IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.03.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.9219 & 9224 of 2025
and
W.M.P.Nos.10327, 10328 and 10338 of 2025

Tvl. Parcel By night Pvt. Ltd.,
rep. By its Director, Mr.HR.Shankar ...Petitioner in both W.Ps.

Vs.

1. The Deputy State Tax Officer -I (ST)
   The Deputy Commercial Tax Officer (ST)
   Hosur (South) -1, Commercial Taxes Building,
   1st Floor, Seetharam Nagar,
   Bangalore Road, near Old Bus Stand
   Hosur- 635 109.

2. The Deputy Commissioner (ST)
   GST Appeal Erode & Salem,
   Room No.233, 2nd Floor,
   No.17-2 Ward J Block -3,
   Integrated Commercial Taxes Buildings,
   Pitchards Road, Salem – 636 007.

...Respondents 1 and 2 in both W.Ps.

Prayer in W.P.No.9219 of 2025:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records from the file of the first respondent in the impugned assessment order in

Ref.No..ZD330824202303W in GSTIN ID : 33AAACP8232C1ZW dated 22.08.2024 passed for FY 2019-20 and to quash the same as arbitrary.

Prayer in W.P.No.9224 of 2025:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records from the file of the second respondent Form GST Apl -02 in ARN # AD330225022476E dated 17.02.2025 and to quash the same as illegal and violative of principles of natural justice.

Appearance of the counsels in both W.Ps

For Petitioner : Mr.R.Ananth,

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

COMMON ORDER

Heard Mr.R.Ananth, 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 Petitions are taken up for final disposal at the stage of admission itself.

2. The challenge in both the Writ Petitions are to the order passed by the first respondent dated 22.08.2024 for FY 2019-20 and the Order of rejection of the Appeal passed by the second respondent and to quash the same.

3. The learned counsel for the petitioner would submit that a show cause notice in Form GST DRC-01 along with an attachment dated 21.05.2024 was issued but, the petitioner's Consultant failed to file reply to such show cause notice, however, the first respondent, without even affording an opportunity of hearing to the petitioner, passed the impugned order dated 22.08.2024, confirming the proposals contained in the show cause notice and uploaded the said order on the Gst On-line Portal and feeling aggrieved against the impugned order, the petitioner with the guidance of the Consultant, preferred an Appeal by making pre-deposit of 10% of the disputed tax, however, the Appeal was summarily rejected by the second respondent on the ground of delay vide order dated 17.02.2025. Further, it is averred that the respondent-Department, in furtherance of the impugned order, recovered entire disputed tax.

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

4. The learned Government Advocate (T) for the respondents fairly submitted that since the entire disputed tax has already been recovered from the petitioner and in addition to the same, the petitioner also made a pre-deposit of 10% of the disputed tax while preferring the Appeal, 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 on hand, it is seen that a show cause notice was issued to the petitioner in Form GST DRC-01 along with an attachment dated 21.05.2024. Unfortunately, the petitioner's Consultant failed to file reply to such show cause notice. However, the first respondent, without even affording an opportunity of hearing to the petitioner, passed the impugned order dated 22.08.2024, confirming the proposals contained in the show cause notice. The said impugned order was not directly served on the petitioner, rather, it was uploaded on the Gst On-line Portal

6.1 Thus, it is clear that the petitioner was totally unaware of the assessment order passed against them, since, the same was not uploaded under the usual column, i.e." View Notices and Orders, which tab the assessment order should have been ideally uploaded as per the User Manual issued by the respondent-Department, whereas, the same was uploaded under the different column, "Additional Notices and Orders". Only when the petitioner received an intimation from the respondent-Department, as regards pending of tax arrears, the petitioner became aware of the assessment order, thereafter, the petitioner approached the Consultant, and with his guidance/opinion, preferred an Appeal against the assessment order and made a pre-deposit of 10% of the disputed tax, however, the Appeal was summarily rejected by the second respondent on the ground of delay vide order dated 17.02.2025. Hence, the present Writ Petitions are filed challenging both the impugned assessment order passed by the first respondent as well as the order of rejection of the Appeal passed by the second respondent.

6.2 In view of the aforesaid facts, this Court is of the view that the impugned assessment order passed by the first respondent suffers from violation of natural justice, as the respondent-Department has not taken any steps to serve the impugned order to the petitioner through physical mode of service, particularly, by RPAD, and made it available only in the GST Portal, which the petitioner was not aware, and only when the petitioner received intimation from the respondent-Department as regards pendency of tax arrears, the petitioner came to know of the impugned assessment proceeding.

6.3 Therefore, 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, considering the fact that the entire disputed tax has already been recovered from the petitioner and in addition to the same, the petitioner also made a pre-deposit of 10% of the disputed tax while preferring the Appeal, this Court is not inclined to impose any condition, however, proceeds to pass the following order/directions:-

i) The impugned order dated 22.08.2024 passed by the first respondent and the order of rejection of the Appeal by the second respondent dated 17.02.2025 are set aside.

ii) Consequently, the matter is remanded to the first respondent for fresh consideration.

iii) The petitioner is directed to file a reply along with supportive documents within a period of two weeks from the date of receipt of a copy of this order.

iv) Thereupon, the first 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.

7. In the result, the Writ Petitions are allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.03.2025

sd
Index : yes/no
Neutral Citation : yes/no

Krishnan Ramasamy,J.,

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To

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   The Deputy Commercial Tax Officer (ST)
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