IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.3235, 3238, 3236, 3241, 3242 & 3244 of 2021
WMP.Nos.3675, 3677, 3673, 3681, 3684 & 3687 of 2021

W.P.No.3235 of 2021

Mr.Angusamy Gounder Subbu Rathinam,
Proprietor,
M/s.Cholaa Knit Wear,
5, K.G.Layout,
Behind Dhanalakshmi Theater,
Kongu Main Road,
Tirupur-641 607 ...Petitioner in all wps

Vs.

1.The Deputy Commissioner of GST & Central Excise
Tirupur Division,
No.51, Elementary School Road, Kumar Nagar,
Tirupur- 641 603

2.The Assistant Commissioner of Central Tax,
No.51, Elementary School Road, Kumar Nagar,
Tirupur-641 603 ...Respondents in all wps

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of certiorari calling for the records on the files of the 1st respondent in Order No.389/2019, 392/19, 391/19, 393/19, 390/19 and 394/19 dated 12.12.2019 respectively and quash the same as being violative of principles of natural justice.

In all WPs.
For Petitioner : Mr.V.Srikanth

For Respondents : Mr.R.Gunaalan
Junior Panel Counsel

ORDER

Heard Mr.V.Srikanth, learned counsel for the petitioner and Mr.R.Gunaalan, learned counsel for the respondents.

2.The petitioner has challenged orders rejecting his applications for refund. The orders are dated 12.12.2019 and state as follows:

> Application Reference No:AA3308190633524
>
> With reference to the above ARN Number, the refund application in RFD-01A along with the relevant enclosures has not been received in this office in spite of this office letter dated 11.11.2019. In term of Board's Circular No.79/53/2018/GST dated 31.12.2018, the refund claimed by you in RFD-01A is liable for rejection.
>
> I hereby reject the refund application of GST refund as detailed below under sub-section (5) of Section 54 of the Act/under Section 56 of the CGST Act, 2017.

3. It is the case of the revenue that the enclosures in support of the refund claimed have not been produced and that a notice has been issued, though under ordinary post, calling upon such documents. No proof of service of the notice is available.

4. The provisions of Section 169 deal with service of notice and read as follows:

> 169. Service of notice in certain circumstances.
> (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—
> 1. by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
> 2. by registered post or speed post or courier with acknowledgment due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
> 3. by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
> 4.by making it available on the common portal; or

5. by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
6. if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

5. It was thus incumbent upon the authority to have either tendered the notice directly or by messenger including courier to the assessee or to the persons enumerated under Section 169A or by registered post, speed post or courier with acknowledgment due or by email, as stipulated statutorily.

6. Since none of the accepted modes of service have been resorted to in this case, the impugned orders are violative of the provisions of natural justice. As far as the contention that the orders are appealable and thus the writ petitions are not maintainable, is concerned, since I have held that the orders have been passed without any opportunity having been granted to the petitioner, I see no reason to relegate the petitioner to statutory appeal.

7. The petitioner is permitted to file documents in respect of the refund applications within a period of four weeks from today. Upon receipt of the documents, the respondents shall issue notice to the petitioner, hear it and pass orders on the refund applications within a period of four weeks from the date of receipt of the documents. These writ petitions are allowed. Connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner of GST & Central Excise
Tirupur Division,
No.51, Elementary School Road, Kumar Nagar,
Tirupur- 641 603

2.The Assistant Commissioner of Central Tax,
No.51, Elementary School Road, Kumar Nagar,
Tirupur-641 603

+1cc to Mr.R.Gunaalan, Advocate, S.R.No.34214

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AK-II(CO)

CB(18/10/2021)