



W.P.No.37987 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37987 of 2024

and

W.M.P. Nos.41078 and 41079 of 2024

Sanjay Kumar Pandey (Since Dead)

Proprietor of M/s.Sri Sai Enterprises,

Thru' his legal heir

Mrs.Urmila Pandey

...Petitioner

Vs.

The Assistant Commissioner (ST),

Sriperumbudur Assessment Circle,

Kancheepuram.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus to call for the records of the respondent Order in reference No.ZD330824265740B, dated 29.08.2024 for the F.Y. 2019-2020, quash the same and a direction to the respondent to consider the replies filed in ARN No.ZD330422001023F, dated 04.04.2022, ARN No.ZD330124135424W, dated 29.01.2024 for adjudicating the issue in accordance



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with law.

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For Petitioner : Mr.R. Ramkumar
For Respondent : Ms. Amrita Dinakaran
Government Advocate

ORDER

Challenging the impugned order dated 29.08.2024 passed by the respondent relating to the financial year 2019-2020 on the premise that the assessment order cannot be made in the name of the dead person viz., Sanjay Kumar Pandey, who was the proprietor of the M/s.Sri Sai Enterprises.

2. Ms. Amrita Dinakaran, learned Government Advocate takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner submitted that the factum of the death of the proprietor was brought to the notice of the respondent/authority vide its reply to the show cause notice dated 29.01.2024. However, the respondent/authority proceeded to pass the impugned order in the name of the death person viz., Sanjay Kumar Pandey.



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4. It is submitted by the learned counsel for the petitioner that identical issue has come up for consideration before 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 the manner known to law, in case the petitioner is carrying on the business of the deceased dealer Mr.Radhakrishnan Pillai.”

5. The learned Government Advocate appearing for the respondent would



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submit that the order is an appealable order and this writ petition ought not to be entertained.

6. Heard both sides and perused the material on record.

7. This Court is conscious of the fact that normally jurisdiction under Article 226 would not be entertained when there is an alternate remedy, however the same is not an absolute bar but is a self imposed restriction and has exceptions carved out to the above rule, one such exception is where the order is without jurisdiction. The assessment made in the name of dead person has been held to be a nullity and would thus fall within the exception to the rule of alternate remedy.

8. At this juncture, it was submitted by the learned Government Advocate for the respondent they may be granted liberty to issue common notice to the legal heirs of the deceased Sanjay Kumar Pandey, 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.



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9. Recording the same, the impugned order is set aside. The writ petition stands disposed of by granting liberty to the respondent to issue common notice to the legal heirs of the deceased Sanjay Kumar Pandey, 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.

02.01.2025

Speaking (or) Non Speaking Order

Neutral Citation: Yes/No

jd

To

The Assistant Commissioner (ST),
Sriperumbudur Assessment Circle,
Kancheepuram.



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MOHAMMED SHAFFIQ, J.

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