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W.P. No.32406 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.32406 of 2024

and

W.M.P. No.35185 of 2024

M/s.Lakshmi Narayana Textiles,
Rep. By Mrs.Akilandeswari wife of the deceased proprietor,
2/160-A, Elachipalayam,
Karumathampatti,
Coimbatore-641 659. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Tirupur Central II Circle,
Tirupur. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the impugned order of the Respondent in GSTIN:33ABDPU4115A1Z9/2019-20 dated 15.07.2024 and quash the same.

For Petitioner : Mr.M.Hariharan

For Respondent : Mr.V.Prashanth Kiran
Government Advocate



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ORDER

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The present writ petition is filed challenging the impugned proceedings dated 15.07.2024 on the limited ground that it has been made in the name of M/s.Lakshmi Narayana textiles which is a proprietary concern. Mr.A.D.Umashankar was the proprietor of Lakshmi Narayana textiles.

2. It is submitted by the learned counsel for the petitioner that Mr.Umashankar, the said proprietor passed away on 30.03.2021 and the impugned order came to be passed in the name of the proprietary concern which according to the petitioner is assessment made in the name of the dead person and therefore a nullity.

3. It is trite law that assessment or adjudication orders made in the name of dead person is non-est and a nullity. In this regard, it may be relevant to refer to the judgment of this Court in the case of *R.Unnikrishnan Vs. Union of India* reported in 2024 (21) CENTAX 47 (Mad.), wherein, while considering an identical issue, it was held as under:

“9. There is no dispute that the dealer Mr.Radhakrishnan Pillai has died on 11.10.2017 and that the petitioner is one of his legal heirs/legal representatives along with his mother R.Sujatha aged about 62 years, his sister Sreelekshmi aged about 33 years and his grand~mother Nalinakshi Amma aged



about 84 years.

10. *The order that has been passed against the dead person is non~ est in law. If the petitioner is carrying on the business of the deceased person, then, the remedy is available to the Department to proceed against the petitioner under Section 93 of the TNGST Act, 2017. It appears to be that the petitioner is not carrying on the business of the deceased person.*

11. *Be that as it may, since the impugned order has been passed against the dead person, the impugned order is quashed by directing the respondents to issue a common notice to the petitioner representing the interest of the other legal heirs/legal representatives of the deceased dealer Mr.Radhakrishnan Pillai, within a period of 30 days from the date of receipt of a copy of this order and thereafter proceed in the manner known to law, in case the petitioner is carrying on the business of the deceased dealer Mr.Radhakrishnan Pillai."*

4. The learned counsel for the Respondent would submit that it is an appealable order and thus writ petition ought not be entertained.

5. This Court is conscious of the fact that normally petition under Article 226 would not be exercised when there is an alternate remedy, however the same is not an absolute bar but is a self imposed restriction. The above rule of alternate remedy has certain exceptions carved out to the above rule, one such exception is where the order is without jurisdiction. The assessment made in the name of dead person having been found to be a nullity and thus without jurisdiction, thereby falls within the exception to the rule of alternate remedy.



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6. In view thereof, the impugned order in the name of Mr.Umashankar (dead person) is set aside. Liberty is granted to the Respondent to issue notice to the legal heirs of the deceased Umashankar and thereafter, proceed in the manner known to law.

7. The learned counsel for the petitioner would submit that in view of the fact that they seized to carryon business, they may be served with the notice in physical mode inasmuch as they may not have access to the web portal. Therefore, the learned counsel for the petitioner would submit that the notice / order may be served to the petitioner's address i.e.,No.34/20, Kamarajar Street, Mahalingapuram, Pollachi, agreed to by the learned Government Advocate for the Respondent.

8. The writ petition stands disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

11.12.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No



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To:
The Assistant Commissioner (ST),
Tirupur Central II Circle,
Tirupur.



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MOHAMMED SHAFFIQ, J.

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