IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.04.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.9215 of 2025
and
W.M.P.Nos.10320, 10321 & 10322 of 2025

Unique Industrial Supplier
rep. By its Proprietor, Promod Kumar Jha. ...Petitioner

Vs.

1. The Assistant Commissioner (ST)
Office of the Assistant Commissioner (ST)
Harbour Assessment Circle, North Division,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Chennai – 600 003.

2. The Deputy State Tax Officer-II
Harbour Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Room No.325, 3rd Floor, Chennai – 600 003. ...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 Impugned Demand Order dated 21.08.2024 made in ZD3308241814755 under Section 73 of CGST/TNGST Act 2017 for Tax period April 2019 - March 2020 along with DRC 07 by the 2nd Respondent and to quash the same and consequently, to direct the respondents to release the attachment by de-freezing the Petitioner's bank account bearing Account Number No.235105000487 maintained with ICICI Bank North Boag Road Branch and Account Number 5542935656 maintained with Central Bank of India, Tiruvottiyur Branch and Account Number 125001711902 maintained with Canara Bank T.C. Street Branch.

For Petitioner : Mr.P.Vikram Kumar

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

O R D E R

Heard Mr.P.Vikram Kumar, learned counsel appearing for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (T) who takes notice on behalf of the respondents. 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 21.08.2024, for the tax period April, 2019-March, 2020 along with DRC-07 and to quash the same, and consequently, to direct the respondents to de-freeze the petitioner's bank account.

3. The learned counsel for the petitioner would submit that the petitioner is a small-time trader and all the business activities, including filing of GST returns were managed by him; that the petitioner being a layman, he is unaware of the Form GST DRC-01 dated 22.05.2024, issued by the respondents and all other allied communications, as such notices were merely uploaded in the GST Portal, however, on coming to know about such notices over phone from the respondent-Department, the petitioner filed his inadequate reply dated 04.07.2024, but the second respondent passed the impugned order by stating that as if, the petitioner has not filed and that, in the absence of reply, it is clear that the defect pointed out in the DRC-01 is correct, and proceeded to pass order without even affording an opportunity of hearing to the petitioner to putforth their defence.

3.1 Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and is liable to be aside. However, the learned counsel stated that the petitioner is ready and willing to pay 25% of the disputed tax, in the event, this Court is inclined to set aside the impugned order and thus, prays for appropriate orders.

4. The learned Government Advocate (T) for the respondents 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. It is an undisputed fact that the show cause notice issued by the respondent-Department in Form GST DRC-01 was uploaded in the GST Portal and was not served on the petitioner by physical mode of service. Therefore, the petitioner was totally ignorant of the proceedings issued by the respondents. However, the petitioner, on being informed by the respondent-Department over phone about the demand notice, filed an inadequate reply, as he is a small-time trader and a layman, on reading the instruction manual of the GST Portal, the petitioner filed such adequate reply.

6.1 Thus, as and when, a reply is filed by the petitioner/assessee, irrespective of the fact whether it is adequate/inadequate reply, what is the next course, the second respondent ought to have adopted is to issue a notice of personal hearing, but, in the present case, without affording an opportunity of personal hearing to the petitioner, the second respondent has straight away proceeded to confirm the proposals contained in the show cause notice and passed a final order, that too, by wrongly recording that, 'in the absence of reply filed by the petitioner, the defect pointed out by them is correct" which is incorrect.

6.2 Therefore, it is clear that the second 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. 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 the following orders/directions:-

i) The impugned order dated 21.08.2024 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 an effective reply in a detailed manner 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 bank attachment order is concerned, upon production of proof with regard to the payment of 25% of the disputed tax made by the petitioner, respondent-Department is directed to issue appropriate direction on the petitioner's banker towards de-freezure of the petitioner's bank account forthwith and permit the petitioner to operate the bank account.

7. In the result, the Writ Petition is allowed on the aforesaid terms.

No costs. Consequently, connected Miscellaneous Petitions are closed.

02.04.2025

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Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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