IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.03.2025

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.8728 & 8736 of 2025
& W.M.P.Nos.9785, 9786, 9776 & 9774 of 2025

Palani Jayakumar,
Proprietor of M/s.J.K.Transport,
No.6, Lakshmi Amman Koil Street,
Mannurpet, Padi, Chennai 600 050
... Petitioner in both petitions

Vs.

The Deputy Commercial Tax Officer (ST),
Padi Assessment Circle,
Integrated Commercial Taxes and Registration
Department Building (South Tower),
4th Floor, Room No.416,
Nandanam, Chennai 600 035.
... Respondent in both petitions

Prayer in W.P.No.8728 of 2025:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in connection with the impugned notice under Section 79(1)(c) dated 12.02.2025 vide Ref.No.Rc.No.33AJBPJ1333R3Z6/2024-25 and quash the same as illegal and arbitrary.

Prayer in W.P.No.8736 of 2025:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in the file of the respondent in connection with the impugned assessment order vide Ref.No.ZD330424260610T dated 30.04.2024 and consequential impugned rejection of rectification vide Ref.No.ZD330225058129I dated 06.02.2025 and quash the same as illegal, arbitrary and consequently, to direct the respondent to reconsider and pass orders afresh affording an opportunity of being heard within such time as may be directed by this Court.

For Petitioner in both petitions	:	Mr.A.Ganesh
For Respondent in both petitions	:	Ms.Amirta Poonkodi Dinakaran, Government Advocate

COMMON ORDER

These writ petitions have been filed challenging the impugned order dated 30.04.2024 passed by the respondent and the consequential impugned notice dated 12.02.2025 issued by the respondent.

2. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate, takes notice on behalf of the respondent in both petitions. By consent of the parties, the main writ petitions are taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that in this matter, the show cause notice was issued by the respondent on 21.11.2023, whereby the time limit for filing the reply was fixed on or before 21.12.2023 and the date of personal hearing was fixed on 05.12.2023. Accordingly, a reply dated 21.12.2023 was filed by the petitioner. However, without taking into consideration of the said reply, the impugned assessment order came to be passed by the respondent on 30.04.2024, whereby it has been stated that no reply was filed by the petitioner. Further, he would contend that no opportunity of personal hearing was provided by the respondent subsequent to the filing of reply.

4. He had also referred to the provisions of Section 75(4) of the GST Act, 2017 and would submit that when the respondent is intend to pass an adverse order, they should have provided sufficient opportunity to the petitioner. In such case, no such opportunity was provided and thus, it is clear that the impugned order came to be passed not only in contrary to the provisions of Section 75(4) of the GST Act but also in violation of principles of natural justice and hence, he requests this Court to set aside the said impugned order and the consequential notice.

5. Per contra, the learned Government Advocate appearing for the respondent would submit that in the present case, initially a show cause notice was issued on 21.11.2023, whereby the date for personal hearing was fixed on 05.12.2023. Subsequent to the issuance of said notice, a reply was filed by the petitioner on 21.12.2023. However, the said reply was not clear and sufficient to satisfy the respondents. Under these circumstances, the impugned order came to be passed by the respondent.

6. Further, she would fairly admit that in this case, the personal

hearing was fixed by the respondent well before the date of filing of reply and hence, she requests this Court to pass appropriate orders.

7. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent and also perused the materials available on record.

8. In these cases, the issue is with regard to the failure on the part of the respondent in considering the reply filed by the petitioner and in providing an opportunity of personal hearing to the petitioner prior to the passing of impugned order dated 30.04.2024.

9. Initially, the notice in Form GST DRC-01 was issued on 21.11.2023, whereby the time limit for filing the reply was fixed on or before 21.12.2023. Accordingly, the reply was filed by the petitioner on 21.12.2023. Further, in the said notice, the date of personal hearing was fixed on 05.12.2023, which is around 2 weeks prior to the expiry of time limit, provided by the respondent, for filing the reply.

10. Thereafter, though a detailed reply dated 21.12.2023 was filed by the petitioner, the impugned order came to be passed by the respondent by stating that no reply was filed by the petitioner. Hence, it is clear that the respondent had not at all considered the reply filed by the petitioner while passing the impugned order.

11. That apart, it was contended by the petitioner that the respondent had passed the impugned order dated 30.04.2024 without providing any opportunity of personal hearing, subsequent to the filing of reply, which is contrary to the provisions of Section 75(4) of the GST Act, 2017.

12. Normally, if the respondents are intend to pass an adverse order against an Assessee, they are supposed to provide sufficient opportunity to them prior to the passing of assessment order. In such case, the personal hearing should have been fixed only after the filing of reply and if it was fixed before the filing of reply, no useful purpose will be served.

13. For all the above reasons, it is clear that the impugned order was passed without providing any proper opportunity to the petitioner and hence, it is not only contrary to the provisions of Section 75(4) of the GST Act, but also in violation of principles of natural justice. In such view of the matter, this Court is inclined to set aside the impugned order dated 30.04.2024 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 30.04.2024 is set aside and the matter is remanded to the respondent for fresh consideration.

(ii) The petitioner shall file their additional reply/objection along with the required documents, if any, within a period of 15 days from the date of receipt of copy of this order.

(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.

(iv) 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, vide impugned notice dated 12.02.2025, cannot survive any longer and hence, it is to be lifted. As a sequel, the respondent is directed to instruct the concerned Bank to release the attachment, and de-freeze the bank account of the petitioner, immediately upon the production of a copy of this order.

14. With the above directions, these writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

13.03.2025

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

Note: Issue order copy on 14.03.2025

To

The Deputy Commercial Tax Officer (ST),
Padi Assessment Circle,
Integrated Commercial Taxes and Registration
Department Building (South Tower),
4th Floor, Room No.416,
Nandanam, Chennai 600 035.

KRISHNAN RAMASAMY.J.,

nsa

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