IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated :20.03.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.10069 of 2025
and
W.M.P.Nos.11300 & 11301 of 2025

M/s. Amar Wire Products
rep. by its Partner, Mr.Sameer Singh ...Petitioner

Vs.

The Assistant Commissioner (ST) (FAC)
Hosur (South) 3 Assessment Circle
Integrated Commercial Tax Building
Ground Floor, Seetharam Medu
Old Bus Stand, Hosur – 635 109. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records relating to the impugned order dated 07.10.2024 bearing No.GSTIN : 33ABTFA1001D1Z5/2022-23 passed by the respondent and all other consequential proceedings thereto including the notice of recovery dated 24.01.2025 bearing Demand ID No.ZD331024041572X and to quash the same as arbitrary.

For Petitioner : Mr.Srikant Parthasarathy
For Respondent : Mr.C.Harsha Raj

Special Government Pleader (T)

Order

Heard Mr.Srikant Parthasarathy learned counsel appearing for the petitioner and Mr.C.Harsha Raj, learned Special Government Pleader (T) who takes notice on behalf of the respondent. 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 respondent dated 07.10.2024 and the notice of recovery dated 24.01.2025 and to quash the same.

3. The learned counsel for the petitioner would submit that the petitioner has been issued with a notice dated 09.10.2023 calling forth petitioner's reply and fixing the personal hearing dated on 25.10.2023, at 11 a.m.; that thereafter, a further notice, titled as 'show cause notice' was issued on 18.04.2024, which was subsequently followed by a reminder dated 27.09.2024, which the petitioner did not have access due to the reason that the Auditor was withholding the credentials of the GST Portal and finally, the petitioner was allegedly served with the copy of the proceedings dated 07.10.2024, whereby, the respondent proposed to take action under Section 74 of the TNGST Act and in furtherance of the impugned order, notice of recovery dated 24.01.2025 came to be issued against the petitioner.

3.1 Further, it is contended that since the affairs of the petitioner-Firm including accounts were handled by a Chartered Accountant, who was vested with complying with the GST provisions, the petitioner was not aware of the any proceedings against them. That apart, the petitioner's login credentials and other informations pertaining to the GST Department were with the external Auditor, who neither gave us the access to the portal nor informed the petitioner of any proceedings, which was not communicated to the petitioner either by the respondent by way of SMS or email or physical notice to the petitioner's registered officer or by the External Auditor by any other means, the petitioner was totally unaware of the impugned proceedings and only when the notice of recovery was served to the petitioner's address for the first time, the petitioner came to know of the impugned proceedings. Therefore, the learned counsel would submit that the impugned orders suffers from violation of principles of natural justice and are liable to be aside, as the petitioner has not been heard before passing the impugned order. However, the learned counsel stated that the petitioner is also ready and willing to pay 25% of the disputed tax, in the event, this Court is inclined to set aside the impugned order, and thus, prays for appropriate orders.

4. The learned Special Government Pleader (T) for the respondent fairly submitted that since the petitioner has voluntarily come forward to deposit 25% of the disputed tax, 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. On perusal of records, it is seen that since the affairs of the petitioner-Firm including accounts were handled by a Chartered Accountant, who was vested with complying with the GST provisions, the petitioner was not aware of any proceedings against them. That apart, the petitioner's login credentials and other informations pertaining to the GST Department were with the external Auditor, who neither gave the petitioner the access to the portal nor informed the petitioner of any proceedings, which was not communicated to the petitioner either by the respondent by way of SMS or email or physical notice to the petitioner's registered officer or by the External Auditor by any other means, the petitioner was totally unaware of the impugned proceedings.

6.1 Thus, it is crystal clear that the impugned order came to be passed against the petitioner, behind their back, as the respondent-Department has not taken any steps to serve any notices/communications through any 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 an urgent notice dated 24.01.2025 was sent to the address of the petitioner for the first time towards recovery, the petitioner came to know of the impugned assessment proceedings.

6.2 Therefore, the respondent passed the impugned order without even affording any opportunity of hearing to the petitioner, which is nothing but an ex parte order, as the same suffers from 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, since the petitioner, themselves, have voluntarily come forward to deposit 25% of the disputed tax, to which, the learned Special Government Pleader (T) is also agreable, this Court is inclined to pass the following orders/directions:-

i) The impugned order dated 07.10.2024 and the consequential recovery notice dated 24.01.2025 passed by the respondent are set aside.

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

iii) The petitioner is granted liberty to deposit 25% 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 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 Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

20.03.2025

sd

Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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