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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.12464 of 2024
and
W.M.P.(MD) Nos.11068, 11073 & 11079 of 2024

1.Unnikrishnan R

2.Sujatha R

3.Nalinakshi Amma ... Petitioners

Vs.

1.The Union of India,
Represented by its
Secretary to Government,
Finance Department, Rajpath Marg,
Central Secretariat, New Delhi - 110001.

2.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner
of Commercial Taxes, Ezhilagam,
Chepauk, Chennai - 600005.

3.The State Tax Officer, Kuzhithurai,
The Commercial Tax Building,
Kuzhithurai @ Kattuthurai,
Kanniyakumari District - 629163. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records

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pertaining to the Impugned Order No.GSTIN:33ABBPP2462P1ZF/ 2017-18 dated 29.12.2023 issued by the third respondent, and quashing the same as illegal and consequently directing the second, third and fourth respondents not to proceed further to recover the demand pursuant to the said order.

For Petitioners : Mr.Bobby John Pulickaparambil

For R1 : Mr.G.Rajaraman
Central Government Standing Counsel

For R2 & R3 : Mr.R.Sureshkumar
Additional Government Pleader

O R D E R

In this Writ Petition, the petitioner has challenged the impugned order dated 29.12.2023 passed by the third respondent in GSTIN: 33ABBPP2462P1ZF/2017-18, and prayed for a direction to the second, third and fourth respondents not to proceed further with recovery proceedings pursuant to the impugned order.

2. Mr.G.Rajaraman, learned Central Government Standing Counsel takes notice for the first respondent. Mr.R.Sureshkumar, learned Additional Government Pleader, takes notice for the second to fourth respondents. With their consent, this Writ Petition is taken up for final disposal at the time of this admission.

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3. The petitioner is the son of deceased dealer Mr.Radhakrishnan Pillai who was running a business concern under the name and style of 'M/s.Chothi Enterprises' at Anakarai, Kulapuram, Kanyakumari District and tragically died on 11.10.2017 under mysterious circumstances. However, the third respondent issued Show Cause Notice under Section 73(1) of the TNGST Act, 2017 on 29.09.2023 in the name of the deceased dealer Mr.Radhakrishnan Pillai.

4. The case of the petitioner is that although the petitioner and other members of the family are the legal heirs/legal representatives of the deceased dealer Mr.Radhakrishnan Pillai, they are not carrying on the business carried on by the deceased Mr.Radhakrishnan Pillai. It is submitted that the impugned order dated 29.12.2023 confirming the demand proposed in the Show Cause Notice dated 29.09.2023 is *non-est* in law as it has been passed against the dead person.

5. This Writ Petition is opposed by both the learned Central Government Standing Counsel for the first respondent and the learned Additional Government Pleader for the second to fourth respondents

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stating that there was no proper intimation about the death of the dealer Mr.Radhakrishnan Pillai. It is therefore submitted that not only the Show Cause Notice in Form GST DRC-01 was issued on 30.09.2023 followed by the Show Cause Notice dated 29.09.2023 issued under Section 73(1) of the TNGST Act, 2017, but also a Notice in Form GST ASMT-10 was issued on 13.06.2023, to which also, neither the petitioner nor his family members have responded.

6. It is further submitted that in the affidavit, the petitioner has stated that they have orally informed the officers about the death of the dealer telephonically. It is therefore submitted that there is no merits in the challenge to the impugned order.

7. The learned Additional Government Pleader for the second to fourth respondents submitted that the petitioner may be given liberty to file statutory appeal before the Deputy Commissioner (ST) (GST) (Appeal) under Section 107 of the TNGST Act, 2017 by condoning the delay and therefore prayed for dismissal of this Writ Petition with the above liberty.

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8. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Central Government Standing Counsel for the first respondent and the learned Additional Government Pleader for the second to fourth respondents.

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

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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.

12. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.06.2024
(2/2)

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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Copy To:
1.The Secretary,
Finance Department,
Union of India, Rajpath Marg,
Central Secretariat, New Delhi - 110001.

2.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner
of Commercial Taxes, Ezhilagam,
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3.The State Tax Officer, Kuzhithurai,
The Commercial Tax Building,
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