



W.P(MD)No.20626 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.20626 of 2024

and

W.M.P(MD)No.17484 of 2024

T.Nigil

... Petitioner

Vs.

- 1.The Commissioner of GST & Central Excise (Appeals),
Office of the Commissioner of GST & Central
Excise (Appeals),
Circuit House, C.R.Building,
P.T.Rajan Road, Bibikulam,
Madurai-625 002.
- 2.The Commissioner of GST & Central Excise,
Office of the Commissioner of GST & Central Excise,
C.R.Building,
P.T.Rajan Road, Bibikulam,
Madurai-625 002.
- 3.The Additional / Joint Commissioner of GST &
Central Excise,
Office of the Additional / Joint Commissioner of
GST & Central Excise,
C.R.Building, Tractor Street,
NGO "A" Colony,
Tirunelveli-627 007.



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4.The Superintendent of GST & Central Excise,
Office of the Superintendent of GST & Central Excise,
Nagarcoil Range, 48/1-4, First Floor,
Shivaraj Building,
Tower Junction,
Nagarcoil-629 001.

... Respondents

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 relating to the impugned order in Appeal No.13/2023-MDU-GST-COMMR-APP, dated 30.10.2023 passed by the first respondent and quash the same and pass such further or other as this Court.

For Petitioner : Mr.B.Vijay Karthikeyan
For Respondents : Mr.R.Gowri Shankar
Senior Standing Counsel

ORDER

The present writ petition has been filed challenging the order in appeal No.13 of 2023, dated 30.10.2023, whereby, the order in original, dated 02.01.2023 was affirmed.

2. The limited ground of challenge is that the entire adjudication / assessment proceeding commencing with issuance of show cause notice, dated 28.03.2022 has been made in the name of the petitioner's father, who had died on 19.05.2021. The death of the petitioner's father was also brought to the



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notice of the respondent. However, the respondent proceeded to pass the impugned order of adjudication in the name of the dead person. It was submitted that any assessment made in the name of a dead person is a nullity. Though specific grounds have been raised before the appellate authority as to the impermissibility of making assessment in the name of a non-existing entity/person, the same stood rejected by placing reliance on Section 93(1) of the Central Goods and Service Tax Act, 2017, which reads as under:

"Section 93. Special provisions regarding liability to pay tax, interest or penalty in certain cases.-

(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a person, liable to pay tax, interest or penalty under this Act, dies, then-

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined



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before his death but has remained unpaid or is determined after his death."

3. A reading of Section 93 would show that Clause (a) only provides that if a business carried on by the person is continued by the legal representative or any other person after his death, such legal representative or other person, who continues, shall be liable to pay tax, interest or penalty, while Clause (b) provides that if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty. The above provision does not appear to dispense with the need / requirement to make the assessment in the name of an existing person / entity. No assessment can be made in the name of a dead person under the GST Act. Under the GST Act, in the case of original assessee being a dead person it may be necessary to make the assessment in the name of the legal heirs. The assessment in the name of the dead person more so when the factum of his death has already been informed by the respondent authority, vitiates the entire proceeding. The above defect is a substantive defect. Participation in the assessment proceeding by the legal representative cannot cure the above defect.



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4. In this regard, reliance was sought to be placed on a 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



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the manner known to law, in case the petitioner is carrying on the business of the deceased dealer Mr.Radhakrishnan Pillai."

5. At this juncture, it was submitted by the learned Senior Standing Counsel for the respondents they may be granted liberty to issue common notice to the legal heirs of the deceased T.Tamil Raj, within a period of thirty (30) days from the date of receipt of a copy of this order and thereafter, proceed in the manner known to law.

6. Recording the same, the impugned order is set aside. The writ petition stands disposed of by granting liberty to the respondents to issue common notice to the legal heirs of the deceased T.Tamil Raj, within a period of thirty (30) days from the date of receipt of a copy of this order and thereafter, proceed in the manner known to law. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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MOHAMMED SHAFFIQ, J.

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