IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.6660 of 2025
and
W.M.P.Nos.7290 & 7292 of 2025

M.Kathiresan
Proprietor of M/s. Vijayalakshmi Transport.
...Petitioner

Vs.

The Deputy Commissioner GST & Central Excise,
Tiruppur Division,
Office of the Deputy Commissioner of Central GST and
Central Excise,
2nd Floor, 51, Elementary School Street,
Kumar Nagar, Tirupur – 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 of the respondent leading to issuance of impugned Order-in-Original dated 30.08.2022 vide Order Sl.No.39/2022-DC-TPR(ST-ADJ) and to quash the same.

For Petitioner : Mr.Arunmokan, K.M.C.

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

Order

Heard Mr.K.M.C.Arunmokan, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel, 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 passed by the respondent dated 30.08.2022 and to quash the same.

3. The learned counsel for the petitioner would submit that the petitioner is a Firm, engaged in the business of transportation of goods from one place to another, the petitioner-Firm became member of Tiruppur Exports Goods Transporters' Association, however, due to decline in the business, the petitioner shifted the Firm from Ashok Nagar, to Bharathi Nagar East, Ammapalayam, Tiruppur; that the petitioner was informed by the said Association that the respondent-Department has passed against the petitioner and also against other members of the Association for alleged service tax liability; that on enquiry made by the erstwhile counsel in the office of the respondent, he was served with a copy of the show cause notice dated 13.10.2021, and the copy of the Order-in-Original dated 30.08.2022.

3.1 The learned counsel for the petitioner submitted that the grievance expressed by the petitioner is that neither the show cause notice nor the Order-in-Original was served on the petitioner, and the same were sent to the petitioner's Old address, which the petitioner was not aware, and hence, the petitioner could not file reply to the show cause notice, however, the respondent, without affording an opportunity of hearing to the petitioner, passed the impugned order.

3.2 Therefore, 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. 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 order and remands the matter back to the Authority for fresh consideration, and thus, prays for appropriate orders.

4. The learned Senior Standing Counsel 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. Taking into consideration of the submissions made on either side and perusal of record, there is no dispute on the aspect that show cause notice dated 13.10.2021, which culminated in the impugned order has not been served on the petitioner's current and correct address, however, the same has been sent to the petitioner's former address, hence, the petitioner is not aware of the show cause notice, however, the respondent, without even affording an opportunity of hearing to the petitioner, passed the impugned order, which infact was unknown to the petitioner and only when the Association, where, the petitioner-Firm was a member initially, informed the petitioner about the order passed against them, the petitioner, on enquiry through their erstwhile Counsel in the Office of the respondent-Department, the petitioner, the copy of both the show cause notice and impugned order has been given to the Counsel and it was only thereafter, the petitioner came to the know of the impugned order. Therefore, this Court is of the view that the respondent passed the impugned order without even affording any opportunity of hearing to the petitioner, which is nothing but an ex parte order, as the same suffers from violation of principles of natural justice.

6. 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, since the petitioner, themselves, have voluntarily come forward to deposit 25% of the disputed tax, to which, the learned Senior Standing Counsel is also agreable, this Court passes the following orders/directions:-

i) The impugned Order-in-Original dated 30.08.2022 passed by the respondent dated 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 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.

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.

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

26.02.2025

sd
Index : yes/no

To

The Deputy Commissioner GST & Central Excise,
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2nd Floor, 51, Elementary School Street,
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Krishnan Ramasamy,J.,

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