IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.02.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.6165 of 2025
and
W.M.P.Nos.6776 & 6777 of 2025

Tvl. AGS Mall
rep. by its Partner, Mr.A.Gnanasekar ...Petitioner

Vs.

The Commercial Tax Officer,
Jurisdiction, Thirupattur,
Thiruppattur : Vellore : Tamil Nadu
Thirupattur -T.N. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus call for records on the file of the respondent passed in order under Section 73 in GSTIN 33AAUFA0984D1ZG and Form GST DRC07 having Reference No. ZD3303240981688 and dated 16.03.2024 for the tax period April 2018 - March 2019 relating to Financial Year 2018-19 and quash the same as illegal contrary to the provisions of the TNGST/CGST Acts and in violation of principles of natural justice and fair play and direct the Respondent to reverse the suo moto debiting of the Electronic Credit Ledger of the Petitioner.

For Petitioner : Mr.K.K.Arjun

For Respondent : Mr. C.Harsha
Special Government Pleader (T)

Order

Heard Mr.K.K.Arjun learned counsel appearing for the petitioner and Mr.C.Harsha learned Special Government Pleader (T) who takes notice on behalf of the respondent. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order of the respondent dated 16.03.2024 for the tax period April 2018 - March 2019 relating to Financial Year 2018-19 and quash the same and to direct the respondent to reverse the suo moto debiting of the Electronic Credit Ledger of the Petitioner.

3. The learned counsel for the petitioner would submit that all the notices/communications, which culminated in the impugned order has been uploaded in the GST Portal under the Column "View Additional

Notices/Orders" instead of usual column "View Notices/Orders", and hence, the said notice was unnoticed by the petitioner's Consultant' that the reasons for non responsive to such notices is purely owing to the fact that the petitioner has no knowledge of the same, as they were uploaded in the GST Portal under the unusual column, i.e. 'View Additional Notice/Orders', nor the Consultant engaged by the petitioner has noted those notices.

3.1 Therefore, the learned counsel for the petitioner assailed the impugned order by contending that the impugned order is nothing but an ex parte order, as the petitioner has not been heard before passing the the same and insofar as the notices/communications, which have been merely uploaded to the GST Dashboard under "View Additional Notices and Orders" tabs in the GST Portal are concerned, the same can no longer be deemed to be a sufficient service. Therefore, the learned counsel prays for setting aside the impugned order.

4. The learned Special Government Pleader submitted that in terms of the provisions contained in Section 169 (d), the respondent has complied with the service by sending notices via. On-line Portal and the same cannot be stated to be insufficient service, inasmuch as, most of the taxpayers registered under the provisions of the GST Act are engaging the GST practitioners to act on their behalf, and they are finding only the On-line Portal services as their easy access for sending their communication in the form of reply/objection on behalf of the assessees, therefore, the petitioner and cannot expect for the traditional way of sending notice to them via. RPAD; and in fact Section 169 d) expressly prescribes On-line mode of service as the effective service, and only in cases, where, the assessees have not engaged any other Consultant for filing their returns, |the respondent-Department is adopting the mode of sending service through e-mail to the address provided at the time of registration, and in the event of the same getting bounced back, they are sending by a messenger. Therefore, it is contended that in terms of Section 169 of the Act, the mode of service adopted by the respondent cannot be deemed to be insufficient service.

4.1 However, the learned Special Government Pleader fairly submits that in the present case, since it is stated by the learned counsel for the petitioner that entire disputed tax has been recovered from the petitioner via. Electronic credit ledger account, in the event, this Court is inclined to set aside the impugned order and remand the matter back for re-consideration, subject to the verification of the statement made by the petitioner as regards recovery, the matter would be re-considered, and hence, he sought for appropriate orders in this regard.

5. I have considered the rival submission and perused the materials on record.

6. It is an undisputed fact that the respondent passed an order under Section 73 dated 16.03.2024 by summarily confirming the notice proposal, however, the respondent did not issue any detailed order (assessment order) with the impugned order rather attached and relied upon annexure to ASMT-10. Therefore, according to the petitioner, the impugned is unsustainable, as the respondent has not issued any intimation in DRC-01A or detailed order, but merely relied on ASMT-10 and DRC-01 and its attachments, which were merely uploaded in the GST portal and were not served on the petitioner through physically.

6.1 As rightly pointed out by the learned counsel for the petitioner the service effected by the respondent through on-line portal cannot be deemed to be sufficient service. 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 assessees, 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.

6.2 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 assessees in the manner known to law.

6.3 Hence, it is expected from the respondent-Department firstly to ensure as to whether the mode of service adopted by them would be 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-assesseee 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.

6.4 In the light of the above, this Court has no hesitation to hold that the impugned order is an ex parte order as the same suffers from violation of principles of natural justice and is liable to be aside on account of the fact that the petitioner has not been heard before passing such order. Therefore, this Court is inclined to set aside the impugned order. Thus, once the order is passed in violation of principles of natural justice, this Court cannot impose any condition requiring the petitioner to make any deposit, however, taking into consideration of the fact that entire disputed disputed tax has already been recovered from the petitioner by way of initiation of recovery proceedings pursuant to the impugned order, this Court, is inclined to pass the following orders/directions:-

i) The impugned order dated 16.03.2024 passed by the respondent is set aside.

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

iii) Thereafter, the petitioner is directed to file a reply along with supportive documents within a period of three weeks from the date of receipt of a copy of this order.

iv) 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 hear the petitioner in full and decide the matter in accordance with law.

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

24.02.2025

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Index : yes/no

To
The Commercial Tax Officer,
Jurisdiction, Thirupattur,
Thiruppattur : Vellore : Tamil Nadu

Krishnan Ramasamy,J.,

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