# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 17.12.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.37606 of 2024**
**and**
**WMP Nos.40646 and 40648 of 2024**

Sivanandam Kamatchi,
Proprietrix of
M/s V T Paulraj and Co : Petitioner

Versus

1.The Deputy State Tax Officer I,
Purasawalkam Assessment Circle,
F/50, 1st Floor, First Avenue,
Anna Nagar (East), Chennai 102

2.The Assistant Commissioner(ST)
Purasawalkam Assessment Circle,
F 50, 1st Floor, First Avenue,
Anna Nagar (East) Chennai 600102 : Respondents

**PRAYER**: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari to call for the impugned proceedings of the first respondent in GSTIN 33ANXPK2093D1ZV/ 2017-18 dated 28.12.2023 and the connected order under section 74 dated 30.12.2023 and the summary of the order in Form GST DRC-07 dated 30.12.2023 issued in Reference No ZD331223269229E and quash the same as passed contrary to the provisions of the Central Goods and Service Tax Act, 2017 read with the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 and also passed in contrary to the principles of natural justice

For Petitioner : Mr.P.Rajkumar

For Respondents :Ms.Amrita Dinakaran,
Government Advocate

**ORDER**

The writ petition is filed challenging the impugned order dated 28.12.2023 on the limited ground that the show cause notice in DRC 01 dated 07.09.2023 has been served by uploading in the website portal, despite the fact that the petitioner's registration certificate was cancelled, even prior to initiation of assessment proceedings.

2. It is submitted by the learned counsel for the petitioner that the petitioner's registration certificate was cancelled as early as on 19.04.2021. However, the impugned proceedings dated 28.12.2023 for the period 2017-2018 was initiated by issuance of the show cause notice dated 07.09.2023, followed by opportunities for personal hearing and reminder on 07.10.2023, 24.12.2023 and 27.12.2023 respectively. The petitioner had not responded to the said notices and thus the proposal, which was made on the basis of an alleged mismatch between GSTR 2A and GSTR 3B, was confirmed.

3. It is submitted by the learned counsel for the petitioner that inasmuch as its registration certificate was cancelled as early as on 19.04.2021, the respondent ought to have served the notices either by tender or sending it by RPAD. The petitioner would submit that he is not obligated to check the GST portal once its registration certificate is cancelled. In this regard, reliance was sought to be placed on the judgment of a Division Bench of the Allahabad High Court in Writ Tax No.1676 of 2024. Reliance was also placed on the judgment of this Court in W.P.Nos.8860 and 8861 of 2023 dated 19.10.2023, wherein, this Court, while considering the mode of service once the registration certificate is cancelled has held that the service of the notice and order must be made either by tender or by RPAD inasmuch as according to the learned Single Judge, the respondent were fully aware of the fact that once the registration certificate is cancelled, the petitioner's GST portal would be closed.

4. Placing reliance on the above judgment, it was submitted by the learned counsel for the petitioner that the impugned proceedings itself is bad and non est inasmuch as there is no valid or proper service.

5. To the contrary, it is submitted by the learned Government Advocate for the respondents that the mode of service is prescribed under Section 169 of the GST Act, which reads as under:

> ***Section 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:-*
>
> *(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 acknowledgement 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 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.*

6. Placing reliance upon the above provision, it was submitted that in terms of Section 169(1)(b), the proceedings including notices/orders available at the common portal is a valid mode of service and the law does not make any distinction between dealers whose registration certificate has been cancelled and those dealers whose registration certificate are existing and alive. It was submitted that this distinction which is sought to be made as to the mode of service by the petitioner between dealers whose registration certificate has been

cancelled and those dealers whose registration certificate are existing and alive is artificial.

7. It was also submitted by the learned Government Advocate that insofar as the findings in W.P.Nos.8860 and 8861 of 2023, wherein it was found that GST portal would be closed on cancellation of registration certificate is factually incorrect inasmuch as even a dealer whose registration certificate is canceled would continue to have access to the web portal. It was thus submitted that the submission of the petitioner that there is no valid or proper service cannot be sustained. It was submitted that if the petitioner were serious about the mode of service can only be by way of RDAP or tender, the only recourse is to challenge the provision which enables the authorities to serve it by way of uploading it in the GST portal. In the absence of any challenge, it may be curtailing one of the modes of service which is available to the respondent authorities in terms of Section 169 of the Act.

8. It was then submitted that the writ petition itself ought not to have been entertained inasmuch as it is hit by latches. Since the impugned order of assessment were passed as early as on 30.12.2023, having not been vigilant, the petitioner cannot now question the validity of the order. It is submitted that it is trite law that the discretionary remedy under Article 226 would be made

available only to those who are vigilant and diligent and to not those, who are lethargic.

9. Heard both sides and perused the materials available on record.

10. This is an ex parte order and though I find that there is merit in the submission of the learned Government Advocate for the respondents, however, this Court has been taking a consistent view, following the earlier orders of this Court in similar circumstances, in the case of ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024,*** and remanded the matters on deposit of 25 % of the disputed taxes.

11. In view thereof, the writ petition stands disposed of on the following terms:

a) The impugned orders dated 28.12.2023 and 30.12.2023 are set aside

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, within a period of four weeks from the date of receipt of a copy of this order.

c) If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeal, the same would be reduced/adjusted, from/towards the 25% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % of disputed taxes to be paid, if any, within a period of one week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three weeks from such intimation.

d) The entire exercise of verification of payment, if any, intimation of the balance sums, if any, to be paid for compliance with the direction of payment of 25% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance of the above direction, shall be completed within a period of four weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 25% of disputed taxes within the stipulated period i.e., four weeks from the date of receipt of a copy of this order shall result in restoration of the impugned order.

f) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 25 % of the disputed taxes.

g) On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four (4) weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. It is made clear that if the above conditions viz., 25% of disputed taxes is not complied or objections are not filed within the stipulated period, four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

12. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**17.12.2024**

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
mrn

To
1.The Deputy State Tax Officer I,
Purasawalkam Assessment Circle,
F/50, 1st Floor, First Avenue,
Anna Nagar (East), Chennai 102

2.The Assistant Commissioner(ST)
Purasawalkam Assessment Circle,
F 50, 1st Floor, First Avenue,
Anna Nagar (East) Chennai 600102

**MOHAMMED SHAFFIQ, J.**

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