IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.2900 of 2025
and W.M.P.Nos.3202 & 3203 of 2025

Adhoc Industrial Services,
Rep by its Proprietor,
N.Rajkumar,
No.24, Asha Nagar, Padappai,
Kancheepuram 601 301

... Petitioner

Vs.

The Deputy Sales Tax Officer,
Oragadam Assessment Circle,
Integrated Commercial Taxes Circle,
Building No.4/109, Chennai Bangalore Highway Road,
Nazarathpettai, Chennai 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 of the respondent order dated 10.06.2024 in GSTIN: 33AEMPR5949D1Z7/2022-23 and to quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.U.Baranidharan,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order dated 10.06.2024 passed by the respondent.

2. Mr.U.Baranidharan, learned Additional 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 this case, due to financial reasons, the petitioner had closed down his business and surrendered its registration as early as on 31.05.2023. Subsequent to the closure of business, initially a show cause notice dated 07.09.2023 was issued by the respondent, for which the reply dated 19.12.2023 has been filed. Thereafter, the notices dated 27.12.2023 and

10.01.2024 was uploaded by the respondent in the GST Portal by stating that the reply filed by the petitioner was not clear. However, since the petitioner had closed down his business and reply was also filed on 19.12.2023, he was under the impression that the proceedings would have been dropped by the respondent and hence, he had no occasion to verify the portal, due to which, he was unable to file his reply to the said notices. Under these circumstances, the impugned order came to be passed by the respondent on 10.06.2024 without providing any opportunity of personal hearing to the petitioner.

4. Further, he would submit that since the petitioner's registration was cancelled with effect from 31.05.2023, uploading of notices by the respondents in the common portal would not be sufficient and hence, the respondent should have served the notice vide a practicable mode of services as provided under Section 169 of the GST Act, 2017. Therefore, he would contend that the said impugned order has been passed in violation of principles of natural justice and requests this Court to set aside the same.

5. In reply, the learned Additional Government Pleader, appearing for the respondent would submit that subsequent to the closure of business, a notice dated 07.09.2023 was uploaded by the respondent, for which a reply dated 19.12.2023 has been filed by the petitioner. Since the reply was not clear, the respondent had uploaded the notices dated 27.12.2023 and 10.01.2024. However, no reply was filed by the petitioner. Further, the reason assigned by the petitioner, that they were unaware of the uploading of notices, is completely unacceptable. Hence, he requests this Court to dismiss the present petition.

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

7. In the case on hand, there is no dispute on the aspect that the petitioner had closed down his business and hence, the petitioner's registration was cancelled with effect from 31.05.2023. Thereafter, a

notice dated 07.09.2023 was issued by the respondent, for which a reply dated 19.12.2023 was filed. After the filing of reply, the petitioner was under the *bone fide* impression that no further proceedings will be initiated and hence, he had no occasion to view the portal. Under these circumstances, the notices dated 27.12.2023 and 10.01.2024 have been uploaded by the respondent in the GST Portal. Being unaware of the said notices, the petitioner had failed to file the reply. Thereafter, the impugned order dated 10.06.2024 came to be passed by the respondent.

8. In this case, after the closure of business, the notices were uploaded by the respondent in the common portal. When a person is carrying on business, he may have chances to view the portal regularly. On the other hand, when he closed down the business, he may not have any chance to verify the portal. In such case, the respondent should have applied his mind and served the notice vide any other practicable mode as stated in the provisions of 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."

9. A reading of the above provision makes it clear that 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.

10. 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.

11. 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. 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.

12. 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 10.06.2024 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 10.06.2024 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.

13. 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 Deputy Sales Tax Officer,
Oragadam Assessment Circle,
Integrated Commercial Taxes Circle,
Building No.4/109, Chennai Bangalore Highway Road,
Nazarathpettai, Chennai 600 123.

KRISHNAN RAMASAMY.J.,

nsa

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