IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.02.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos. 5588 & 5615 of 2025
and
W.M.P.Nos. 6164, 6165, 6198 & 6199 of 2025

M/s. S.P.Agencies
rep. by its Proprietor,
Mr.Shanmugam Parvathi Senthilkumar

...Petitioner in both W.Ps.

Vs.

1. The Assistant Commissioner,
Thiruchengodu Assessment Circle
100/13, Pavadi Sengunthar Trust Building,
SSD Road, Tiruchengodu – 637 211.

2. The Branch Manager,
State Bank of India,
No.9, Salem Main Road,
Mallasamudram, Thiruchengodu,
Namakkal – 637 503.

...Respondents in both W.Ps.

Prayer in W.P.No.5588 of 2025

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records pertaining to the impugned order dated 20.11.2023 issued in Ref.No.ZD3311231201365 by the respondent with respect to assessment year 2017-18 and to quash the same.

Prayer in W.P.No.5615 of 2025

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records pertaining to the impugned recovery order dated 28.03.2024 issued in Form GST DRC -13 Ref. GSTIN No.33CSKPS8077H1Z4/2017-18 issued by the first respondent and to quash the same.

For Petitioner in both W.Ps.	:	Mr.G.Derrick Sam
For Respondent-1	:	Mr.C.Harsha Raj Special Government Pleader (T)

COMMON ORDER

Heard Mr.G.Derrick Sam, learned counsel appearing for the petitioner and Mr.C.Harsha Raj, learned Special Government Pleader, who takes notice on behalf of the respondent No.1. With consent, the main Writ Petitions are taken up for final disposal at the stage of admission itself.

2. The challenge in Writ Petition No.5588 of 2025 is to the order dated 20.11.2023 issued by the first respondent with respect to assessment year 2017-18 and to quash the same. The consequential recovery proceedings initiated by the first respondent dated 28.08.2024 is put to challenge in W.P.No.5615 of 2025.

3. The learned counsel for the petitioner would submit that the first respondent issued a DRC-01 notice dated 27.09.2023, for the AY 2017-18 citing some difference between GSTR1 and GSTR3B, however, since the same was not served on the petitioner through physical mode of service, but was merely uploaded in the GST Portal under the "View Additional Notices/Orders Tab", the said notice was unnoticed by the petitioner, therefore, the petitioner could not file reply nor appear for the personal hearing, however, without hearing the petitioner, the impugned order came to be passed.

3.1 It is the further grievance of the petitioner that even the impugned order passed by the first respondent was unknown to the petitioner; that only when the petitioner made an attempt to withdraw certain amount from his bank, the petitioner came to know that his account has been attached vide letter in DRC-13 dated 28.03.2024 by the first respondent; that though the petitioner, immediately on coming to know of the impugned orders with the help of the Consultant filed an Appeal, since the same was not filed within the prescribed time limit, the same came to be rejected by the Appellate

Authority. Thus, by averring so, the learned counsel prays for setting aside the impugned order, inasmuch as, the same were passed in violation of principles of natural justice. Similarly, the recovery proceedings initiated in Form GST DRC-13 dated 28.03.2024 in pursuance of the impugned order dated 20.11.2023 is also unsustainable.

3.2 The learned counsel for the petitioner further submitted that the petitioner has already deposited 10% of the disputed tax, and the petitioner is ready and willing to deposit remaining 15 % of the disputed tax in the event, this Court is inclined to set aside the impugned order and remand the matter back to the first respondent for fresh consideration.

4. The learned Special Government Pleader (T) for the first respondent fairly submitted that since the petitioner has already deposited 10% of the disputed tax and undertook to pay another 15% of the disputed tax, the prayer sought for by the petitioner may be considered.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. There is no dispute on the aspect that notices, which culminated in the impugned order were merely uploaded in the GST portal, which were unnoticed by the petitioner, as the petitioner had no occasion to view the Portal then and there, hence, the petitioner could not file reply or appear for the personal hearing. However, the respondent passed the impugned order without even affording any opportunity of hearing to the petitioner, which even was unnoticed by the petitioner, and only when the petitioner's bank account came to be attached by the first respondent in pursuance of the impugned proceedings dated 20.11.2023 by virtue of Form DRC-13 dated 28.03.2024, the petitioner came to know of the impugned orders during the first week of June, 2024 and though the petitioner filed Appeal challenging the orders dated 20.11.2023, since the same is filed beyond the statutory period, the Appeal was rejected.

6.1 Thus, in the light of the above facts and circumstances of the Court, this Court is of the view that the impugned order is nothing but an ex parte order and liable to set aside as the same suffers from violation of principles of natural justice. Further, this Court feels that no useful purpose would be served by relegating the petitioner to agitate their claim before the Appellate Authority, as such course would pave the way of multiplicity of proceedings. That apart, since it is stated that the petitioner has already deposited 10% of the disputed tax, and the petitioner is ready and willing to deposit remaining 15 % of the disputed tax in the event, the impugned orders are set aside, this Court is inclined to pass the following order:_

i) The impugned order passed by the first respondent dated 20.11.2023 and the consequential recovery proceedings dated 28.03.2024 are set aside

ii) Consequently, the matter is remanded to the first respondent for fresh consideration.

iii) The petitioner is granted liberty to deposit 15% of the disputed tax, which the petitioner themselves have voluntarily came forward to make such payment within a period of two weeks from the date of receipt of a copy of this order.

iv) Thereafter, the petitioner is directed to file a reply along with supportive documents within a period of two weeks.

v) Thereupon, the respondent is directed to consider the reply and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner and shall decide the matter in accordance with law.

vi) Upon production of proof with regard to the payment of 25% of the disputed tax made by the petitioner, the respondent-Department is directed to pass appropriate orders towards de-freezure of the petitioner's bank account forthwith.

7. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.02.2025

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Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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