BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.3838 of 2024
and
W.M.P.(MD)No.3727 of 2024

M/s.Abitha Timber Traders,
Rep. by its Proprietor
Jalaideen Jafar Sathik,
No.177, Thaikka Street,
Tenkasi – 627 811. ... Petitioner

versus

The Assistant Commissioner (ST)(FAC),
Tenkasi Assessment Circle,
Tenkasi. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondent vide his order in GSTIN: 33ADNPJ7510Q1Z4/2019-2020 dated 23.02.2023 and quash the same as it is illegal and in gross violation of Principles of Natural Justice and further direct the respondent to re-do the assessment afresh after providing an opportunity of personal hearing as per the provisions of the GST Act.

For Petitioner : Mr.M.V.Manibabu

For Respondent : Mr.A.Baskaran,
Additional Government Pleader

ORDER

The petitioner is a Timber Trader and he has filed this writ petition as against the order passed by the respondent dated 23.02.2023 that certain discrepancies were found in the Returns filed by the petitioner for the Assessment Year 2019-2020.

2. The learned counsel appearing for the petitioner submits that the impugned order was passed without providing an opportunity of hearing to the petitioner. Though it is mentioned that show cause notice was issued in Form DRC 01 under Section 73(1) of the TNGST Act 2017 and personal hearing was provided, the petitioner was not aware of it. According to him, the petitioner is not an educated person and he is not acquainted with the on-line portal and uploading the

notices through on-line portal. He further submits that the impugned order has been passed as if the petitioner has not submitted a reply to this notice.

3. The learned Additional Government Pleader appearing for the respondent submits that the notice can be sent through on-line portal as per Section 169(d) of the TNGST Act and therefore, notices were issued through on-line portal and the petitioner ought to have made arrangements to verify the same and to make out the case during the enquiry. According to the learned Additional Government Pleader, the petitioner has failed to place any materials during the enquiry. He further submits that as against the impugned order, the petitioner is having an appeal remedy.

4. The learned counsel for the petitioner has relied on the order of this Court passed in W.P.No.27651, 27654 and 27657 of 2021 dated 04.02.2022, wherein, this Court has issued a direction to the

respondents to communicate the notices through other modes as contemplated under Section 169(1)(b) of the TNGST Act 2017 and quashed the impugned assessment orders.

5. This Court considered the rival submissions made and also perused the materials available on record.

6. The petitioner is a Timber trader. He claims that he is not acquainted with the advance technology of following the notices, which has been uploaded in the portal. According to the petitioner, he submitted the returns only through his Auditor. The impugned order has been passed after issuing notice in Form ASMT-10 dated 13.05.2022 and notice in Form DRC 01A dated 05.11.2022 and notice in Form DRC 01 dated 03.12.2022. Admittedly, all these notices were uploaded only through the portal.

7. Section 169(d) of the Tamil Nadu Goods and Services Tax Act 2017, provides the mode of service of notice and the same is extracted as under:

> 169. (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
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> (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
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> (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."

8. Though Section 169(d) of TNGST Act 2017, enables the respondent to issue notice through the common portal, other modes are also made available to the respondent under Section 169 of the TNGST Act 2017. In this case, the petitioner is a Timber Trader. He is not an educated person and he is not acquainted in following the notices uploaded through the common portal.

9. This Court, in similar writ petitions filed in W.P.Nos.27651, 27654 and 27657 of 2021, dated 04.02.2022, has held as follows:

> "11. Though Section 169 of the respective enactments allows the authorities to communicate any decision, order, summons, notice or other communication under this Act by any one of the methods specified, unless the proper conformation that notices and

impugned orders which were uploaded in the web portal of the State Government in tngst.cid.tn.gov.in are auto populated, it cannot be said that there is a sufficient compliances of the aforesaid Section.

12. GST Act was implemented in the year 2017 with effect from 01.07.2017. The web portal maintained by GST has faced problems on several occasions and steps were taken for correcting the technical glitches. Even as on date, there are problems arising out of intercommunication between the State GST and Central GST and the web portal which has to be resolved.

13. The respondents can therefore continue the service of notice through registered post or speed post or courier with acknowledgment to the petitioners at their last known place of business or residence and upload the same in the web portal. Till all problems are resolved on the technical side, the authority may simultaneously serve the notice of assessment and communications under the Act and Rules both through registered post or speed post or courier with acknowledgment as is contemplated Section 169(1)(b) of the Act and through web portal.

14. Once all technical problems are resolved, the

practice of sending physical copy through registered post or speed post or courier with acknowledgment may be dispensed with.

15. Considering the same, I am inclined to set aside the impugned assessment orders and remit the cases back to the respondents to pass speaking on merits and in accordance with law.

16. The petitioners are directed to file a reply to the respective Show Cause Notices which have been served on the learned counsel for the petitioners. The impugned orders which stand quashed by this order shall be treated as supplementary Show Cause Notices.

17. Since the dispute pertains to the Assessment Year 2017-2018, the respondents shall pass appropriate orders within a period of forty five (45) days from the date of receipt of a copy of this order.

18. Accordingly, these Writ Petitions stand disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.”

10. In view of the above decision, this writ petition is allowed by setting aside the impugned order passed by the respondent dated 23.02.2023 and the matter is remitted back to the respondent for fresh consideration. The respondent shall proceed with the assessment and pass orders afresh, after providing an opportunity of hearing to the petitioner. The petitioner shall appear before the respondent on 04.03.2024 (Monday) along with the required documents. In order to avoid such a situation, the respondent shall also find out the possibility of issuing the notices through other modes, which are also made available under Section 169 of the TNGST Act 2017. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2024

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NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.

To

The Assistant Commissioner (ST)(FAC),
Tenkasi Assessment Circle,
Tenkasi.

B.PUGALENDHI, J.

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