IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2025

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.8145 of 2025
and
W.M.P.Nos.9121 and 9122 of 2025

Tvl.Ocean Cargo Movers,
(Represented by its Proprietor Ashutosh Tiwari)
First Floor, 598/5, T.P.K.Complex,
Old G.N.T. Road, Sholavaram,
Tiruvallur, Tamil Nadu 600067. ...Petitioner

..Vs..

The Assistant Commissioner (ST),
Thirumazhisai Assessment Circle,
4/109-GST Integrated Building,
Nazarathpet, Chennai-600 123. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the impugned order bearing order bearing GSTIN 33ANWPT4793Q1ZL/2019-20 dated 28.08.2024 passed by the Respondent and quash the same as the same being arbitrary, passed in violation of principles of natural justice.

For Petitioner : Mr.M.S.Sanjay Nikaash

For Respondent : Mr.V.Prashanth Kiran
Government Advocate (T)

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ORDER

The challenge in this writ petition is to the order dated 28.08.2024 passed by the Respondent and to quash the same.

2. Mr.V.Prashanth Kiran, learned Government Advocate (Taxes), takes notice on behalf of the respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. The learned counsel for the petitioner submits that show cause notice followed by personal hearing notice were issued to the petitioner by the respondent by uploading the same in the GST portal. Since the petitioner's auditor was busy at that relevant point of time, the petitioner vide their letter dated 20.10.2023 had requested extension of time till 24.11.2023, for filing reply and to attend personal hearing. However, the Petitioner's Auditor had

failed to participate in the adjudication proceeding, which fact was not even informed to the petitioner. Thereafter another personal hearing notice was also uploaded in the GST Portal. Since the petitioner had entrusted his Auditor in the adjudication proceedings, they were not aware of the same. Subsequently, the respondent passed the impugned order dated 28.08.2024, demanding tax along with interest and penalty for the Assessment Year 2019-2020 and the same was also uploaded in the GST Portal. The petitioner came to know of the same belatedly.

5. Further, he would submit that impugned assessment order came to be passed without hearing the Petitioner and therefore the same is passed in violation of principles of natural justice Hence he prays to set aside the impugned order.

6. The learned Government Advocate (Taxes) appearing for the Respondent submitted that though the Show Cause Notice, reminder notices as well as personal hearing notices were issued to the Petitioner, by uploading the same in the GST portal, the petitioner failed to file its reply and appear for personal hearing and hence assessment order came to be passed.

7. In reply, the learned counsel for the petitioner would fairly submit that the petitioner is now ready and willing to pay 25% of the disputed tax liability made by the respondent in the event of providing an opportunity to them to file their reply along with the required documents to substantiate their claim, for which, the learned Government Advocate (Taxes) appearing for the Respondent has no serious objection.

8. Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the Respondent and also perused the materials available on record.

9. In the present case, the petitioner's Auditor to whom the petitioner had entrusted the works relating to GST proceedings, had neither filed the reply to the show cause nor appeared for personal hearing. That apart, the Petitioner's Auditor had not informed the same to the petitioner and therefore the petitioner was not aware of the same. Under such circumstances, impugned order came to be passed.

10. It is settled law that violation of principles of natural justice is a failure of due process. If any order is passed against the petitioner with demand,

that order has to be passed after giving an opportunity of personal hearing to the petitioner otherwise, it will amount to depriving the interest of the petitioner and the same amounts to violation of principles of natural justice.

11. In the case on hand, the impugned order came to be passed without hearing the petitioner. Hence, this Court is of the view that the impugned order passed is in violation of principles of natural justice and it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned assessment order dated 28.08.2024 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The order impugned herein is set aside and the matter is remanded to the Respondent for fresh consideration on condition that as volunteered by the Petitioner, they shall pay 25% of disputed tax to the Respondent within a period of ***four weeks*** from the date of receipt of a copy of this order and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) The Petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

12. Accordingly, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

12.03.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

The Assistant Commissioner (ST),
Thirumazhisai Assessment Circle,
4/109-GST Integrated Building,
Nazarathpet, Chennai-600 123.

Krishnan Ramasamy,J.,

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