**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 16.12.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.38408 of 2024**
**and**
**W.M.P. Nos.41600 and 41601 of 2024**

P.Magashweta ... Petitioner

Vs.

The Commercial Tax Officer,
Thiruvanmiyur South III,
Chennai South, Tamil Nadu. ... Respondent

**PRAYER**: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondents contained in the impugned Show Cause Notice (SCN) in Form GST DRC-01 vide Reference No.ZD330524215425P, dated 24.05.2024 and the consequent impugned order under Section 73 bearing Reference No:ZD330724349215F dated 30.07.2024 for Assessment Year 2019-20, for GSTIN 33AHFPP7298B1Z8 and to quash the same as arbitrary, unjust and illegal.

For Petitioner : Mr.Salaivarun

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader.

**ORDER**

The present writ petition is filed challenging the impugned Show Cause Notice 24.05.2024 and the consequential impugned order dated 30.07.2024 on the limited ground that they have been made in the name of dead person viz., Mr.Palani.

2. It is submitted by the learned counsel for the petitioner that Mr.Palani was engaged in the business of renting of commercial properties and was registered under the Goods and Services Tax Act, 2017. The said Mr.Palani passed away on 14.04.2022. However, a Show Cause Notice dated 24.05.2024 was issued in the name of Mr.Palani. Pursuant thereto, an impugned order dated 30.07.2024 came to be passed in the name of Mr.Palani, which, according to the petitioner, is an assessment made in the name of a dead person thus 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.*

*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 it is an appealable order and thus writ petition ought not be entertained.

5. 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.

6. In view thereof, the impugned Show Cause Notice and the impugned order issued in the name of Mr.Palani (dead person) are set aside. Liberty is granted to the Respondent to issue notice to the legal heirs of the deceased Mr.Palani and thereafter, proceed in the manner known to law.

7. The writ petition stands disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

**16.12.2024**

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
shk

To:
The Commercial Tax Officer,
Thiruvanmiyur South III,
Chennai South, Tamil Nadu.

**MOHAMMED SHAFFIQ, J.**

shk

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