IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.03.2025

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THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.8395 of 2025
and W.M.P.Nos.9409, 9412 & 9413 of 2025

Simon David Augustine,
Clevermedia (GSTIN:33AIQPA3589C1ZD),
No.1A, Reddiyar Complex,
Vellore Road, Near Millenium Plaza,
Thiru Nagar, Vellore, Tamil Nadu 632 006. .. Petitioner

Vs.

Deputy Commercial Tax Officer,
Integrated Commercial Tax Office Complex,
Near Railway Station,
Parasuramanpatti, Gudiyatham. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue Writ of Certiorari, calling for the records of the respondent in the impugned order vide Reference No.ZD331223227980M with GSTIN/33AIQPA3589C1ZD/2017-18 dated 27.12.2023 and quash the same.

For Petitioner : Mr.Chikkars Srikanth

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

ORDER

This Writ Petition has been filed by the petitioner seeking to call for the records of the respondent in the impugned order vide Reference No.ZD331223227980M with GSTIN/33AIQPA3589C1ZD/2017-18 dated 27.12.2023 and quash the same.

2.Learned counsel appearing for the petitioner would submit that, in the present case, the petitioner have not received physical copy of the show cause notice and also personal hearing notice. The show cause notice dated 10.10.2023 was uploaded in the GST Portal tab in view additional notices column and the petitioner had no ocassion to open the GST Portal. He would also submit that the petitioner came to know about the impugned order during the month of December 2024 when he received a call from the Recovery Officer in respect of pending demand and immediately, he aproached a GST practitioner and with his assistance, he has verified the GST portal and came to know about the impugned proceedings initiated by the Department for the F.Y.2017-18.

3.The learned counsel would further submit that initially proceedings were initiated under Section 73(5) of the TNGST Act, 2017 by issuing DRC-01A, dated 25.09.2023 towards wrong claim of ITC based on RCM details, however, later, the respondent issued a summary notice under Section 74 by issuing DRC-01 dated 03.01.2023, without showing any reason amounting to fraud or any wilful misstatement or suppression of facts to evade tax. Subsequently, the respondent also issued reminder -1 on 09.11.2023 without giving any show cause notice and without providing any details for intiating the proceedings under Section 74 of the Act. He would further submit that the petitioner is ready and willing to pay 25% of the disputed tax demand in respect of the impugned assessment period and prayed to set aside the impugned order direct the respondent to permit the petitioner to file their reply and provide an opportunity of personal hearing, so that the petitioner would be able to substantiate their case.

4.Learned Government Advocate appearing for the respondent would submit that as per the voluntary submissions made by the learned counsel for the petitioner, subject to the deposit of 25% of the disputed tax demand by the petitioner in respect of the impugned assessment period, if the Court feels it appropriate and it is a fit case for re-consideration, this Court may consider and pass orders.

5.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate and perused the materials available on record.

6.Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it is evident that the impugned proceedings were issued through the GST Portal Tab. According to the petitioner, he was not aware of the issuance of the imugned proceedings issued through the GST Portal till the Recovery Officer informed over phone to him. It appears that reminders were also sent to the petitioner through the GST portal. When such being the case, this Court feels that when the respondent did not receive any reply/response from the petitioner for the impugned notices/proceedings and the reminders and when the statute provide alternative mode for sending notices, it is a bounden duty of the respondent to choose an other effective mode of service instead of uploading the notices and the reminders on the common portal again and again. When such exercise is being carried out, the petitioner would have not come with the plea before his Court that they have not received any notices.

7.Thus, in such circumstances, this Court is of the view that the impugned order came to be passed without affording opportunity of personal hearing to the petitioner to establish their case, thereby violating the principles of natural justice and that it is just and necessary to provide an opportunity to the petitioner to establish their case on merits and in accordance with law.

8.For the reasons stated above, this Court is inclined to set aside the impugned order dated 27.12.2023 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The orders impugned herein is set aside on condition that the petitioner deposits 25% of the disputed tax amount in respect of the impugned assessment period, as agreed by the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

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

(iii) Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment made on the Bank account of the petitioner cannot survive any longer and hence, it is lifted. The respondent is directed to instruct the Bank to unfreeze the Bank account of the petitioner immediately upon the production of the receipt of 25% deposit made by the petitioner as directed by this Court.

(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.

9.With the above directions, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

17.03.2025

rst

Index : Yes/No
Internet: Yes/No
Speaking/Non-Speaking Order

To:

Deputy Commercial Tax Officer,
Integrated Commercial Tax Office Complex,
Near Railway Station,
Parasuramanpatti, Gudiyatham.

KRISHNAN RAMASAMY, J.

rst

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