IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.07.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No. 6249 of 2024
and
W.M.P.No.6942 of 2024

M/s. G.M.S.Creations,
rep. by its Partner,
M.Nagarajan. ...Petitioner

Vs.

The Assistant Commissioner (ST) (FAC)
Goods and Services Tax Department
Tirupur South Circle, Tiruppur -II
Church Back Sir, Avinashi Road,
Bungalow Stop, Tiruppur – 641 603. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records pertaining to the impugned order passed by the respondent in proceedings bearing Number TIN 33852325005/2013-14 dated 13.07.2015 and to quash the same.

For Petitioner : Mr.S.I.Sharukumar

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (T)

Order

The challenge in this Writ Petition is to the order passed by the respondent dated 13.07.2015 and to quash the same.

2. The learned counsel appearing for the petitioner would submit that the respondent alleged to have sent notice under Form 'O' dated 13.07.2015, demanding the petitioner to pay the balance tax within thirty days from the date of service of the said notice; that though the order was alleged to have passed on 13.07.2015, the same was served on the petitioner only on 28.12.2023 and in the interregnum, the petitioner received a call from the Office of the respondent on 02.02.2023 intimating the petitioner to file Form WW along with Audit Report and additional payment of penalty of Rs.10,000/-, and the petitioner also filed Form WW with Audit Report on 07.03.2023 along with payment of penalty and the same was also acknowledged by the respondent, and therefore, the impugned order passed by the respondent way back in the year 2015 is unsustainable and liable to be set aside. The learned counsel also relied on a decision rendered by the Hon'ble Division Bench of this Court in W.A.No.4085 of 2019 dated

12.12.2019, wherein, the Bench has struck down the best judgment assessment passed by the Assessing Officer enhancing 50% of the declared turnover for the reason that the assessee did not file the audit report in the absence of any adverse materials against the assessee.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader for the respondent would submit that the impugned notice dated 13.07.2015 was issued to the petitioner by way of RPAD; however, the petitioner has not filed Form WW along with Audit Report in the year 2015, and filed the same only in the year 2023, and therefore, fairly stated that the impugned order may be set aside and the matter may be remitted to the respondent for fresh consideration, and all the contentions that were raised by the petitioner before this Court may be agitated before the Assessing Officer by providing all informations.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and perused the materials placed on record.

5. Admittedly, the impugned order, viz., the Best Judgment Assessment was passed on 13.07.2015 on the ground that the petitioner/assessee failed to file Form WW. However, it is the case of the petitioner that the said order though passed in the year 2015, the same was served on the petitioner only on 28.12.2023 and in the interregnum, the petitioner received a call from the respondent on 02.02.2023, requiring the petitioner to file Form WW along with penalty of Rs.10,000/-, and the petitioner, in compliance of the same, filed Form WW on 07.03.2023 along with penalty. Further, the learned counsel for the petitioner also relied on a decision rendered by the Hon'ble Division Bench of this Court in W.A.No.4085 of 2019 dated 12.12.2019, wherein, it is held that passing best judgment assessment making 50% enhancement of the declared turnover for the reasons that the assessee did not file the audit report, for which, the assessee suffered the penalty as prescribed by law was not permissible, this Court is of the view that the facts of the case would vary from case to case basis, and the yardstick adopted in the said case cannot be applied to the petitioner's case.

6. Therefore, this Court deems fit that it would be appropriate to remand the matter for re-consideration before the respondent, before whom, the petitioner can canvass all the issues that were raised herein, as rightly pointed out by the learned Additional Government Plesder for the respondent. Accordingly, this Court is inclined to pass the following order:-

i) The impugned order dated 13.07.2015 is set aside.

ii) The matter is remitted to the respondent for fresh consideration however, the same is subject to the condition that the petitioner pays a sum of Rs.10,000/- (Rupees Ten Thousand only) as costs to the Principal Government Naturopathy Medical College and Hospital, bearing Account No.7883022723, IFSC Code: IDIB000M157 within a period of four weeks from the date of receipt of a copy of this order.

iii) Upon production of proof with regard to the payment of costs made by the petitioner, the respondent is directed to afford an opportunity of personal hearing to the petitioner by issuing a 14 clear days notice and thereafter, shall hear the petitioner in full and decide the matter in accordance with law. Since the impugned order was passed in the year 2015 (i.e on 13.07.2015), aforesaid exercise shall be completed by the respondent within a period of three months.

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

23.07.2025

sd

Index : yes/no
Neutral Citation : yes/no

To

The Assistant Commissioner (ST) (FAC)
Goods and Services Tax Department
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Church Back Sir, Avinashi Road,
Bungalow Stop, Tiruppur – 641 603.

Krishnan Ramasamy,J.,

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