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W.P. No.35673 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35673 of 2024

and

W.M.P.Nos.38528 and 38530 of 2024

S.Suganthan

.. Petitioner

Vs.

The Assistant Commissioner (ST),
Pollachi East Assessment Circle,
Commercial Taxes Building,
No.8, Palakkad Road, Pollachi 642 001.

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the order of the respondent dated 30.04.2024 in Reference No.ZD330424250449E and quash the same.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.TNC.Kaushik
Additional Government Pleader



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ORDER

The writ petition is filed challenging the impugned order dated 30.04.2024 in Reference No.ZD330424250449E, on the limited ground that the impugned order cannot be made in the name of the dead person viz., Pachayappa Sakthivel, who was the proprietor of the petitioner.

2. It is submitted by the learned counsel for the petitioner that one Pachayappa Sakthivel was carrying on business in dry fly ash and is registered under the GST Act. It was submitted that the said Pachayappa Sakthivel passed away on 24.03.2023 and the impugned order was passed on 30.04.2024 in the name of the said deceased person after his death. It was submitted that pursuant to the impugned order of assessment, recovery proceedings were initiated and bank accounts have been attached.

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)



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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 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 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.

7. At this juncture, it was submitted by the learned Additional Government Pleader for the respondent they may be granted liberty to issue common notice to the legal heirs of the deceased Pachayappa Sakthivel, within a period of thirty (30) days from the date of receipt of a copy of this order.

8. Recording the same, the impugned order dated 30.04.2024 is set aside. The writ petition stands disposed of by granting liberty to the



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respondents to issue common notice to the legal heirs of the deceased Pachayappa Sakthivel, 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. In view of the order passed herein, the bank attachment shall be lifted forthwith.

9. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

22.11.2024

Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

spp

To:

The Assistant Commissioner (ST),
Pollachi East Assessment Circle,
Commercial Taxes Building,
No.8, Palakkad Road, Pollachi 642 001.



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MOHAMMED SHAFFIQ, J.

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