BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.4778 of 2024 and
WMP(MD) No.4588 of 2024

K.Nagarajan ... Petitioner

Vs

The Assistant Commissioner (ST),
Theni II Assessment Circle,
Theni. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the respondent in his proceedings in Roc.471/2018/A3 in Form No.5, dated 24.01.2024 and quash the same as it is unlawful and in gross violation of the principles of natural justice.

For Petitioner : Mr.A.Sathesh Murugan
For Respondents : Mr.A.Basakaran
Additional Government Pleader

O R D E R

The petitioner's wife one Kaveri was running a Proprietary concern dealing with Masala powders in the name of

"M/s.Vel Brothers", Allinagaram, Theni District. The said Kaveri has registered her business with the respondent. She died on 05.05.2015. While so, the respondents have issued the impugned proceedings in ROC 471/2018/A3 in Form No.5, dated 24.01.2024 for attachment of the property in S.No.615/2, Allinagaram, Theni District that the Proprietary concern M/s.Vel Brothers have not submitted its returns for the period 2013-2014 and 2014-2015. Challenging the same, the petitioner/the husband of the deceased Kaveri has filed this writ petition.

2. The learned counsel appearing for the petitioner claims that the petitioner and his sons are not aware of the business transactions of his wife. They have verified and found that there is no records available in their house in respect of her wife's business. The respondents have not furnished any documents in support of their notice, dated 21.12.2016. In the absence of any relevant documents, they are not in a position even to reply for the notice. Since the order has been passed as against a dead person, it is void

one. Therefore, a suitable direction may be issued to the respondents to furnish the required documents to the petitioner enabling him to offer his reply to the notice/proceedings.

3.Mr.A.Baskaran, learned Additional Government Pleader takes notice for the respondents and submits that a surprise inspection was conducted by the Department officials in the business place of M/s. Vel Brothers under Setion 65 of the TNVAT Act and found certain discrepancies and by intimating the same, a notice was issued on 05.05.2015 to the proprietorix N.Kaveri. However, the notice was returned as unserved. Thereafter, another notice was issued on 15.10.2015 and the legal heir of the said Kaveri has received the same on 15.10.2015. However, no reply/objection has been submitted by them. Therefore, the Department has proceeded further and an order was passed on 21.12.2016, demanding a sum of Rs.1,96,07,498/- towards tax arrears for the period from 2013-2014 and 2014-2015. According to the learned Additional Government Pleader, subsequent notices dated 23.01.2017, 16.10.2018 and

03.10.2019 have been sent to the dealer. However, the Dealer has neither settled the tax arrears nor responded to any of the notices. He further submits that one Nagendran, one of the legal heirs of the said Kaveri has submitted a petition on 10.03.2023 requesting for revision of assessment made for the years 2013-2014 and 2014-2015. Therefore, it is not proper on the side of the petitioner that they are not aware of the business transactions of his wife. The impugned order has been passed after providing sufficient opportunities to the dealer concerned. Hence, there is no need to interfere with the impugned order.

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

5.The petitioner, the husband of one Kaveri has approached this Court that his wife was running a business dealing with masala powder and he is not aware of his wife's business transactions; she died on 05.05.2015; the impugned order of attachment dated 24.01.2024 has been passed as against the dead person and therefore it is void in nature. According to the respondents, they have issued a notice on 05.05.2015 on the date of death of the said Kaveri and it was returned as not claimed. For the subsequent notices issued by the Department in the years 2017, 2018 and 2019, the legal heirs of the deceased Kaveri have not responded. On 10.03.2023, one Nagendran, the son of the said Kaveri has submitted an application, requesting for revision of assessment for the years 2013-2014 and 2014-2015. It appears that the petitioner is not having any documents to offer his reply to the notice issued by the Department. More over, the order of attachment, dated 24.01.2024 has been passed based on the order dated 21.12.2016 as against the proprietary concern, that too, when the proprietorix is not alive. Since the basic document is found to be voidable, the consequential order of attachment is liable to be set aside.

6.In view of the above, this writ petition is allowed. The impugned order dated 24.01.2024 is hereby set aside with a liberty to the respondents to initiate proceedings afresh as against the legal heirs of the deceased Kaveri within a period of one week from the date of receipt of a copy of this order, by issuing a notice afresh along with the required documents. Reasonable opportunity shall also be provided to the petitioner/the legal heirs of deceased Kaveri. The petitioner shall furnish his reply, if any, within a period of two weeks from the date of such notice. The respondent shall pass orders by considering the reply of the petitioner as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

01.03.2024

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

To

The Assistant Commissioner (ST),
Theni II Assessment Circle,
Theni.

B.PUGALENDHI, J.

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Order made in
W.P(MD)No.4778 of 2024 and
WMP(MD) No.4588 of 2024

01.03.2024