IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2025

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.5393 of 2025
and W.M.P.Nos.5947 & 5948 of 2025

Tvl.Yaa.Mohaideen Cheicken & Mutton Briyani Centre,
Rep. by.Mohamed Yagob Abubacker,
No.4/15B, NA, Church Road, Pallavaram,
Contonement Pallavaram,
Tamil Nadu – 600 043. ... Petitioner

Vs.

The Assistant Commissioner (S.T.),
Pallavaram Assessment Circle,
31 & 33, 2nd Street, Sripuram,
Chormpet, Chennai – 600 044. ... 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 impugned order dated 25.08.2022 issued by the respondent having Reference No.ZB3308223107445 and quash the same as arbitrary and illegal.

For Petitioner : Mr.A.Abdul Rahman
For Respondent : Ms.Amirta Poonkodi Dinakaran
Government Advocate

ORDER

This Writ Petition has been filed by the petitioner seeking to call for the records of impugned order dated 25.08.2022 issued by the respondent having Reference No.ZB3308223107445 and quash the same as arbitrary and illegal.

2.Learned counsel for the petitioner would submit that the petitioner failed to file 3B returns during the month of May 2022, which was ought to have been filed on 20.06.2022. Therefore, the respondent issued the assessment order dated 25.08.2022, directing the petitioner to make the payment of Rs.6,55,122/- within a period of 30 days from the date of the assessment order being passed. Further, in the impugned assessment order, the respondent had mentioned that if the petitioner furnished the return within a said period of 30 days, the impugned order deemed to have been withdrawn.

3.He would further submit that the petitioner filed his returns of 3B on 02.09.2022 i.e within the time framed fixed by the respondent. However, till date the assessment order is kept alive in the GST portal and the recovery process is initiated against the petitioner. As per the provision of Section 62(2) of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred as 'the TNGST Act') the assessment order deemed to have been withdrawn. Hence, the present writ petition has been filed.

4.Ms.Amirta Poonkodi Dinakaran, learned Government Advocate appearing for the respondent after taking due instructions submitted that in the present case, the petitioner has filed 3B returns on 02.09.2022, within 30 days from the service of the impugned assessment order. Therefore, as mentioned under Section 62(2) of the TNGST Act, the assessment order has to be deemed to have been withdrawn. But, due to some technically glitch, it has been reflected in the portal and at any costs it will be removed.

5.Heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondent and perused the materials available on record.

6.Considering the submission made by the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent, it is seen that, in the present case, the issue is pertaining to the withdrawal of the assessment order passed in the month of August, 2022. Due to the non-filing of the 3B returns, the assessment order came to be passed as per Section 62 of the TNGST Act. For better appreciation Section 62 of the TNGST Act is extracted hereunder:-

> "62. (1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgment taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of

five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

A reading of the above provision would show that the assessing authority empowers to pass the assessment order if the assessee fails to furnish the return. At the same time, immediately upon the receipt of the assessment order, if the assessee filed his returns within 30 days from the date of the assessment order passed by the respondent, the assessment order shall be deemed to have been Withdraw, in terms of the provisions of Section 62(2) of the TNGST Act.

7.However, in the present case, though the petitioner filed his 3B returns within 30 days from the date of the assessment order, the order is still alive in the GST portal. Learned Government Advocate would fairly submit that due to technical glitch they could not remove the assessment order from the portal and at any cost, it will be removed. Therefore, the submission of the learned Government Advocate appearing for the respondent is recorded. Since as per the provision of Section 62(2) of the TNGST Act, immediately upon the filing of the return by the petitioner within 30 days from the date of the assessment order, the same has to be deemed to have been withdrawn, no further orders is required as prayed for in the writ petition since the same is deemed to be withdrawn by virtue of operation of law. Thus, the respondent is directed to remove the assessment order from the portal as expeditiously as possible.

8.With the above observations, this Writ Petition is closed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.02.2025

Speaking order
Index : Yes
Neutral Citation : Yes / No
rst

To

The Assistant Commissioner (S.T.),
Pallavaram Assessment Circle,
31 & 33, 2nd Street, Sripuram,
Chormpet, Chennai – 600 044.

KRISHNAN RAMASAMY.J.,

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