IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2025

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.9917 of 2025
and W.M.P.Nos.11131 & 11132 of 2025

K.P.Sathyamoorthy ...Petitioner

Versus

1.The Deputy State Tax Officer – 1,
Attur (Rural) Assessment Circle,
1st Floor, S.No.500/4, Appamasamuthram,
Thennangudipalayam Village Post,
Attur Taluk – 636 108.

2.The Deputy Commissioner (CT), GST Appeal,
Integrated Commercial Tax Building,
Pitchards Road,
Salem – 636 007. ...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for an issuance of Writ of Certiorari, to call for the records of the 1st respondent herein in GSTIN:33AYEPS5940D1Z1/2018-19 dated

10.06.2024 and the consequential order of the 2nd respondent in GSTIN/Temp ID/UIN 33AYEPS5940D1Z1/2018-19 dated 25.01.2025 and quash the same.

For Petitioner : Mr.Raveendran B

For Respondent : Ms.P.Selvi
Government Advocate

ORDER

This writ petition has been filed by the petitioner seeking to call for the records of the 1st respondent herein in GSTIN:33AYEPS5940D1Z1/2018-19 dated 10.06.2024 and the consequential order of the 2nd respondent in GSTIN/Temp ID/UIN 33AYEPS5940D1Z1/2018-19 dated 25.01.2025 and quash the same.

2.Learned counsel for the petitioner would submit that the petitioner is the civil work contractor and he was regular in payment of tax. While so, the 1st respondent issued show cause notice dated 02.04.2024, alleging there is mismatch between FORM GSTR -3B and FORM GSTR 2A and therefore called for explanation. Since the said show cause notice was uploaded in the GST portal, the petitioner was not aware of the show cause notice and the reminder sent by the first respondent. The petitioner came to know about the issuance of show cause notice through his GST practitioner and on 07.06.2024, the petitioner replied to the show cause notice dated 02.04.2024, stating that the said difference was already paid by them on 10.03.2023 and requested to drop the proceedings. However, the 1st respondent had passed the impugned order on 10.06.2024 by levying interest under Section 74 of the Tamil Nadu Goods and Services Tax Act, 2017, within four days from the date of reply filed by the petitioner without providing an opportunity of personal hearing.

3.He would further submit that for invoking Section 74 of the Act, the first respondent has to allege that the petitioner did not pay tax or short paid or erroneously refunded or where ITC has been wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts to evade tax and without any element of fraud or wilful misstatement or suppression of facts to evade tax on the part of the tax payer, the 1st respondent cannot invoke Section 74 of the Act. Further, the petitioner was under the impression that since the petitioner paid the amount and informed the same through reply, there is nothing to proceed further. Only in the month of December 2024, when he got a call from the 1st respondent, he came to know about the impugned order dated 10.06.2024. Thereafter, the petitioner preferred an appeal before the 2nd respondent and the same was rejected without assigning any reason. Hence, the present writ petition has been filed seeking to set aside the impugned orders.

4.Ms.P.Selvi, learned Government Advocate appearing for the respondent would fairly submit that though the petitioner had filed his reply on 07.06.2024, the impugned order came to be passed on 10.06.2024, without providing an opportunity of personal hearing after the filing of reply by the petitioner. She would further submit that 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 for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

6.Considering the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents, it is evident that the show cause notice has been issued by the 1st respondent on 02.04.2024 and thereafter, reminder was also sent to the respondent to file reply and to appear in person. Since the petitioner was not aware of the issuance of show cause notice through GST portal, the petitioner filed his reply only on 07.06.2024 after knowing about the issuance of show cause notice through his GST practitioner. According to the petitioner he had remitted the entire tax amount on 10.03.2023, prior to the issuance of show cause notice dated 02.04.2024 and the same was informed to the 1st respondent through his reply. Though the 1st respondent accepted the payment of tax made by the petitioner, had passed the impugned order for levying interest under Section 74 of the Act, without alleging any fraud or wilful misstatement or suppression of fact by the petitioner. After the filing of reply by the petitioner, the 1st respondent ought to have provide an opportunity of personal hearing as per Section 75 (4) of the Act, before passing the impugned order. In the present case, without providing an opportunity of personal hearing, the 1st respondent has passed the impugned order on 10.06.2024, without four days from the date of filing reply by the petitioner, which is clear violation of provision under Section 75(4) of the Act. It is just and necessary to provide an opportunity to the petitioner to establish their case on merits and in accordance with law.

7.For the reasons stated above, this Court is inclined to set aside the impugned assessment order dated 10.06.2024 passed by the 1st respondent and the consequential order dated 25.01.2025 passed by the 2nd respondent rejecting the appeal. Accordingly, this Court passes the following order:-

(i) The orders impugned herein are set aside.

(ii) The respondent shall consider the reply filed by the petitioner 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.

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

19.03.2025

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Index : Yes / No
Internet : Yes / No
Speaking Order / Non Speaking Order
Neutral Citation:Yes/No

To

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