IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :07.04.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.9863 of 2025
and
W.M.P.Nos.11072 & 11073 of 2025

M/s. ACT Plastic Pvt. Ltd.,
rep. By its CEO, A.Ganesh ...Petitioner

Vs.

1. The Deputy Commissioner of GST
   & Central Excise,
   No.1, Goubert Avenue (Batch Road)
   Puducherry – 605 001.

2. The Assistant Commissioner, GST & Central Excise,
   Puducherry Division-II,
   Azeez Nagar, Puducherry – 605 010.

3. The Branch Manager,
   ICICI Bank, Lawspet Branch, Pondicherry. ...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 order passed in C.No.ADJ/GST/226/2023-CGST by the second respondent vide his order in GSTIN : 34AAFCA1632G2Z5 dated 15.04.2024 and to quash the same as arbitrary and consequently, to direct the respondent to provide an opportunity to adequately and appropriately respond to the show cause notice dated 20.09.2023 issued by the first respondent.

For Petitioner : Mr.E.V.Chandru @ E.Chandrasekaran

For Respondents : Mr.Rajnish Pathiyil
Senior Standing Counsel

Order

Heard Mr.E.V.Chandru @ E.Chandrasekaran learned counsel appearing for the petitioner and Mr.Rajnish Pathiyil, learned Senior Standing Counsel, 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 15.04.2024 and to quash the same as arbitrary.

3. The learned counsel appearing for the petitioner would submit that neither the show cause notice nor the reminders or the impugned order of assessment has been served on the petitioner directly through RPAD, but has been uploaded in the GST Portal, which the petitioner was unaware and hence, the petitioner could not file reply or appear for the personal hearing, however, the second respondent, without even affording an opportunity of hearing to the petitioner passed the impugned order.

3.1 Therefore, the learned counsel would submit that the impugned orders suffer from violation of principles of natural justice and is liable to be aside, as the petitioner has not been heard before passing the impugned orders. However, it is stated that the petitioner is also ready and willing to deposit a sum of Rs.75,000/- in the event, this Court is inclined to set aside the impugned order and remands the matter back to the Authority for fresh consideration, and thus, prays for appropriate orders.

4. The learned Senior Standing Counsel (T) for the respondents fairly submitted that since the petitioner has voluntarily come forward to deposit a sum of Rs.75,000/-, the prayer sought for by the petitioner may be considered.

5. Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it is evident that the impugned show cause notice was uploaded on the GST Portal Tab. According to the petitioner, the petitioner was not aware of the issuance of the show cause notice issued through the GST Portal. Further, the original of the said show cause notice was not furnished to the petitioner. In such circumstances, this Court is of the view that the impugned assessment order came to be passed without affording any opportunity of personal hearing to the petitioner.

6. No doubt, sending notice by uploading in portal is a sufficient service, but, the Officer who finds no response from the petitioner to the show cause notices, instead of sending repeated reminders, should have applied his/her mind and explored the possibility of sending notices by way of other modes prescribed in Section 169 of the GST Act, which are also the valid mode of service under the Act, otherwise, the service of notice will not be deemed to be an effective service, rather, it would be only fulfilling the empty formalities. Merely passing an *ex parte* order by fulfilling the empty formalities will not serve any useful purpose and the same would pave way for multiplicity of litigations, not only wasting the time of the Officer concerned, but also the precious time of the Appellate Authority/Tribunal and this Court as well. Thus, when there is no response from the tax payer to the notice sent through a particular mode, the Officer who is issuing notices should strictly explore the possibilities of sending notices through some other mode as prescribed in Section 169(1) of the Act, preferably by way of RPAD, which would ultimately achieve the object of the GST Act.

6.1 Therefore, this Court is inclined to set aside the impugned order, as the same suffers from the 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, considering the fact that the petitioner has come forward to deposit a sum of Rs.75,000/-, in the event the impugned order is set aside, this Court is inclined to pass the following orders/directions:-

i) The impugned order dated 15.04.2024 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 Rs.75,000/-, 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 a reply 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 Rs.75,000/- 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.

07.04.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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