IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.2751 of 2025
and W.M.P.Nos.3085 & 3088 of 2025

R.Thamizharasi,
Proprietrix,
M/s.S.J.Enterprises,
SF No.113, 1st Floor,
Chettiar Agaram Main Road,
Sivabotham, Vanagaram,
Chennai 600 095.

... Petitioner

Vs.

The Assistant Commissioner (ST),
Vanagaram Assessment Circle,
ICT Building, 104/9, Chennai Bangalore Highways,
Varadharajapuram, Nazarathpet,
Poonamallee 600 123.

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records connected with attachment to order DRC 07 dated 12.04.2024 passed by the respondent herein and to quash the same.

For Petitioner : Mr.N.Viswanathan

For Respondent : Mr.M.Venkateshwaran,
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order dated 12.04.2024 passed by the respondent.

2. Mr.M.Venkateshwaran, learned Special Government Pleader, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that in the present case, the show cause notice, in Form GST DRC-01, was uploaded in the GST Portal, on 28.12.2023, whereby the time limit was provided for filing reply on or before 27.01.2024 and the personal hearing was fixed on 10.01.2024. Since the said notice was uploaded under the column, viz., "View Additional Notices and Orders", in the

GST portal, the petitioner had no occasion to view the same. Under these circumstances, the impugned order came to be passed by the respondent without providing any opportunity of personal hearing to the petitioner, which clearly amount to violation of principles of natural justice.

4. Further, he would submit that in the present case, the entire disputed tax amount, as demanded in the show cause notice, has been duly paid by the petitioner. However, since he has a good case to contest before the respondent, he requests this Court to provide an opportunity to present his case before the respondent.

5. Per contra, the learned Special Government Pleader appearing for the respondent would submit that in the present case, the respondent had issued show cause notice and also provided an opportunity of personal hearing to the petitioner. The details with regard to the same was mentioned in the show cause notice. However, the petitioner failed to avail the said opportunities, which were provided by the respondent. Therefore, he would contend that it is not that no show cause notice was

issued and no personal hearing was provided to the petitioner prior to the passing of impugned order. Therefore, he prayed for dismissal of this petition.

6. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent and also perused the materials available on record.

7. In the case on hand, the show cause notice was issued on 28.12.2023. Admittedly, the said notice was uploaded under the "View Additional Notices and Orders" column instead of "Notices" column, due to which, the petitioner has no occasion to view the same. Hence, the petitioner was unable to file any reply to the said show cause notice.

8. Normally, while issuing a notice to an assessee, the relevant authority must not only send the notice but also ensure that it is properly "reached and served" on the assessee, meaning the onus is on the authority to verify that the notice has been delivered and received by the

intended recipient; this aligns with the principles of natural justice and proper legal procedure.

9. In the present case, according to the petitioner, show cause notice was issued by uploading the same under the "View Additional Notices and Orders" column instead of "Notices" column, due to which, the petitioner could not notice the same. At this juncture, it is pertinent to note that there are multiple modes of serving of notices/summons/order/decision or any other communication prescribed under Section 169 of the 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."

10. A reading of the above provision, it is explicit that service of notice should be first by way of initial modes, viz., by giving/tendering it directly or by a messenger including a courier; by registered post or speed post or courier; and by sending a communication to assessee's e-mail address (169.1(a) to (c)) and thereafter, by making it available on the common portal; by publication in a newspaper (169.1(d) & (e). If none of these modes is practicable, by affixing it in some conspicuous place at assessee's last known place of business or residence (169.1(f). The provision further provides that every decision, summons, norice or any communication shall be deemed to have been served when it is tendered, or published, or a copy thereof is affixed, and also when the same is sent by by registered post or speed post.

11. No doubt, Section 169 is a step to modernize the tax administration in the country by taking advantage of available technology, which provides service of notices/orders by way of uploading the same in common GST portal and communicating through e-mail, but at the same time, it is pertinent to note that unless the assessee possesses technical knowledge, he may not be in a position to have access of GST portal or to go through his e-mail.

12. Further, many of the assessees are entirely dependent upon their authorized persons/auditors/consultants who are equipped with technical knowledge and used to get their assistance in uploading their returns and to respond the notices/communications that were emailed to them to their registered email ids in the web portal. On certain occasions when the assessees are unable to get their assistance, they may not be in a position to access their web portal and go through their emails, by which, they fail to respond the same. In such circumstances, when there was no response from the assessee's end despite uploading the notices

on the common web portal and sending to his email, immediately, it is incumbent on the part of the Taxing Authority to choose an effective mode of service from and out of the modes that were specifically prescribed in Section 169 (1) instead of uploading the notices on the common portal again and again. If the Authority resorts to serve notice by giving or tendering it directly or by registered post with acknowledgement due, there may not be any complaint from the assessee that no opportunity is provided and further, this mode satisfies the principles of natural justice.

13. Further, in this case, the show cause notice was issued on 28.12.2023, wherein it has been stated that the reply has to be filed on or before 27.01.2024. However, the date of personal hearing was fixed as 10.01.2024. Normally, the personal hearing should be fixed only after the filing of reply and if it was fixed before the filing of reply, it will be only an empty formalities, by which, no useful purpose will be achieved.

14. For all the above reasons, it is clear that the impugned order was passed in violation of principles of natural justice without providing any proper opportunity to the petitioner. In such view of the matter, this Court is inclined to set aside the impugned order dated 12.04.2024 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 12.04.2024 is set aside and the matter is remanded to the respondent for fresh consideration.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of 15 days from the date of receipt of copy of this order.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice, by fixing the date of personal hearing, to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

15. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

04.02.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

The Assistant Commissioner (ST),
Vanagaram Assessment Circle,
ICT Building, 104/9, Chennai Bangalore Highways,
Varadharajapuram, Nazarathpet,
Poonamallee 600 123.

KRISHNAN RAMASAMY.J.,

nsa

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