IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.37299 of 2024
and
W.M.P.Nos.40316 and 40317 of 2024

Mr.Munusamy Gunasekaran (Deceased),
Represented by his wife and legal heir Mrs.Radha ... Petitioner

Vs.

The State Tax Officer,
Arakkonam Circle,
Ranipet Zone, Tamil Nadu. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records of the respondent in order dated 28.07.2023 in GSTIN 33AADPG6155H1ZZ/2018-19 and quash the same as illegal, arbitrary and in violation of principle of natural justice.

For Petitioner : Ms.C.Rekhakumari

For Respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER

This writ petition is filed challenging the impugned order passed by the respondent in GSTIN 33AADPG6155H1ZZ/2018-19 dated 28.07.2023 on the premise that the assessment order cannot be made in the name of the dead person viz., Munusamy Gunasekaran.

2. It is submitted by the learned counsel for the petitioner that the petitioner had carrying on business of works contract and was a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. The petitioner died on 04.06.2021 and in support thereof, death certificate is also enclosed. It is submitted that the factum of the death of the petitioner was also brought to the notice of the respondent authorities by the petitioner herein, who is the wife of the deceased Munusamy Gunasekaran vide letter dated 16.01.2022, which was filed in response to a notice in ASMT 10 dated 25.12.2021. Despite the fact the respondent authorities were put on notice of the fact that Munusamy Gunasekaran had passed away, the impugned order has been made in the name of Munusamy Gunasekaran. It is thus submitted that the entire proceedings is a nullity.

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. It was submitted by the learned Special Government pleader for the respondent they may be granted liberty issue common notice to the legal heirs of the deceased Munusamy Gunasekaran, within a period of thirty (30) days from the date of receipt of a copy of this order and thereafter, proceed against the legal heirs in the manner known to law.

5. 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 heirs of the deceased Munusamy Gunasekaran, 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, connected Miscellaneous Petition stands closed.

11.12.2024

Index : Yes / No
Internet : Yes/ No
mrn

To:
The State Tax Officer,
Arakkonam Circle,
Ranipet Zone, Tamil Nadu.

MOHAMMED SHAFFIQ, J.

mrn

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