



W.P. No.32266 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.32266 of 2024

and

W.M.P. Nos.35055, 35056, 35057 and 35058 of 2024

Mr.Sudhakar Pitchaimuthu
Rep. By its Legal heir/ Representative
Mr.Perumal Pitchaimuthu
Propreitor, TVL PEE PEE YEM Metals
Residing at No.5, Kasturibai Street 4,
Periyar Nagar Via Ganapathy,
Coimbatore, Tamil Nadu-641 006.

... Petitioner

Vs.

- 1.The Deputy State Tax Officer,
Ganapathy Circle,
Dr.Balasundaram Road,
Coimbatore-641 018.
- 2.The Assistant Commissioner (ST),
Ganapathy Circle,
Dr.Balasundaram Road,
Coimbatore-641 018.
- 3.Canara Bank
Ganapathy Circle,
No.1, Adhi Vinayaka Complex,
Gopalswamy Street, Ganapathy,
Coimbatore-641 006.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records in the impugned order dated 08.03.2024 with reference to GSTIN No.33AEFPP5947Q1ZR/2017-18 on the file of the 1st Respondent and to quash the same on the following amongst other ground which are in the alternative and without prejudice to each other.

For Petitioner : Mr.H.Siddarth

For Respondents : Mr.TNC Kaushik
Additional Government Pleader (For R1,R2)

ORDER

The impugned order dated 08.03.2024 is challenged on the short ground that the same has been passed in the name of a dead person namely Mr.Perumal Pitchaimuthu.

2. It is submitted by the learned counsel for the petitioner by placing reliance upon the death certificate of Mr.Perumal Pitchaimuthu that he passed away on 12.05.2021. It was submitted that the factum of demise of Mr.Perumal Pitchaimuthu was brought to the notice of the Respondent authority and application for cancellation of registration certificate was also made. However, the impugned order dated 08.03.2024 is made in the name of a dead person viz., Mr.Perumal Pitchaimuthu.



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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 Respondents would submit that the order is an appealable order and this writ petition ought not to be entertained.



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5. Heard both sides and perused the material on record.

6. 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.

7. In view thereof, the impugned order in the name of Perumal Pitchaimuthu (dead person) is set aside. Liberty is granted to the Respondents to issue notice to the legal heirs of the deceased Perumal Pitchaimuthu and thereafter, proceed in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

19.11.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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MOHAMMED SHAFFIQ, J.

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