IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.03.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.10639 of 2025
and
W.M.P.Nos11978 & 11981 of 2025

Harold Industries Pvt. Ltd.,
rep. by its Director, B.Srinivasan. ...Petitioner

Vs.

1. The Deputy Commissioner (ST) (FAC)
O/o. The Deputy Commissioner (ST)
GST – Appeal Chennai -I, Room No.210,
2nd Floor, Main Building,
No.1, Greams Road, Chennai – 600 006.

2. The Deputy State Tax Officer/Deputy Commercial Tax Officer
Thirumazhisai Assessment Circle,
Avadi Zone, Thiruvallur Division, T.N. ...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 of the second respondent demand order made in Ref.No.ZD330424235167L dated 29.04.2024 and the order dated 05.03.2025 of the first respondent made in ARN/AD331224004835F/2018-19/A1 and to quash the same and consequently, to direct the respondents to give them an opportunity of personal hearing.

For Petitioner : Mr.P.Suresh Babu
For Respondents : Ms.P.Selvi
Government Advocate (T)

Order

Heard Mr.P.Suresh Babu learned counsel appearing for the petitioner and Ms.P.Selvi, 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 29.04.2024 and the order of rejection of the Appeal by the first respondent dated 05.03.2025 and to quash the same.

3. The learned counsel for the petitioner would submit that the petitioner was not aware of the impugned passed by the second respondent dated 29.04.2024 as the same was not directly served on the petitioner and was only uploaded in the Portal, however, the petitioner aggrieved by the said impugned order preferred an appeal before the first respondent by making a pre-deposit of 10% of the disputed tax, but the same dismissed by the impugned order dated 05.03.2025 on the ground of delay, and hence, the petitioner has approached this Court by way of present Writ Petition seeking to set aside both the impugned orders and to afford an opportunity of hearing to the petitioner and to decide the matter in accordance with law. It is further submitted that the petitioner is ready and willing to deposit 15% of the disputed tax, in the event, this Court is inclined to set aside the impugned orders and issued appropriate directions in that regard.

4. The learned Government Advocate (T) for the respondent fairly submitted that since the petitioner has already deposited 10% of the disputed tax while preferring appeal and has now voluntarily came forward to deposit 15% of the disputed tax, this Court may pass appropriate orders, as it deems fit and proper.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. Admittedly, there is no dispute on the aspect that the impugned Assessment Order passed by the second respondent dated 29.04.2024 is an ex parte order, as the petitioner has not been heard before passing the same, since, all the show cause notices dated 27.12.2023, and other allied communications, which culminated in the impugned assessment order have been merely uploaded in the GST Portal through on-line service and have not been served on the petitioner through physical mode, therefore, the same were unnoticed by the petitioner.

6.1 That apart, in respect of the show cause notice 27.12.2023, the petitioner has already filed objections, based on which, the second already passed an order dated 18.04.2024 dropping the proceedings, and hence, certainly, the petitioner would have had no occasion to follow the GST communications and only when the recovery proceedings came to be initiated against the petitioner in furtherance of the impugned proceedings, the petitioner came to know of the impugned proceedings, immediately thereafter, the petitioner challenged the impugned assessment order and preferred Appeal, however, the first respondent/Appellate Authority dismissed the Appeal on the ground that the same has not been filed within the condonable limit, which necessitated the petitioner to approach this Court seeking for the aforesaid relief.

6.2 Therefore, in the light of the above facts and circumstances of the case, this Court is inclined to set aside both the impugned assessment order passed by the second respondent/Assessing Officer, as the same suffers from violation of principles of natural justice and the order of dismissal of the Appeal passed by the Appellate Authority/first respondent, (since, he has no power to condone the delay beyond the period of 30 days). Further, considering the fact that the petitioner is also ready and willing to pay 15% of the disputed tax, in the event, the impugned assessment order is set aside, this Court is inclined to issue/pass following orders/directions:-

i) The impugned order dated 29.04.2024 passed by the second respondent and the order of rejection passed by the first respondent/Appellate Authority dated 05.03.2025 are set aside.

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

iii) The petitioner is granted liberty to deposit 15% 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 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, it is needless to state that, once the impugned order is set aside, the attachment order can no longer survive and the same has to be given a go-by by the respondent-Department. Hence, the respondent-Department is directed to issue appropriate direction on the petitioner's banker towards de-freezure of the petitioner's bank account forthwith.

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

24.03.2025

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Index : yes/no
Neutral Citation : yes/no

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