BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.3067 of 2024 and
WMP(MD) No.3048 of 2024

1.T.John Bosco
2.Alphonsal Thomas
3.Grace Mercy
4.Jose Thomas ... Petitioners

Vs

The Assistant Commissioner of CGST & CEX,
Central Revenue Building,
Tractor Road,
NGO 'A' Colony,
Tirunelveli – 627 007. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in No.F.No.GEX COM/ ADJN/ GST/ 530/ 2023- CGST- DIV- TNVL-COMMRTE-MADURAI/ODER-IN-ORIGINAL No.40/ AC/ GST/ 2023, dated 20.10.2023 and quash the same and consequently direct the respondent to issue fresh notice to the first petitioner as representing legal heir of the deceased dealer, Thomas and after hearing the objections/reply and an opportunity of personal hearing, pass fresh orders according to law.

For Petitioner : Mr.M.Azeem
For Respondent : Mr.R.Nandhakumar
Senior Standing Counsel

ORDER

The petitioners are the legal heirs of one John Thomas, who was running a Saw mill and Timber shop in the name and style of "St.John Saw Mill & Timbers" in Mulagumoodu, Kanyakumari District. They have filed this writ petition challenging the order of assessment passed by the respondent for the year 2017-2018, dated 20.10.2023.

2.The learned counsel appearing for the petitioners submits that the said St.John Saw Mill & Timbers is a proprietary concern and it was maintained and managed by Johnson Thomas. Due to certain ailments, he died on 08.10.2023. The impugned assessment order was issued on 20.10.2023, which was received by the petitioners on 21.10.2023, i.e after the death of Johnson Thomas. Therefore, the learned counsel submits that the order is *ab initio void,* which is passed as against the dead person. The petitioners have sent a representation to the respondent to issue a fresh pre-assessment notices and after providing an opportunity of hearing to the petitioners, a fresh order may be passed. However, their representation was not considered by the respondent. According to the petitioners, since they are not the parties to the assessment proceedings, they could not prefer an appeal before the Appellate Authority. Therefore, the petitioners are before this Court.

3.Mr.R.Nandhakumar, learned Senior Standing Counsel takes notice for the respondent and submits that the assessment is for the year 2017-2018. Before passing the impugned assessment order, the assessee, Johnson Thomas was provided with an opportunity of hearing. A show cause notice was issued on 14.03.2023 and enquiry was conducted during his life time. He has also submitted his reply and participated in the enquiry. According to the learned standing counsel, the assessment order, dated 20.10.2023 was passed after providing due opportunity to the assessee. Considering the position as on date, the learned standing counsel has submitted that a liberty may be given to the respondent to conduct a fresh enquiry as against the legal heirs of Johnson Thomas for the dues liable to be paid by Johnson Thomas towards ineligible ITC availed and utilized and non-payment of interest on delayed payment of Tax for the period July 2017 to March 2018.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5. The petitioners are the legal heirs of one Johnson Thomas, who was running a Saw Mill and Timbers. The said Johnson Thomas died on 08.10.2023. The impugned assessment order was passed on 20.10.2023 as against the dead person. As per Section 93 of the GST Act, the legal heirs are liable to pay the tax arrears in case of death of the taxable person. Therefore, the

petitioners are having a legal right to defend the impugned assessment order. However, they are not in a position to prefer an appeal as they are not the parties to the assessment proceedings. In such view of the matter, this Court is inclined to set aside the impugned assessment order.

6.Accordingly, this writ petition is allowed. The impugned assessment order, dated 20.10.2023 is hereby set aside with a direction to the Assistant Commissioner of CGST & CEX,Tirunelveli/the respondent to issue a fresh notice to the legal heirs of Johnson Thomas and conduct an enquiry by providing an opportunity of personal hearing to the petitioners and pass order afresh within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

13.02.2024

NCC :Yes/No
Index:Yes/No
Internet:Yes
vrn

To

The Assistant Commissioner of CGST & CEX,
Central Revenue Building,
Tractor Road,
NGO 'A' Colony,
Tirunelveli – 627 007.

B.PUGALENDHI, J.

vrn

Order made in
W.P(MD)No.3067 of 2024 and
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