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W.P.No.3617 of 2025
and W.M.P.Nos.4008 & 4009 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2025

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.3617 of 2025
and W.M.P.Nos.4008 & 4009 of 2025

Tvl. Viswanathan Amarnath,
Proprietor of M/s.Shanvi Enterprises,
New D.No.96, Old Door No.43, Flat No.2C,
Suprabha Apartments, Gandhi Nagar,
Adyar, Chennai – 600 020.

.. Petitioner

Vs.

The Deputy State Tax Officer (ST),
Kotturpuram Assessment Circle,
Integrated Registration and Commercial
Taxes Building,
Nandanam, Chennai – 600 035.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue Writ of Certiorari, to call for the records of the respondent in order dated 28.08.2024 in GSTN 33AESPA5807M2Z9/2019-20 and quash the same as illegal, arbitrary and in violation of principle of natural justice.



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For Petitioner : Ms.C.Rekhakumari
For Respondent : Mr.M.Venkateshwaran
Special Government Pleader (Taxes)

ORDER

This writ petition has been filed by the petitioner, seeking for the issuance of a Writ of Certiorari, to call for the records of the respondent in order dated 28.08.2024 in GSTN 33AESPA5807M2Z9/2019-20 and quash the same as illegal, arbitrary and in violation of principle of natural justice.

2.The learned counsel for the petitioner would submit that in the present case, the respondent uploaded DRC-01, reminders and the impugned order dated 28.08.2024 in “View Additional Notices” and Orders” column on GST Portal, whereby the time limit was provided for filing reply on or before 25.06.2024 and the personal hearing was fixed on 26.06.2024. Since the said notices and reminders were 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, *ex parte* impugned order came to be passed by the



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respondent without providing any opportunity of personal hearing to the petitioner, which clearly amount to violation of principles of natural justice.

3.Further, he would submit that in the present case, the respondent has erroneously reversed the ITC of Rs.31,437/- on the ground that the suppliers have filed GSTR 3B return with NIL turnover and failed to pay tax on the invoices declared in GSTR 1 for the relevant period. The learned counsel would submit that the supplier has duly filed GSTR 1 return declaring its tax liability correctly and that they have filed GSTR 3B return duly remitting its tax liability and hence, the reversal of ITC on the said ground is unjustified.

4.Per contra, the learned Special Government Pleader appearing for the respondent would submit that in the present case, the respondent has 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



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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.

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

6.In the case on hand, the show cause notice was issued on 25.05.2024. Admittedly, the said notice was uploaded under the “View Additional Notices and Orders” column and the part-time accountant who was engaged by the petitioner for filing returns, did not cross-check the 'view additional notices and orders' column and thereby, reply could not be filed in time and it is neither willful nor wanton.

7.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



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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.

8. 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 due to which, the same was not taken note of and could not file the reply in time. 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



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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).



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(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, notice 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.



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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 assesseees 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 assesseees 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



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Taxing Authority to choose an other 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.

12. Thus, when the fact remains that the assessee/petitioner is not even aware of any of those notices being sent to them, it is not known as to what the respondent-Department would achieve by sending notice followed notice and finally claiming that the petitioner has failed to respond to any one of such notices and they are constrained to pass final orders, which even, the petitioner-assessee is unaware. Thus, only at the eleventh hour, when the petitioner is receiving an intimation either from the Department or their Banker as regards the attachment of their bank account, which is the ultimate step taken by the respondent-GST Department towards initiation of recovery proceedings in pursuance of the assessment proceedings, the

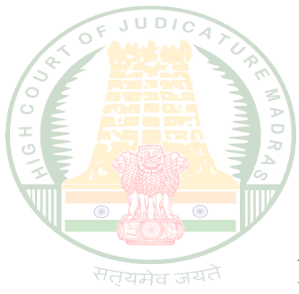


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petitioner-assessee are coming to know of the same, and by the time, the petitioner became aware of the impugned order and takes steps for filing Appeal, the same is getting barred by limitation, therefore, again, the petitioner is put to irreparable hardship, since obviously, the Appellate Authority would refuse to entertain such Appeal, as they have not been conferred with power to condone the delay, which is beyond their limit and onceagain, petitioner is constrained to approach this Court seeking permission to exhaust their Appellate remedy.

13.Thus, it is pertinent to mention here that though Section 169 of the Act, particularly, clause (d) prescribes mode of service via. Online Portal, the very same Section also prescribes many modes of services for sending notice to the assessee, of which, valid modes of sending GST Notices are hand-delivering the notices either directly or by a messenger by a courier to the taxpayer or his authorized representative, by registered post or a speed post or a courier with an acknowledgement addressed to the last known address of the taxpayer.



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14.Thus, when the respondent-Department realizes the fact that the notice effected via, On-line portal service does not fetch them any reply/response, instead of sticking on to the similar of mode of service by sending notices/reminders incessantly, they could change mode of service and **this Court suggests that notice through RPAD would be the best mode of service**, in which case, the assessee cannot take advantage of the notice being unnoticed or plead ignorance, and in the case of the same being not delivered due to reasons such as 'No such addressee', 'Incorrect address', proper endorsement to such effect would be available to the respondent-Department, and in the case of acceptance by the assessee, acknowledgement of the same would be available, thereafter, there won't be any fetter on the respondent-GST Department to proceed against the assessee in the manner known to law.

15.Thus, this Court would like to point out herein that though Section 169 (d) empowers the respondent-Department to sent notice via. Online Portal, the very same Section prescribes other modes of service as well, and hence, it is expected from the respondent-Department firstly to ensure as to



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whether mode of service adopted by them would an effective service in reaping the expected result, since it is ultimate goal of the respondent to prevent any revenue loss being caused to the Government's exchequer. Had the notice caused by the respondent reaches the petitioner-assessee's hand, definitely, the petitioner-assessee would have come forward to file an effective reply/objection and convinced the respondent, whereby, the respondent would have either dropped further initiation of proceedings or else would have provided the reasons for rejection, which would have paved the way for the petitioner to go on Appeal challenging such rejection, however, since such an opportunity was deprived to the petitioner, the petitioner is now forced to pay tax/interest/penalty.

16.Further, in this case, the show cause notice was issued on 25.05.2024, wherein it has been stated that the reply has to be filed within a 30 days. However, the date of personal hearing was fixed as 26.06.2024. 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.



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17. 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 28.08.2024 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 28.08.2024 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.

18. With the above directions, this writ petition is disposed of. No



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costs. Consequently, the connected miscellaneous petitions are also closed.

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Index : Yes/No

Internet: Yes/No

To:

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KRISHNAN RAMASAMY, J.

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