IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.03.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.7651 of 2025
and
W.M.P.Nos.8582 & 8583 of 2025

Tvl. Varsha Tech Engineering,
rep. by its Proprietor, K.S.Sekar. ...Petitioner

Vs.

1. The Deputy Commissioner (ST) (FAC)
Tambaram Zone,
Commercial Tax Department,
4th Floor, Room No.422,
PAPJM Building, No.1, Greams Road,
Chennai – 600 006.

2. The Assistant Commissioner (ST)
Selaiyur Assessment Circle,
Integrated Building for Commercial Taxes and Registration Department,
Room No.341, 3rd Floor,
Nandanam, Chennai – 600 035.

3. The Branch Manager,
Bank of Baroda, Tambaram Branch,
Duraisamy Reddy Street,
Tambaram, Chennai – 600 045. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records pertaining to the order dated 28.08.2024, passed by the second respondent bearing Ref.No.ZD330824259629V and to quash the same and consequently, to quash the order dated 12.02.2025, passed by the first respondent.

For Petitioner : Mr.A.Maheshnath
For Respondent : M/s.P.Selvi
Government Advocate (T)

Order

Heard Mr.A.Maheshnath learned counsel appearing for the petitioner and M/s.P.Selvi, learned Government Advocate (T), 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 second respondent dated 28.08.2024 and the order dated 12.02.2025, passed by the first respondent and to quash the same.

3. The learned counsel for the petitioner would submit that the petitioner, being an income tax assessee has been regularly paying tax without any default, however, the petitioner was issued with a show cause notice dated 23.05.2024, under Section 73 of the TNGST Act, whereby, the petitioner was asked to file reply and appear for the personal hearing on 31.05.2024; the petitioner, on receipt of such notice, given an explanation along with the supportive documents, and further, undertook to file additional documents, if explanation was found unsatisfactory, thereafter, since there was no reply from the first respondent, the petitioner assumed that the explanation offered by the petitioner was accepted and the proceedings might have dropped, however, only when the petitioner received a communication from the third respondent/Bank stating that the respondent-Department has instructed them to create a lien over the petitioner's account, the petitioner came to know that after the issuance of notice dated 23.05.2024, a reminder notice dated 24.08.2024 has been issued by the second respondent, and since the petitioner failed to file any reply to such notice dated 24.08.2024, the second respondent passed the impugned order dated 28.08.2024.

3.1 Therefore, the learned counsel would submit that the impugned orders suffers from violation of principles of natural justice and are liable to be aside. However, it is 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.

4. The learned Government Advocate (T) 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. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. In the case of hand, it is seen that initially, a show cause notice dated 23.05.2024 was issued to the petitioner calling for the petitioner's reply and fixing personal hearing date on 31.05.2024, to which, the petitioner filed reply along with necessary documents and also undertook to file additional documents, in case, the explanation was found not satisfactory and made a specific request for provision of personal hearing opportunity. Thereafter, since no response was forthcoming from the first respondent, the petitioner assumed that the explanation offered by the petitioner might have been found satisfactory and proceedings might have been dropped.

6.1 However, it is seen that subsequent to the show cause notice dated 23.05.2024, the second respondent has issued a reminder dated 24.08.2024, calling for petitioner's reply and fixing the personal hearing and the petitioner, who was under the impression that the proceedings with regard to show cause notice dated 23.05.2024 was dropped, failed to view the Portal, in the interregnum, the second respondent, passed the impugned order dated 28.08.2024 stating that the petitioner failed to file reply and appear for the personal hearing and confirmed the proposals contained in the show cause notice.

6.2 Further, in the impugned order dated 28.08.2024, the second respondent though has stated that no reply was filed by the petitioner, however, has quoted the petitioner's explanation in the said order. Thus, it is clear that the second respondent passed the impugned order dated 28.08.2024 without going through the reply filed by the petitioner dated 31.05.2024 Thus, as rightly pointed out by the learned counsel for the petitioner, the impugned order suffers from violation of principles of natural justice and the show cause notice and the order passed by the second respondent are totally misconceived one without application of mind.

6.3 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 Government Advocate (T) is also agreable, this Court is inclined to pass/issue the following orders/directions:-

i) The impugned order dated 28.08.2024 passed by the second respondent is set aside.

ii) Consequently, the matter is remanded to the second 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 second 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) So far as the order passed by the first respondent dated 12.02.2025 is concerned, viz., the order directing the petitioner's bank to create lien over the petitioner's account, upon production of proof with regard to the payment of 25% of the disputed tax made by the petitioner, the first respondent is directed to re-call the same and pass appropriate orders towards de-freezure of the petitioner's bank account forthwith.

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

10.03.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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