

**Chief Justice's Court**

**Case :-** WRIT TAX No. - 1137 of 2023

**Petitioner :-** Mrs Lalitha Subramanian

**Respondent :-** Union Of India And 3 Others

**Counsel for Petitioner :-** Kalpana Sinha

**Counsel for Respondent :-** A.S.G.I.,Amit Mahajan,Gopal Verma

**Hon'ble Pritinker Diwaker,Chief Justice**

**Hon'ble Ashutosh Srivastava,J.**

Heard Sri Utkarsh Srivastava, learned counsel for the petitioner, Sri Amit Mahajan, learned counsel for the Respondent Nos.2, 3 & 4 and Sri Gopal Verma, learned counsel, who has appeared for the Union of India.

The challenge in this writ petition is to the demand cum show cause notice dated 26.03.2021 issued by the Respondent No.3, Assistant Commissioner, Central Goods & Service Tax, Division-I, E-23B, Sector-8, Noida, as also the consequential order dated 27.02.2023 passed by the Respondent No.2, Principal Commissioner, Central Goods & Service Tax Commissionerate, Noida , C-56/42, Sector-62, Noida, whereby and whereunder M/s TSR Subramanian, a Sole Proprietorship Firm run by the husband of the petitioner namely late Sri T.S.R. Subramanian, engaged in providing services as a Consultant has been saddled with tax liability of Rs.8,97,716/- under the proviso to Section 73(1) of the Finance Act, 1994 read with Sections 142, 173, 174 of the Central Goods & Service Tax Act, 2017 towards Service Tax for the Financial Year 2014-15 along with equivalent penalty and interest thereon. Further, under the impugned order a further penalty of Rs.10,000/- has been imposed under Section 71(1)(c) of the Finance Act, 1994 read with Sections 142, 173, 174 of the Central Goods & Service Tax Act, 2017.

The impugned notice dated 26.03.2021 and the consequential order dated 27.02.2023 are being assailed on the ground that the notice was issued against the dead person inasmuch as the husband of the petitioner who was the sole proprietor of the firm M/s TSR Subramanian had expired on 26.02.2018 and the said fact was communicated to the Respondent No.4 vide letter dated 18.12.2020 annexing the death certificate in response to a letter dated 07.12.2020 issued by the Respondent No.4 in the name of

the firm. Besides communicating the death of her husband, it was informed by way of the said letter dated 18.12.2020 that any alleged difference between gross receipt shown in the Income Tax Return and the gross receipt shown in the Service Tax was due to pension income of her late husband which was Rs.10,77,750/-.

It is further submitted that though the factum of death of her husband was duly communicated to the respondents yet the impugned order dated 27.02.2023 has been passed. It is also argued that no show cause notice dated 26.03.2021 referred to in the impugned order dated 27.02.2023 was ever served upon the petitioner and no letters or communication in relation to affording opportunity of personal hearing was served upon the petitioner and the impugned order is ex-parte and against a dead person. It is also argued that the impugned demand cum show cause notice dated 26.03.2021 on the basis of which the impugned order dated 27.02.2023 has been passed, pertains to Financial Year 2014-15 and as such, the entire proceedings are patently illegal having been initiated after a period of five years from the relevant date. It is, accordingly, submitted that the impugned order is liable to be set aside.

Sri Amit Mahajan, learned counsel appearing for the contesting respondents has attempted to justify the order on the ground that the impugned order has been passed against the firm M/s TSR Subramanian. He, however, has not been able to refute the submissions of learned counsel for the petitioner that the firm was a Sole Proprietorship Firm and the factum of the demise of Sri TSR Subramanian, the sole proprietor was duly communicated to the authorities and no notice was ever served upon the petitioner or any other legal representative of the deceased Sole Proprietor of the Assessee Firm.

We have heard the respective counsel for the parties and have perused the record as also the impugned order dated 27.02.2023. We find that the Assistant Commissioner, Central Goods & Service Tax, Division-I, Noida in the impugned order has taken note of the factum of the death of the husband of the petitioner. The impugned order also states that opportunity of personal hearing was accorded and dates were fixed but neither any authorized representative appeared nor any communication was received from the party even though the communication was made by the department on registered address and registered e-mail. We are of the opinion that the department was required to serve notice upon the petitioner being the legal representative of the deceased before proceeding in the matter. The impugned order nowhere records that notice issued

by the department was served upon the petitioner being the legal representative of the deceased assessee.

In view of the above, we are of the view that the impugned order dated 27.02.2023 is liable to be set aside and is, accordingly, set aside. The matter is remitted back to the Assistant Commissioner, Central Goods & Service Tax, Division-I, Noida, for decision afresh after affording personnel hearing to the petitioner or to her representative considering the age of the petitioner, which is stated to be 79 years. The Assistant Commissioner, Central Goods & Service Tax, Division-I, Noida shall not be required to issue fresh notice to the petitioner. We direct the petitioner or her representative to appear before the Assistant Commissioner, Central Goods & Service Tax, Division-I, Noida on 28.11.2023 along with certified copy of the order of this Court. We permit the petitioner to file objections along with all documents relied upon in support of her claim before the Assistant Commissioner. The Assistant Commissioner shall thereafter fix a date for personal hearing and decide the matter expeditiously preferably within a period of two months after considering all respect of the matter strictly in accordance with law.

The writ petition is **disposed of** with the above direction.

**Order Date :- 7.11.2023**

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