

W.P. No.34252 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.34252 of 2024

and

W.M.P. Nos.37093 and 37098 of 2024

Mrs.Lakshmi Periyasamy,
4/186, 4th Street,
MMDA, Maduravoyal,
Chennai-600 095.

... Petitioner

Vs.

1.State Tax Officer,
Vanagaram Assessment Circle,
Vanagaram.

2.The Deputy Commissioner (ST),
Poonamallee Zone,
Poonamallee.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the 1st Respondent in GSTIN:33AUHPP1146M1ZH dated 01.06.2022 for the tax period 01/2021-01/2021 of the financial year 2020/2021 and quash the same as illegal, arbitrary and violative of principles of natural justice.

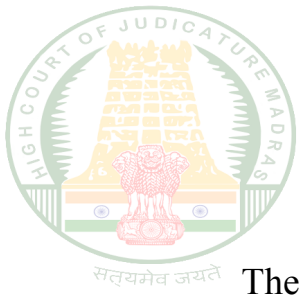
For Petitioner

: Mr.A.Sheik Peer

For Respondents

: Mr.G.Nanmaran

Special Government Pleader



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ORDER

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The impugned order dated 01.06.2022 is challenged on the short ground that the same has been passed in the name of a dead person namely Mr.S.Periyasamy.

2. It is submitted by the learned counsel for the petitioner by placing reliance upon the death certificate that Mr.Perumal Pitchaimuthu passed away on 17.11.2020. It was submitted that the factum of demise of Mr.S.Periyasamy was brought to the notice of the Respondent authority and application for cancellation of registration certificate was also made. However, the impugned order dated 01.06.2022 is made in the name of a dead person viz., Mr.S.Periyasamy.

3. It is trite law that assessment or adjudication orders made in the name of dead person is non-est and a nullity. In this regard, it may be relevant to refer to the 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



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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."

4. The learned counsel for the Respondents would submit that the order is an appealable order and this writ petition ought not to be entertained.

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

6. This Court is conscious of the fact that normally petition under Article 226 would not be exercised when there is an alternate remedy, however the same is not an absolute bar but is a self imposed restriction. The above rule of alternate remedy has certain 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 having been found to be a nullity and thus without jurisdiction, falls



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within the exception to the rule of alternate remedy.

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7. In view thereof, the impugned order in the name of S.Periyasamy (dead person) is set aside. Liberty is granted to the Respondents to issue notice to the legal heirs of the deceased S.Periyasamy and thereafter, proceed in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

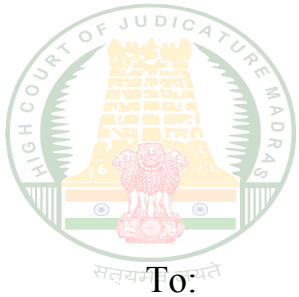
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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To:

1.State Tax Officer,
Vanagaram Assessment Circle,
Vanagaram.

2.The Deputy Commissioner (ST),
Poonamallee Zone,
Poonamallee.



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MOHAMMED SHAFFIQ, J.

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