IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.31967 of 2023
and
W.M.P.No.31554 of 2023

1.Mahendra
2.Hansa Devi Khatri
3.Bhagwathi Khatri
4.Dinesh Kumar
5.Kalavathi

... Petitioner

Vs.

Assistant Commissioner (ST),
NSC Bose Road Assessment Circle,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai 600 003.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned order of the respondent passed in GST No.33AAHPB0945N1ZT/2018-2019 dated 23.02.2023 and quash the same.

For Petitioner : Mr.N.Murali

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order dated 23.02.2023 passed by the respondent.

2. Mr.C.Harsha Raj, learned Additional Government Pleader, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioners would submit that the petitioners are the legal heirs of the deceased Bhimraj, who was running business in the name of "Bhimraj and Co". The said Bhimraj was passed away on 16.08.2018 and the same was intimated to the respondent by way of online application dated 01.04.2019. Thereafter, the GST Registration was cancelled with effect from 08.04.2019.

4. Further, he would submit that under these circumstances, the respondent had issued GST DRC-01 notice dated 23.12.2022 in the name of deceased Bhimraj. Subsequent to the said notice, an assessment order was also passed on 23.02.2023. Therefore, he would contend that the said assessment order is liable to be set aside, since the said proceedings were initiated against a dead person.

5. In reply, the learned counsel for the respondent would fairly submit that the notice dated 23.12.2022 was issued and the assessment order dated 23.02.2023 was passed against the dead person. Further, he would submit that the said notice and assessment order may be treated as notice to all the 5 petitioners, who are the legal heirs of the Bhimraj and the petitioners can file their reply to the said notices, thereafter, the respondent shall pass appropriate orders after providing sufficient opportunities to the petitioners.

6. The learned counsel for the petitioner would accept the suggestion made by the learned counsel for the respondent. However, he

would submit that since the assessment order was passed against the dead person, the same is liable to be set aside.

7. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

8. In view of the above, the fact remains that the impugned assessment order came to be passed against the dead person, which is non-est in law and hence, it is liable to be set aside. Therefore, this Court is of the considered view that the petitioners shall construed the notice issued by the respondent dated 23.12.2022 as a notice issued to them as on date. Further, the petitioners are directed to file a reply to the said notice within a period of 6 weeks from the date of receipt of copy of this order. Thereafter, the respondent is directed to pass appropriate orders after providing opportunities to the petitioner for personal hearing.

9. With the above directions, the impugned order dated 23.02.2023 is set aside.

10. Accordingly, this writ petition is disposed of. Consequently, the connected miscellaneous petition is also closed. No cost.

08.11.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

Assistant Commissioner (ST),
NSC Bose Road Assessment Circle,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai 600 003.

KRISHNAN RAMASAMY.J.,

nsa

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(1/3)