

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 22ND DAY OF JANUARY 2020 / 2ND MAGHA, 1941

WP (C) .No.927 OF 2020 (M)

PETITIONER/S:

VIMAL RAJ
AGED 34 YEARS
S/O.LATE K.DEVARAJAN POTTI, DEVA NIVAS, THIRUNAKKARA
WEST GATE, KOTTAYAM-686001.

BY ADVS.
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT/S:

- 1 THE STATE TAX OFFICER-1,
1ST CIRCLE, STATE GST DEPARTMENT, NAGAMPADAM,
KOTTAYAM-686001.
- 2 THE COMMISSIONER OF STATE GST,
STATE GST DEPARTMENT, TAX TOWERS, KILLIPPALAM,
KARAMANA, THIRUVANANTHAPURAM-695002.

OTHER PRESENT:

SMT.THUSHARA JAMES, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P(C) No. 927 of 2020

Dated this the 22nd day of January, 2020

JUDGMENT

The case projected in this writ petition is as follows:

The petitioner would contend that the impugned orders, ie, Exts.P3 to P3(1) are illegal and arbitrary, due to the following reasons.

- a) There cannot be any orders passed against a deceased under the statute.
- b) Provisions of Section 93 of CGST Act has not been followed while issuing Exts.P3 series.
- c) Show cause notices prior to Exts.P3 series were not served by the 1st respondent.

2. Accordingly, the petitioner would contend that Ext.P3 series orders are required to be quashed or interdicted by this Court.

In the light of these averments and contentions petitioner has filed the instant W.P.(C) with the following prayers:

- “(i) To quash Exts.P3 to P3(1) orders issued by the 1st respondent by the issue of a writ of certiorari or such other writ or order or direction.
- (ii) To grant the petitioner such other incidental reliefs

including the costs of these proceedings.”

3. Heard Smt.Meera V.Menon, the learned counsel appearing for the petitioner and Smt.Thushara James, the learned Government Pleader.

4. The respondents' seek for a direction to furnish specific instructions to the learned Government Pleader as to the plea made by the petitioner that the assessee concerned who is covered by the impugned Ext.P3 series of assessment orders rendered in March 2019 was dead as early as on 27.03.2018 as evident from Ext.P2 certificate issued by the Registrar of Births and Deaths and on the constitutional contentions raised by the petitioner, such an impugned assessment order as per Ext.P3 series passed against a dead person is a nullity and it is only to be rescinded and quashed, etc.

5. After hearing both sides, it appears that the respondent does not raise any serious dispute as to the factual assertion made by the petitioner that the assessee concerned (who appears to be the paternal grandfather of the petitioner herein) is said to be one of the legal heirs of the deceased assessee as the petitioner's father who is the son of the assessee has died as early as on 27.03.2018 as evident

from Ext.P3 death certificate issued by the Registrar of Births and Deaths, which is much before the rendering of the impugned Ext.P3 series of the assessment orders issued in March 2019. Since, that appears to be the undisputed position, it is only to be held that Ext.P3 series of assessment orders rendered as late as in March 2019 has been passed as against an assessee who is already dead by then and therefore, the impugned assessment orders is a nullity in the eye of law.

6. It is made clear that the 1st respondent will be at liberty to take fresh action in the said assessment proceedings, after ascertaining from the competent Revenue Officials as to who all are the legal representatives or legal heirs of the said deceased assessee and then the respondent will be at liberty to render reasonable opportunity of being heard to such legal representatives and then finalise the assessment proceedings in the manner known to law. It is made clear that this Court has interfered with the impugned proceedings only on the ground that the assessee was already dead as on the date of assessment order and therefore, the assessment orders is a nullity and no other issues are decided by this Court and such other issues are left open.

With these observations and directions, the above Writ
Petition (Civil) stands finally disposed of.

sd/-

ALEXANDER THOMAS

JUDGE

Dxy

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 COPY OF DEATH CERTIFICATE ISSUED BY THE KOTTAYAM MUNICIPALITY DATED 6.4.2018.
- EXHIBIT P2 COPY OF DEATH CERTIFICATE ISSUED BY THE KOTTAYAM MUNICIPALITY DATED 14.1.2019.
- EXHIBIT P3 COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF MARCH 2018 DATED 28.9.2018.
- EXHIBIT P3A COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF APRIL 2018 DATED 28.9.2018.
- EXHIBIT P3B COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF MAY 2018 DATED 28.9.2018.
- EXHIBIT P3C COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF JUNE 2018 DATED 28.9.2019.
- EXHIBIT P3D COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF JULY 2018 DATED 28.9.2019.
- EXHIBIT P3E COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF AUGUST 2018 DATED 28.9.2019.
- EXHIBIT P3F COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF SEPTEMBER 2018 DATED 28.9.2019.
- EXHIBIT P3G COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF OCTOBER 2018 DATED 28.9.2019.
- EXHIBIT P3H COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE MONTH OF NOVEMBER 2018 DATED 28.9.2019.

- EXHIBIT P3I COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF
DECEMBER 2018 DATED 28.9.2019.
- EXHIBIT P3J COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF JANUARY
2019 DATED 28.9.2019.
- EXHIBIT P3K COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF
FEBRUARY 2019 DATED 28.9.2019.
- EXHIBIT P3L COPY OF ASSESSMENT ORDER ISSUED BY THE
1ST RESPONDENT FOR THE MONTH OF MARCH
2019 DATED 28.9.2019.
- EXHIBIT P4 COPY OF HEIRSHIP CERTIFICATE ISSUED BY
THE TAHSILDAR KOTTAYAM DATED
16.10.2019.