BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.6713 of 2024
and
W.M.P.(MD) Nos.6228 and 6230 of 2024

D.Viji ... Petitioner

/vs./

The Deputy State Tax Officer,
Nagercoil (Rural),
Mead Street,
Nagercoil. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the Respondent in No.Form-GST DRC-07 in Ref No. ZD331223247417L/GSTIN:33AFSPK5813NIZY/2017-18 dated 27/28-12-2023 and quash the same and consequently direct the respondent to issue fresh notice to the petitioner as representing legal heir of the deceased dealer, C.Krishnappa 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.J.K.Jeyaselan
Government Advocate

ORDER

The petitioner has filed this writ petition for a Certiorarified Mandamus to call for the records in Form-GST DRC-07 in Ref No.ZD331223247417L/GSTIN: 33AFSPK5813NIZY/2017-18 dated 27-12-2023 on the file of the respondent, to quash the same and to direct the respondent to issue fresh notice to the petitioner as representing the legal heir of the deceased dealer, C.Krishnappa and after hearing the objections/reply and an opportunity of personal hearing, pass fresh orders.

2.The petitioner is the wife of the deceased dealer, Chellakannnadar Krishnappa, who has died on .02.06.2021 due to COVID-19. A notice was issued in the name of the petitioner's deceased husband addressed to the business premises, from where the petitioner's deceased husband was carrying on business before his death. It is the specific case of the petitioner that the petitioner was unaware of the aforesaid notice and thus, an *ex parte* order came to be passed on 27.12.2023.

3.On merits, the learned counsel for the petitioner submits that the registration was cancelled on 03.01.2022 and that notices that preceded the impugned order thus remained un-served. Therefore, the impugned order suffers from violation of principles of natural justice. On merits, the learned counsel for the petitioner would also submit that the petitioner's late husband also had un-utilized input tax credit, which also could be setoff against the tax liability and therefore, he submits that one opportunity be given to the petitioner to engage a counsel to represent the case.

4.The learned Government Advocate for the respondent would submit that the writ petition is liable to be dismissed. In any event, it is submitted that the petitioner has an alternate remedy under Section 107 of the TNGST Act, 2017 and therefore, she should be asked to workout her remedy before the appellate Authority. That apart, it is submitted that there is no dispute with the tax liability. It is submitted that the petitioner's late husband had belatedly paid the tax and therefore, the impugned order is merely a consequential order on account of the delayed payment.

5.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

6.In my view, this is a fit case for exercising the discretion in favour of the petitioner by quashing the impugned order and remitting the case back to the respondent to pass fresh orders on merits and in accordance with law within a period of 60 days from the date of receipt of a copy of this order. The petitioner shall file a reply within a period of 30 days from the date of receipt of a copy of this order. It is made clear that the petitioner shall co-operate with the respondent in the *de nova* proceeding, failing which the respondent is at liberty to pass orders based on the materials available.

7.With the above liberty, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.04.2024

Index : Yes / No
Internet : Yes / No
mm

To

The Deputy State Tax Officer,
Nagercoil (Rural),
Mead Street,
Nagercoil.

C.SARAVANAN, J.

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W.P.(MD) No.6713 of 2024

08.04.2024