IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.38324 of 2024
and
W.M.P.Nos.41494 & 41497 of 2024

Tvl M. Karuppusamy (Deceased)
Rep by his legal heir Smt K.Mangalam,
12/1, SR Layout, Nanje Pillaipudur Street 4,
Madathukulam 64211. ... Petitioner

Vs.

The Deputy State Tax Officer-II,
Udumalpet (NORTH) Assessment Circle,
Udumalpet 642 126. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari , calling for the records of the respondent in his proceedings in GSTIN.33AFDPK5031K1ZP/ 2019-2020, dated 20.08.2024 and quash the same.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 20.08.2024 passed by the respondent relating to the financial year 2019-20, on the premise that the assessment order cannot be made in the name of the dead person viz., M. Karuppusamy.

2. It is submitted by the learned counsel for the petitioner that Mr.M. Karuppusamy, passed away on 10.05.2021 and the impugned order came to be passed in the name of Mr.M.Karuppusamy, that any assessment made in the name of the dead person is 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.*
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> *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. Mr.G.Nanmaran, learned Special Government Pleader appearing for the respondent would submit that the order is an appealable order and this writ petition ought not to be entertained.

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 Special Government Pleader for the respondent they may be granted liberty to issue common notice to the legal heirs of the deceased M.Karuppusamy, 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.

8. Recording the same, the impugned order is set aside. The writ petition stands disposed of by granting liberty to the respondent to issue common notice to the legal heirs of the deceased M.Karuppusamy, 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.

18.12.2024

Index : Yes / No
Internet : Yes/ No
jd

To
The Deputy State Tax Officer-II,
Udumalpet (NORTH) Assessment Circle,
Udumalpet 642 126.

MOHAMMED SHAFFIQ, J.

jd

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