THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.9007 of 2023
and
W.M.P. No.9125 of 2023

M/s. Stars Catering,
Rep. by
M. Prakash - Proprietor ... Petitioner

vs.

The Deputy Commissioner of GST & Central Excise,
Sholinganallur Division,
Chennai South Commissionerate,
No.692,
MHU Complex,
Nandanam,
Anna Salai,
Chennai – 600 035.
Tamil Nadu. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records on the files of the respondent in C. No.IV/16/12/2022-Tech (Adjn.) and Order-in-Original No.9/2022-ST, dated 09.01.2023 and quash the same as being belated adjudication, illegal, void, arbitrary, unconstitutional, barred by limitation, without jurisdiction, without authority of law and contrary to the principles of natural justice.

For Petitioner : Mr. K. Thyagarajan
For Respondent : Mr.T. Ramesh Kutty, SPC assisted by Mr.B. Sivaraman, JPC

ORDER

This writ petition has been filed challenging the impugned order-in-original, dated 09.01.2023 passed by the respondent.

2. The petitioner has challenged the impugned order-in-original by contending that the show cause notice alleged to have been issued to the petitioner by the respondent, prior to the passing of the impugned order-in-original was never received by him. He would submit that the address to which the respondent is said to have served the impugned order-in-original is his residential address and that he never received the show cause notice which is reflected in the impugned order-in-original.

3. The learned counsel for the petitioner also submits that the Registration Certificate issued by the GST Department also confirms that the petitioner's place of business is only at No.45, Ponniamman Koil First Street, Sholinganallur, Chennai and not at No.5, Ponniamman Koil First Street, Sholinganallur, Chennai, to which address, the respondent is

said to have sent the show cause notice, which culminated in the passing of the impugned order-in-original.

4. The learned counsel for the petitioner would submit that being an ex-parte order, the petitioner must be given an opportunity to contest the case on merits and in accordance with law and since principles of natural justice have been violated, the learned counsel for the petitioner seeks for quashing of the impugned order-in-original and for remanding the matter to the respondent for fresh consideration.

5. The learned Senior Panel Counsel appearing for the respondent would submit that as seen from the documents produced by the respondent, which have have been filed by way of typed set of documents, it is clear that the petitioner has received the show cause notice and has also received the order-in-original. He would submit that the delivery report placed by the respondent before this Court received from the postal authorities also confirms that the petitioner has received the show cause notice as well as the impugned order-in-original.

6. According to the learned Senior Panel Counsel appearing for the respondent, the only address given by the petitioner to which the respondent had sent the notice as well as the impugned order-in-original is at No.5, Ponniamman Koil First Street, Sholinganallur, Chennai.

7. However, the learned counsel for the petitioner would submit that as seen from the Registration Certificate issued by the GST department, the petitioner's place of business is at No.45, Ponniamman Koil First Street, Sholinganallur, Chennai, to which address, the respondent ought to have sent the show cause notice as well as the impugned order-in-original.

8. The contentions of the respective parties in the writ petition cannot be adjudicated with the available materials, since there are disputed questions involved, which requires further consideration. The impugned order-in-original is an ex-parte order. The petitioner has challenged the impugned order-in-original on the ground of violation of principles of natural justice. The contention of the petitioner is that he never received the show cause notice, which is reflected in the impugned order-in-original. However, the same has been disputed by the respondent, who claims that the show cause notice was duly served on the petitioner and they have also produced a delivery report from the postal authorities for the same. But the signature of the petitioner is not found in the delivery report. Since the tax liability under the impugned order imposed on the petitioner is Rs.30,29,566/-, which for an individual is a huge sum and that too when the petitioner has

categorically contended before this Court that he never received the show cause notice which is reflected in the impugned order-in-original and there is no conclusive evidence produced by both the parties before this Court to prove that the show cause notice was not received by the petitioner, this Court in order to give one more opportunity for the petitioner to participate in the impugned proceedings is of the considered view that the impugned order-in-original has to be quashed. However, the petitioner must be put on terms for allowing him to participate in the impugned proceedings. Accordingly, this Court issues the following directions :-

i) The petitioner is directed to deposit 10% of the demanded amount as per the impugned order-in-original, within a period of six weeks from the date of receipt of a copy of this order.

ii) On deposit of the aforesaid sum by the petitioner, within the stipulated time, the impugned order-in-original, dated 09.01.2023 passed by the respondent is hereby quashed and the matter is remanded back to the respondent for fresh consideration on merits and in accordance with law after providing one personal hearing to the petitioner. Further, this Court directs the respondent to pass final orders on merits and in accordance with law, within a period of twelve weeks from the date when the petitioner deposits the conditional order amount as stipulated in this order in the earlier paragraph.

iii) In case the petitioner fails to deposit the conditional amount within the stipulated time, the impugned order-in-original shall stands confirmed.

iv) While issuing notices to the petitioner, the respondent shall send the notices to the petitioner at No.45, Ponniammal Koil First Street, Sholinganallur, Chennai, which is the business address of the petitioner.

9. With the aforesaid directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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ABDUL QUDDHOSE, J.

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To
The Deputy Commissioner of GST & Central Excise,
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