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W.P.No.4122 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.07.2023

PRONOUNCED ON : 29.01.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.4122 of 2022

and

WMP.Nos.4255 & 4256 of 2022

Sakthi Steel Trading
Rep.by its Proprietor
M.S.Bakkir Mydeen

... Petitioner

VS.

The Assistant Commissioner (ST),
Vandavasi Assessment Circle,
Vandavasi.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the respondent proceedings in GSTIN : 33ALRPB3913D1ZI/2018 – 2019 dated 29.01.2022 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar



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For Respondent : Mr.V.Prasath Kiran
Government Advocate

ORDER

This writ petition has been filed challenging the impugned order dated 29.01.2022 passed by the respondent/State Tax Officer for the Assessment Year 2018-2019.

2. By the impugned order, the respondent has called upon the petitioner to pay disputed Input Tax Credit (ITC) amount of Rs.50,569.65/- each availed on CGST and SGST availed under the provisions of Central Goods and Services Tax Act, 2017 & Tamil Nadu Goods and Services Tax Act, 2017 [hereinafter referred to as the respective GST enactments]. The impugned order has further imposed penalty under Section 122(1)(ii), Section 122(1)(vii) of the respective GST enactments for the above assessment year.

3. The specific case of the petitioner is that although the notice that preceded the impugned order was sent by the respondent on the common portal



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was received by the petitioner, the petitioner was unaware of the same and thus, the impugned order came to be passed without the petitioner giving a reply to the same.

4. The learned counsel for the petitioner would rely on a decision of the Madurai Bench of this Court rendered in *Thvya Traders (Dhivya Traders) Vs. Appellate Assistant Commissioner (Commercial Tax), Virudhunagar and Another* reported in (2010) 33 VST 803 (Mad) and submits that the provisions of Section 169 of the CGST enactment Act 2017 is similar to Rule 52 of the Tamil Nadu General Sales Tax Rules, 1959 (TNGST Rules, 1959) under the provisions of the TNGST Rules, 1959.

5. It is submitted that in terms of above decision, a notice served on the assessee's brother's wife was construed insufficient service of notice although Rule 52(1)(b) contemplated that in absence of Manager or agent or legal practitioner appointed to represent them, a notice on any adult member of the family was construed to be insufficient. In the above case, it was held as under:-



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“Rules of procedure have been enacted in order to ensure and to give effective implementation of the provisions and the statutes. In taxation statutes the benefit of an interpretation shall always be in favour of the assessee, unless it is shown that a fraud has been played. Therefore, while interpreting the term, any adult member of his family, I am of the clear view that service on brother's wife cannot be construed as service of adult member of the family especially when the petitioner is a Hindu and given marriage to one P.Karuppasamy.”

6. Per contra, learned Government Advocate for the respondent submits that decision rendered under the context of the Rule 52 of the TNGST Rules, 1959 is not irrelevant in the context of TNGST Act, 2017 and CGST Act, 2017. It is submitted that the provisions in the Act itself the intention of the Government as also the State Legislature is clear to make an assessment and paperless. Therefore, the decision of the Madurai Bench of this Court in ***Thvya Traders' case*** cited supra as submitted by the learned counsel for the petitioner cannot be entertained.



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7. It is submitted that the decision rendered in the context of Rule 52 of the TNGST Rules, 1959 cannot be applied to Section 169 of the TNGST, 2017 and CGST Act, 2017, as they are not *pari materia* at all with each other and therefore, they cannot be applied to the facts of the case.

8. That apart, the learned Government Advocate for the respondent would submit that atleast there are three to four decisions of this Court rendered in the context of Section 169 of the TNGST Act / CGST Act, 2017 and Rule 52 of the TNGST Rules, 1959 in the following cases:-

***(A) New Grace Automech Products (P.) Ltd.vs
.State Tax Officer (W.P.No.35115 OF 2023).***

***(B) Jony Electricity India Engineering (P.) Ltd.
Vs. Appellate Authority, Joint Commissioner of
GST & Central Excise, Appeals-I (W.P.No.7000 of
2023).***

***(C) Mr.Pandidorai Sethupathi Raja Vs. The
Superintendent of Central Tax. (W.P.No.14879 of
2022 & batch).***

9. It is submitted that a decision rendered on 16.11.2022 in a batch of Writ petitions (W.P.No.25666 of 2022) was also followed in “B”. Hence submits that the merits of the present writ petition.



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10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent. I have also perused the impugned order and compared the provisions of the T.N. GST Rules, 1959 and Section 169 of the respective GST enactments.

11. The provisions of the respective GST enactments are *pari-materia* with each other. However, Rule 52 of the T.N. GST Rules, 1959 and Section 169 of the respective GST enactments are not exactly *pari-materia* with each other. They are indifferent era.

12. Therefore, the decision decisions rendered in the context of Rule 52 of the T.N. GST Rules, 1959 cannot be straight away applied to Section 169 of the respective GST Enactments.

13. Both Section 169 of the respective GST enactments and Rule 52 of the T.N. GST Rules, 1959 are reproduced below for easy reference:-



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52 of the TNGST Rules, 1959	Section 169 of respective GST Enactment, 2017
Rule 52(1). Service of notices – The service on a dealer of any notice, summons or order under the Act or these rules may be effected in any of the following ways, namely: – (a). by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative, or Explanation.- Endorsement by person who delivers the notice, etc., of having tendered or given it will be proof for the purpose of this sub-rule. (b). if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family; (c). if the address of such dealer is known to the assessing authority, by sending it to him by registered post; (d). if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence. Rule 52(2). Where any Hindu undivided family, firm or other association of persons is partitioned, dissolved or discontinued, notice, summons or orders issued under the Act or these rules may be	(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:-- (a) 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 (b) 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 (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or (d) by making it available on the common portal; or (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to



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52 of the TNGST Rules, 1959	Section 169 of respective GST Enactment, 2017
served on any member of the Hindu undivided family, any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before such partition, dissolution or discontinuance.	whom it is issued is last known to have resided, carried on business or personally worked for gain; or (f) 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. (2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1). (3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.



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14. Section 169(1)(c) of the respective GST enactments specifically provides that any decision, order, summons, notice or other communication under them or the rules made thereunder may be served by any one of the specified methods therein.

15. Section 169(1)(c) of the respective GST enactments statutorily recognises communication of any decision, order, summons, notice or any other communication under that through email to the address provided at the time of registration or as amended from time to time.

16. Therefore, the decisions rendered in the context of Rule 52 of the T.N.G.S.T.Rules, 1959 cannot be straight away applied to in this era of technology under Section 169 of the respective GST Enactments.

17. Section 169 of the respective GST enactments is a progressive provision intended to integrate technology with the assessment proceedings under the provisions of the respective GST Enactments. Section 169 of the



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respective GST Enactment is a step to modernize the tax administration in the country by taking advantage of available technology.

18. At the same time, the Court cannot loose sight of the fact that although there is advancement in the technology and it is omnipresent everywhere and Section 169(1)(c) of the respective GST Enactments has statutorily recognized communication through e-mail, all men of commerce from the business community particularly small traders, small service provider and small manufacturers may not be ready to receive and respond. They may be technologically challenged which may impair them to respond autonomously to emails sent to them in the dash board of GST Web portal on their computer screen or Tab or smart phones.

19. They may not be able to keep a watch on the traffic of slew of notices and communications that are emailed to them to their registered email ids in the web portal, although it is a convenient mode for dissemination and communications of notice, orders, summons, etc. Unless, they have a dedicated team of persons handling their e-mails accounts, they may not even notice



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receipt of any notice, notification, summons in their e-mail.

20. If, notice sent to designated/registered email ID's as is contemplated in Section 169(1)(c) of the respective GST Enactments is not responded by an assessee, it would be incumbent on the part of the department to serve atleast another notice once through any of the other modes of service of notice prescribed under Section 169(1) of the respective GST Enactments so as to ensure there communication and there is no violation of principles of natural justice.

21. This will obviate recalcitrant and obstinate assessee's to scuttle the proceedings by stating that there is a violation of principles of natural justice.

22. Thus, as a matter of prudence, it is advisable for the department to serve notice on such assesseees through other mode of communications prescribed when they fail to respond to the summons, orders, notices and other communications etc., sent to them through email under Section 169 (1) (c) of



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the respective GST Enactments.

23. Therefore, there has to be some amount of flexibility. Rigidity in the administration of tax in such matters may not serve the purpose and can be counter productive. There has to be a proper communication as otherwise *ex parte* decisions are susceptible to be successfully challenged and declared as arbitrary for violation of principles of natural justice.

24. Under these circumstances, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order on merits in accordance with law preferably within a period of 45 days from date of receipt of this order.

25. The impugned order that is quashed by this order shall be treated as corrigendum to the notices issued to the petitioner. Petitioner shall file a reply to the notices positively with the respondent within a period of 30 days from date of receipt of this order.

26. In case, petitioner fails to file a reply within such time, this order shall



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automatically stand vacated, which case, the respondent is liberty to proceed against the petitioner as if the present writ petition is dismissed.

27. Writ petition stands allowed with the above observation.

Consequently, miscellaneous petitions are closed. No costs

29.01.2024

Index : Yes/No

Neutral Citation : Yes/No

kkd

To

The Assistant Commissioner (ST),
Vandavasi Assessment Circle,
Vandavasi.



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C.SARAVANAN, J.

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Pre-delivery Order in
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