IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.23958, 23961 & 23966 of 2021
and
W.M.P.Nos.25277, 25278,25281, 25283, 25284 & 25286 of 2021

(Through Video Conferencing)

Shri Gupta Sweets,
Represented by its Partner,
Promod Kumar,
No.23, Blossom Plaza, Four Road,
Salem – 636007 ... Petitioner in all W.Ps

Vs

Assistant Commissioner (Circle),
Sevapet Assessment Circle,
Commercial Taxes Building,
Pitchards Road, Salem – 636007 ... Respondent in all W.Ps

Prayer in W.P.No.23958 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the case and quash the impugned demand made by the respondent in FORM GST DRC -07 in Reference No.ZD330721001652Y dated 19.07.2021 and further direct the Respondent to re-do the adjudication process in accordance with law after granting personal hearing to the petitioner.

Prayer in W.P.No.23961 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the case and quash the impugned demand made by the respondent in FORM GST DRC -07 in Reference No.ZD330721001843T dated 20.07.2021 and further direct the Respondent to re-do the adjudication process in accordance with law after granting personal hearing to the petitioner.

Prayer in W.P.No.23966 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the case and quash the impugned demand made by the respondent in FORM GST DRC -07 in Reference No.ZD330721001849H dated 20.07.2021 and further direct the Respondent to re-do the adjudication process in accordance with law after granting personal hearing to the petitioner.

For Petitioner : Mr.N.Murali
(in all W.Ps)

For Respondent : Ms.Amirtha Poonkodi Dinakaran
(in all W.Ps) Government Advocate

COMMON ORDER

The petitioner has filed these writ petitions for the Assessment Years 2017-2018, 2018-2019 & 2019-2020. The case of the petitioner is that the respondents have not communicated the respective Assessment orders to the petitioner.

2. That apart, it is submitted that the Assessment Order has been passed in gross violation of principles of natural justice.

3. The learned counsel for the petitioner has drawn attention to the dash board as shown the screen shot of the dash board available in the petitioner's computer as per which only the summary of the Assessment Order for the respective Assessment Years have been uploaded.

4. It is therefore submitted that the petitioner has not even served with the Assessment Orders for the respective Assessment Years and therefore the impugned demand notice/summary orders are liable to be quashed in Form GST DRC-07.

5. The learned counsel for the petitioner submits that Rule 100(2) of the Tamil Nadu Goods and Services Tax Rules, 2017 mandates that a proper officer shall issue a notice to a taxable person in accordance with the provisions of Section 63 in FORM GST ASMT 14 containing the grounds on which the Assessment is proposed to be made on best judgement basis and shall also serve a summary thereafter electronically in FORM GST DRC 01 and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT 15 and summary thereof shall be uploaded electronically in FORM GST DRC 07.

6. The learned counsel for the petitioner further submits that even otherwise the impugned order has been passed without serving a copy of the notice as it is contemplated under Section 169 of the Tamil Nadu Goods and Services Tax Act, 2017 (TNGST Act).

7. The learned counsel for the petitioner therefore submits that the impugned orders are liable to be quashed and prays that the case may be remitted back to the respondent to pass a speaking order after giving a proper opportunity to the petitioner to respond to the notice.

8. By Opposing the prayer of the petitioner, the learned Government Advocate for the respondent submits that the GST portal in TNGST gets link to the dash board in the computer/device of the petitioner and since the Assessment Order in FORM GST ASMT 15 for the respective Assessment orders were uploaded, they ought to have been downloaded by the petitioner from from their dash board.

9. The learned Government Advocate for the respondent submits that if there was any problem, it was the problem in the setting of the dash board in the petitioner's computer and it was open for the petitioner to have approached the help desk to have rectified the matter. Instead the petitioner has rushed to the Court. It is therefore submitted that the writ petitions are liable to be dismissed.

10. As far as gross violation of principles of natural justice, the learned Government Advocate for the respondent submits that the notice preceding the orders in GST ASMT 15 was issued in GST ASMT 14 together with a summary in FORM GST DRC 01.

11. The learned Government Advocate for the respondent has filed a copy of the tracking note issued by the Postal Department showing delivery of the Notice in GST ASMT 14 together with form GST DRC 01.

12. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

13. The notice that has been sent to the petitioner in GST ASNT 14 appears to have been delivered to the petitioner on 05.05.2021. It is a period when the country was reeling under the second wave of Covid-19 a week thereafter, the second lockdown was imposed in Tamil Nadu and few other states.

14. The over all facts and circumstances indicates that the petitioner would not have gained anything by not replying to either the notice in form GST ASMT 14 or by not filing an appeal barring to suffer an adverse order.

15. Thus use of common portal though intended to facilitate faster service notice of orders and decisions, it is noticed that there are teething problems in the communication of notice system derived under Section 169(1)(d) of the TNGST Act, 2017. Thus, the orders have been passed without a reply from the petitioner. Therefore, to meet the ends of justice, a fresh opportunity can be given to the petitioner to file a reply to the notices.

16. The impugned order is therefore quashed and the cases are remitted back to the respondent to pass a speaking order within a period of forty five days from the date of receipt of a copy of this order. The petitioner is given liberty to file

reply/additional representation to the notices within a period of fifteen days from the date of receipt of a copy of this order. The respondent shall thereafter pass a fresh order in accordance with law after giving an opportunity of hearing to the petitioner by serving notice either electronically or through portal or one of other method under Section 169 of the aforesaid Act.

17. This writ petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
Assistant Commissioner (Circle),
Sevapet Assessment Circle,
Commercial Taxes Building,
Pitchards Road, Salem - 636007

+1 cc to Government Pleader Sr.NO. 63233
+3 ccs to Mr.N.Murali, Advocate Sr.NO. 32578

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KG(CO)
A.SK(27.12.2021)