IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.02.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.4634 of 2025
and
W.M.P.No. 5138 of 2025

Gugapriya ...Petitioner

Vs.

1. The Deputy State Tax Officer (ST)
Thiruvallur Assessment Circle,
4/109, Integrated Commercial Taxes Building,
Narzarethpet, Poonamallee,
Chennai – 600 123.

2. The Deputy Commissioner (CT)
O/o Deputy Commissioner (ST)
GST Appeal Chennai – I
PAPJM Building, Greams Road,
Chennai – 600 006. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records from the file of the respondents and to quash the impugned order under Section 73 of the Tamil Nadu Goods and Service Tax Act, 2017/Central Goods and

Service Tax Act, 2017, including the summary of the order in Form GST DRC 07 dated 11.09.2023, and having reference number ZD330923054580G and its annexure dated 11.09.2023, in GSTIN : 33BGMPS6207G1ZA/2017-18 passed by the first respondent for FY 2017-18 along with the acknowledgment in Form GST Apl-02 dated 19.10.2024, issued by the second respondent under Rule 108 of Central Gooods and Service Tax Rules/Tamil Nadu Goods and Service Tax Act, 2017 for the FY 2017-18.

For Petitioners : M/s.N.V.Lakshmi

For Respondents : Mrs.K.Vasanthamala
Government Advocate (T)

Order

Heard M/s.N.V.Lakshmi, learned counsel appearing for the petitioner and M/s.G.Vasanthamala, learned Government Advocate (T), who takes notice on behalf of the respondents. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order passed by the first respondent under Section 73 of the Tamil Nadu Goods and Service Tax

Act, 2017/Central Goods and Service Tax Act, 2017, including the summary of the order in Form GST DRC 07 dated 11.09.2023, and its annexure dated 11.09.2023, for FY 2017-18 along with the acknowledgment in Form GST Apl-02 dated 19.10.2024, issued by the second respondent under Rule 108 of Central Goods and Service Tax Rules/Tamil Nadu Goods and Service Tax Act, 2017 for the FY 2017-18.

3. The learned counsel for the petitioner would submit that the Proprietor of the Firm, viz.Vijaikumar Sankaran had passed away as early as on 27.12.2021, however, all the notices, which culminated in the impugned orders were issued in the name of the said deceased person, and that apart, GST registration was cancelled as early as on with retrospective effect from 09.10.2023, hence, the petitioner, viz., Gugapriya the wife of the said deceased, is not aware of the same and the petitioner came to know about the impugned orders only when the respondent-Department intimated through phone call about the initiation of recovery proceedings, and immediately thereafter, the petitioner took steps to file Appeal and filed the same on 09.02.2024, however, since there was a delay in filing the same, the

Appellate Authority refused to entertain the same by virtue of the impugned acknowledgment in Form GST Apl-02 dated 19.10.2024, therefore, the petitioner is before this Court by way for present Writ Petition seeking for the relief, as stated supra.

3.1 The learned counsel assailed the impugned orders by contending that the notices issued to a dead person and assessment orders passed based on such notices are void ab initio, hence, she, being the legal heir of the deceased, i.e. Wife, is willing to contest the matter by way of Appeal, and hence, sought for appropriate orders.

4. The learned Government Advocate (T) for the respondents would submit that since no intimation was made to the Department with regard to the death of the petitioner's husband, the same resulted in the impugned orders, however, since the petitioner is willing to contest the issue by way of Appeal, the prayer may be considered.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. On perusal of records, it is seen that the deceased, viz., viz.Vijaikumar Sankaran was an assessee on the files of the respondent under the provisions of Tamil Nadu Goods and Service Tax Act, 2017//Central Goods and Service Tax Act, 2017, and the said person died as early as on 27.12.2021, however, the respondent, who is ignorant of the said fact has been continuously issuing notices in the name of the said deceased person, as, no intimation was given to the respondent-Department as regards the death of the petitioner's husband, hence, the impugned assessment orders came to be passed and not stopping with that, the respondent-Department also proceeded to initiate recovery proceedings. The petitioner came to know about the impugned recovery proceedings only when the same was intimated by the respondent-Department through phone call regarding the recovery proceedings, immediately thereafter, the petitioner filed the Appeal. However, since the same was filed beyond the condonable period of delay, the Appellate Authority, rejected the same by virtue of the impugned Acknowledgement in Form GST Apl-02 dated 19.10.2024.

6.1 Thus, the impugned orders are ex parte orders and suffers from violation of principles of natural justice and de hors the same, the notices issued to an assessee, who is no more and assessment orders passed based on such notices are void ab initio and liable to be set aside. However, considering the fact that the petitioner has filed an Appeal challenging such orders, this Court is inclined to condone the delay and grant liberty to the petitioner to agitate the issue before Appellate Authority.

7. Accordingly, this Court passes the following orders:-

i) The impugned acknowledgment in Form GST Apl-02 dated 19.10.2024, whereby, the Appeal was rejected is set aside.

ii) The Delay in filing the Appeal is condoned in its entirety.

iii) The second respondent is directed to take up the Appeal on file and dispose the same in accordance with law.

8. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

13.02.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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