IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-03-2025

CORAM

THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 8945 of 2025
AND
WMP NO. 10054 OF 2025,WMP NO. 10053 OF 2025

Sri Andal and company
Rep by its Proprietor D.B.Kesavan,
No 61 Louis Prakasam Street
Puducherry-605 001.

Petitioner(s)

Vs

The Commercial Tax Officer
Goods Division-1 (Pondicherry
Municipality) 1, Puducherry.

Respondent(s)

PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, praying for an issuance of Writ of Certiorarified Mandamus, calling for the records in GSTIN No. 34ABBFS5017P1ZY/2017-18 dated 30.12.2023 on the file of the respondent and quash the same as illegal, error of law and error on the face of record and contrary to the provisions of the Goods and Service Tax Act 2017 and direct the respondent to pass orders as per the law.

For Petitioner(s): Ms.L.Sweety

For Respondent: Dr.B.Ramaswamy,
Additional Government Pleader
Mr.J.Kumaran
Additional Government Pleader

ORDER

This Writ Petition has been filed, seeking for issuance of Writ of Certiorarified Mandamus, calling for the records in GSTIN No. 34ABBFS5017P1ZY/2017-18 dated 30.12.2023 on the file of the respondent and quash the same as illegal, error of law and error on the face of record and contrary to the provisions of the Goods and Service Tax Act 2017 and direct the respondent to pass orders as per the law.

2.Dr.B.Ramaswamy, learned Additional Government Pleader and Mr.J.Kumaran, learned Additional Government Pleader, takes notice on behalf of the respondent.

3.By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4.Learned counsel appearing for the petitioner would submit that the respondent issued a notice in Form GST-DRC -01A stating that the petitioner has not paid tax under CGST and SGST Act, 2017, followed a show cause notice dated 25.09.2023, but the notices were not uploaded in the portal, by which, the petitioner could not file objections for the same. The respondent issued notice in Form ASMT 10 dated 20.06.2022, which is neither available in the Online portal nor served on the petitioner. He would further state that the respondent passed the summary of the order in Form GST DRC-07 dated 07.12.2023 confirming the proposal as if the petitioner has not filed any objection and had not availed the opportunity of being heard and the petitioner was called upon to file objections on or before 28.12.2023 and immediately, thereafter, on 30.12.2023, the respondent passed the impugned order, which is not a consequential order or speaking order to the summary of an order in Form GST DRC 07 dated 07.12.2023 and hence, the learned counsel would contend that the entire proceedings are misconceived and cannot be sustained. He would further submit that the petitioner is ready and willing to pay 25% of the impugned demand tax and prayed to set aside the impugned order directing the respondent to permit the petitioner to file their reply and provide an opportunity of personal hearing so that the petitioner would be able to substantiate their case.

5.Learned Additional Government pleader appearing for the respondent would submit that as per the voluntary submissions made by the learned counsel for the petitioner, subject to the deposit of 25% of the disputed tax demand by the petitioner in respect of the impugned assessment period, if the Court feels it appropriate and it is a fit case for re-consideration, this Court may consider and pass orders.

6.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader and perused the materials available on record.

7.Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it appears that the impugned summary order dated 20.12.2023 was passed calling upon the petitioner to file objections on or before 28.12.2023 while the impugned order was passed under Section 73 of the Act on 30.12.2023, which is not a consequential order or speaking order to the summary of the order in Form GST DRC 07 dated 07.12.2023. When such being the case, this Court is of the view that the impugned order came to be passed without considering the objections which have to be made by the petitioner and that it is just and necessary to provide an opportunity to the petitioner to establish their case on merits and in accordance with law.

8. For the reasons stated above, this Court is inclined to set aside the impugned order dated 30.12.2023 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The order impugned herein is set aside on condition that the petitioner deposits 25% of the disputed tax amount in respect of the impugned assessment period, as agreed by the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(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.

9.With the above directions, the writ petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

20-03-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

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To:

The Commercial Tax Officer
Goods Division-1 (Pondicherry Municipality) 1, Puducherry.

KRISHNAN RAMASAMY J.

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