IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :15.04.2025

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.6753 of 2025 &
W.M.P.Nos.7414, 7415 and 7416 of 2025

Tvl.M.S.Pharmaceuticals
Represented by its Proprietor
Archana
2A, 3rd Floor, Mettupakkam road,
Maduravoyal,
Chennai, Tamil Nadu,600095. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Commercial Tax Officer,
VANAGARAM, Poonamallee,
KANCHEEPURAM, Tamil Nadu. ... 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 the respondent in impugned order having reference no.ZD331223130526U dated 15/12/2023 in GSTN 33AGEPA7179A1ZW/2017-2018 and quash the same as illegal, arbitrary and in violation of principle of natural justice.

For Petitioner : Mr.Pranav Jain

For Respondent : Ms.Amirtha PoonkodiDinakaran
Government Advocate (Taxes)

ORDER

Ms.Amirthapoonkodi Dinakaran, learned Government Advocate (Taxes) takes notice on behalf of the respondent.

2. The challenge in this writ petition is to the order dated 15.12.2023 passed by the respondent and to quash the same.

3.The learned counsel for the petitioner would submit that the respondent has issued a show cause notice to the petitioner on 27.09.2023 by uploading the same in the GST portal, without serving it through the physical mode That apart, the petitioner's accountant also failed to notice the same. Therefore, petitioner was not aware of the show cause notice and hence failed to file its reply. Since the petitioner failed to file reply to the said show cause notice, the respondent has confirmed the proposals contained in the show cause notice and passed the present impugned order. Subsequently, the petitioner's bank account was attached by the respondent. The petitioner came to know of the impugned order only after the receipt of the bank attachment order. Further, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and is liable to be aside, as the petitioner has not been heard before passing the impugned order.

3.1. It is also submitted by the learned counsel for the petitioner that the petitioner is ready and willing to deposit 25% of the disputed tax, in the event, this Court is inclined to set aside the impugned order and remand the matter back to the Authority for fresh consideration.

4. The learned Government Advocate (Taxes) for the respondent fairly submitted that since the petitioner has voluntarily come forward to deposit 25% of the disputed tax, the prayer sought for by the petitioner may be considered.

5. Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it is evident that the impugned show cause notice was uploaded on the GST Portal Tab. According to the petitioner, the petitioner was not aware of the issuance of the show cause notice issued through the GST Portal and the original of the said show cause notice was not furnished to them. In such circumstances, this Court is of the view that the impugned assessment order came to be passed without affording any opportunity of personal hearing to the petitioner, confirming the proposals contained in the show cause notice.

6. No doubt sending notice by uploading in portal is a sufficient service, but, the Officer who is sending the repeated reminders, inspite of the fact that no response from the petitioner to the show cause notices etc., the Officer should have applied his/her mind and explored the possibility of sending notices by way of other modes prescribed in Section 169 of the GST Act, which are also the valid mode of service under the Act, otherwise it will not be an effective service, rather, it would only fulfilling the empty formalities. Merely passing an *ex parte* order by fulfilling the empty formalities will not serve any useful purpose and the same will only pave way for multiplicity of litigations, not only wasting the time of the Officer concerned, but also the precious time of the Appellate Authority/Tribunal and this Court as well. Thus, when there is no response from the tax payer to the notice sent through a particular mode, the Officer who is issuing notices should strictly explore the possibilities of sending notices through some other mode as prescribed in Section 169(1) of the Act, preferably by way of RPAD, which would ultimately achieve the object of the GST Act.

7. Therefore, this Court finds that there is a lack of opportunities being provided to serve the notices/orders etc., effectively to the petitioner. Hence, this Court is inclined to set-aside the impugned order with terms, by issuing the following directions:-

i) The impugned order passed by the respondent dated 15.12.2023 is set aside.

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

iii) The petitioner is granted liberty to deposit 25% of the disputed tax, which the petitioner themselves had 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) Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment, made on the bank account of the Petitioner cannot survive any longer and hence, it is to be lifted. As a sequel, the respondent is directed to instruct the concerned bank to release the attachment on the bank account of the petitioner, forthwith on production of proof with regard to payment of 25% as stated above.

8. With the above observations & directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.04.2025

(1/3)

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Index : yes/no
Neutral Citation : yes/no

To

The Assistant Commissioner (ST),
Commercial Tax Officer,
VANAGARAM, Poonamallee,
KANCHEEPURAM, Tamil Nadu.

Krishnan Ramasamy,J.,

arr

W.P.No.6753 of 2025
(1/3)

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