IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP No. 34508 of 2024

Mrs.Lakshmi Periyasamy ... Petitioner

versus

1.State Tax Officer,
Vanagaram Assessment Circle,
Vanagaram.

2.The Deputy Commissioner (ST),
Poonamallee Zone,
Poonamallee. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, calling for the records on the file of the first respondent in GSTIN:33AUHPP1146M1ZH dated 30.03.2022 for the tax period 12/2020-12/2020 of the financial year 2020/2021 and quash the same as illegal, arbitrary and violative of principles of natural justice.

For the Petitioner :Mr.S.Kanmani Annamalai

For the Respondents :Ms.V.Prashanth Kiran
Government Advocate
for respondents 1 and 2

ORDER

The present writ petition has been filed challenging the order of the first respondent in GSTIN:33AUHPP1146M1ZH dated 30.03.2022 for the tax period 12/2020-12/2020 of the financial year 2020/2021, on the limited ground that impugned order has been made in the name of a dead person, namely, one S.Periyasamy, husband of the petitioner.

2. It is submitted by the learned counsel for the petitioner that one Periyasamy passed away on 17.11.2020 in support thereof a death certificate was also produced. However, the impugned order under Section 62 of the CGST Act has been made on 30.03.2022 in the name of S.Periyasamy, subsequent to his death. It is submitted that any assessment proceedings in the name of a dead person is non est and liable to be set aside and the same is without jurisdiction.

3. It is submitted by the learned counsel for the petitioner that identical issue has come up for consideration before 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. An identical issue has come up for consideration before this Court in another case, in ***T.Nigil vs The Commissioner of GST & Central Excise (Appeals) in W.P(MD)No.20626 of 2024***, wherein, by order dated 03.09.2024, following the judgment cited supra, this Court has set aside the order, impugned therein and granted liberty to the respondents to issue common notice to the legal heirs of the deceased petitioner therein.

5. The learned Government Advocate for the respondents would submit that the order is an appealable order and this writ petition ought not to be entertained.

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

7. This Court is conscious of the fact that normally jurisdiction under Article 226 would not be entertained when there is an alternate remedy, however the same is not an absolute bar but is a self imposed restriction and has 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 has been held to be a nullity and would thus fall within the exception to the rule of alternate remedy.

8. At this juncture, it was submitted by the learned Government Advocate for the respondents that they may be granted liberty to issue common notice to the legal heir of the deceased Periyasamy, within a period of thirty (30) days from the date of receipt of a copy of this order and thereafter, proceed in the manner known to law.

9. Recording the same, the impugned order is set aside. The writ petition stands disposed of by granting liberty to the respondents to issue common notice to the legal heir of the deceased Periyasamy, within a period of thirty (30) days from the date of receipt of a copy of this order and thereafter, proceed in the manner known to law. There shall be no order as to costs. Consequently, W.M.P.Nos.37408 and 37409 of 2024 are closed.

25.11.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn

To

1.State Tax Officer,
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2.The Deputy Commissioner (ST),
Poonamallee Zone,
Poonamallee.

<u>MOHAMMED SHAFFIQ, J.</u>

(mrn)

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