IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.3018, 3022, 3027 & 3020 of 2025
and
W.M.P.Nos.3296, 3298, 3302, 3303,
3308, 3306, 3300 & 3301 of 2025

Tvl.Arenco Catering,
Rep by its Partner Shafique KP,
PF 1, 2, Erode Railway Station,
Erode 638 002.

... Petitioner in all petitions

Vs.

The Assistant Commissioner (ST)(FAC),
Nethaji Road Assessment Circle,
161, Meenakshi Sundarar Salai,
Erode 638 001.

... Respondent in all petitions

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned orders in Form GST DRC-07 bearing Ref.No. ZD330624364640H, ZD330624364532G, ZD3306243663691 and ZD330624364393C all dated 29.06.2024 issued by the respondent and to quash the same.

For Petitioner
in all petitions : Mr.G.Derrick

For Respondent
in all petitions : Mr.U.Baranidharan,
Additional Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the impugned orders dated 29.06.2024 passed by the respondent.

2. Mr.U.Baranidharan, learned Additional Government Pleader, takes notice on behalf of the respondent in all these petitions. By consent of the parties, the main writ petitions are taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that in this case, the notices in Form GST DRC-01A was issued by the respondent on 18.07.2023 (in W.P.No.3018 of 2025) and 28.06.2023 (in W.P.Nos.3022, 3027 & 3020 of 2025). After the issuance of said notice, the petitioner had remitted the entire disputed tax amount, in each case,

vide Form GST DRC-03 and hence, they were under the impression that the proceedings will be dropped by the respondents. At this juncture, the notices in Form GST DRC-01 dated 08.09.2023 were uploaded by the respondent under the column, viz, “View Additional Notices and Orders” in the GST portal. However, being unaware of the said notices, the petitioner had neither filed their reply nor participated in the personal hearing. Under these circumstances, the impugned orders dated 29.06.2024 came to be passed by the respondent without providing any opportunity of personal hearing, which is a clear violation of principles of natural justice. Hence, this writ petitions have been filed.

4. In reply, the learned Additional Government Pleader, appearing for the respondent would submit that in this case, all the notices were duly issued to the petitioner by way of uploading in the portal. After the remittance of tax amount, the petitioner should have verified the portal as to whether any penalty proceedings were initiated or not. However he had failed to do so. Thus, the *ex parte* impugned orders came to be passed by the respondent. Hence, he would contend that it is not fair on the part of the petitioner to blame the respondent for not sending notice

and prays for dismissal of these petitions.

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

6. In these cases, initially, the notices in Form GST DRC-01A dated 18.07.2023 (in W.P.No.3018 of 2025) and 28.06.2023 (in W.P.Nos.3022, 3027 & 3020 of 2025) were issued by the respondent. Subsequently, the petitioner had remitted the entire disputed tax amount as demanded in the aforesaid notices. The proof with regard to the said remittance, i.e., Form GST DRC-03, were also produced before this Court. Thereafter, the notices in Form GST DRC-01 were uploaded, in the GST Portal, by the respondent on 08.09.2023. However, the same were remained unnoticed by the petitioner.

7. According to the petitioner, after the remittance of disputed tax amount, they were under the *bona fide* impression that the proceedings would have been dropped by the respondent and hence, they had no

occasion to view the notices, which were uploaded under the "View Additional Notices and Orders" column. In such case, the reason assigned by the appears to be acceptable for a simple reason that after remittance of entire disputed tax amount, as demanded in the show cause notice, there will be no reason for any assessee to ignore the notices issued by the Department.

8. Further, it appears that the notices were only uploaded through portal and not served to the petitioner vide any other effective modes of services as stated under Section 169 of the GST Act, 2017. 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."

9. 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.

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 orders were 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 orders dated 29.06.2024 passed by the respondent. Accordingly, this Court passes the following order:-

> (i) The impugned orders dated 29.06.2024 are set aside and the matters are remanded to the respondent for fresh consideration.
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> (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.
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> (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, these writ petitions are 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)(FAC),
Nethaji Road Assessment Circle,
161, Meenakshi Sundarar Salai,
Erode 638 001

KRISHNAN RAMASAMY.J.,

nsa

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