

W.P.No.5163 of 2022

RSI(CO)
GN(08/06/2022)