IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.04.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No 6866 of 2025
and
W.M.P.No.7561 of 2025

M/s.Sri Varalakshmi Agency
rep. By its Proprietor, Mr.M.Vasudevan.

...Petitioner

Vs.

1. The State Tax Officer
   Medavakkam Assessment Circle
   Integrated Commercial and Registration Building,
   Room No.232, II Floor, Nandanam
   Chennai – 600 035.

2. The Assistant Commissioner,
   Medavakkam Assessment Circle,
   Integrated Commercial and Registration Building,
   Room No.230, II Floor, Nandanam
   Chennai – 600 035.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the second respondent issued in show cause notice in Form GST DRC-01 vide Ref. No.ZD331223232256U dated 27.12.2023, and the consequential order passed in GSTIN : 33ACFPV0826L1ZF/2018-19 along with DRC-07 VIDE

Ref. nO.ZD3304242419521 dated 29.04.2024 passed by the first respondent and to quash the same as illegal, and barred by limitation.

For Petitioner	:	Mr.V.Sundareswaran
For Respondents	:	Mr.T.N.C.Kaushik Additional Government Pleader (T)

Order

Heard Mr.V.Sundareswaran learned counsel appearing for the petitioner and Mr.T.N.C.Kaushik, learned Additional Government Pleader (T) who takes notice on behalf of the respondents. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2.1. The challenge in the Writ Petition is to the show cause notice issued by the second respondent dated 27.12.2023 and the consequential order passed by the first respondent along with DRC-07 dated 29.04.2024 and to quash the same as illegal.

3. The learned counsel for the petitioner would submit that initially a show cause notice and other reminder notices were merely uploaded on the GST on-line portal and was not served on the petitioner through physical mode of service and the petitioner, who was unaware of the said notices failed to file reply and appear before the respondent, however, the respondent, without even affording an opportunity of hearing to the petitioner, passed the impugned orders confirming the proposals contained in the show cause notice.

3.1 Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and is liable to be aside. However, it is stated that the petitioner is also ready and willing to deposit 25% of the disputed tax, in the event, this Court is inclined to set aside the impugned orders and remands the matter back to the Authority for fresh consideration, and thus, prays for appropriate orders.

4. The learned Additional Government Pleader (T) for the respondents 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 and three reminder notices were uploaded on the GST Portal Tab and the petitioner was not aware of the issuance of those notices through the GST Portal. Further, the original of the said show cause notice was not furnished to the petitioner in person. 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.

6. No doubt, sending notice by uploading in portal is a sufficient service, but, the Officer who finds no response from the petitioner to the show cause notices, instead of sending repeated reminders, 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, the service of notice will not be deemed to be an effective service, rather, it would only be fulfilling the empty formalities. Merely passing an *ex parte* order by fulfilling the empty formalities will not serve any useful purpose and the same would 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.

6.1 Therefore, this Court is inclined to set aside the impugned order, as the same suffers from the violation of principles of natural justice. 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, considering the fact that the petitioner has come forward to deposit 25% of the disputed tax in the event the impugned orders are set aside, this Court is inclined to pass/issue the following orders/directions:-

i) The impugned show cause notice issued by the second respondent in DRC-01 dated 27/12/2023 and the consequential order passed by the first respondent along with DRC-07 dated 29.04.2024 are set aside.

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

iii) The petitioner is granted liberty to deposit 25% 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.

And

v) Thereupon, the first respondent is directed to consider the reply and shall issue a 14 clear days notice affording an opportunity of personal hearing to the petitioner and shall 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 Petition is closed.

15.04.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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