IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2025

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.11277 of 2025
and
W.M.P.Nos.12719 & 12720 of 2025

M/s.Hanuman Enterprise,
Represented by its Proprietorship,
Mr.Hadma Ram Choudharai (M/A 45 Yrs),
No.70, Narayana Mudali Street,
Sowcarpet,
Chennai 600079. ...Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
N.S.C.Bose Road Assessment Circle,
Chennai (North) Division,
Chennai 600 003. ...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 the records on the file of the Respondent and to quash the impugned assessment order dated 21.07.2023 bearing no.33AMFPC5794A1ZF/2018-19 passed by the Respondent as arbitrary.

For Petitioner : Mr.J.Ashish

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (Taxes)

Order

Mr.T.N.C.Kaushik, learned Additional Government Pleader (Taxes), 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 dated 21.07.2023 passed by the respondent for the AY 2018-19 and to quash the same.

3. The learned counsel for the petitioner would submit that the first respondent has issued a show cause notice on 16.06.2023 to the petitioner by uploading the same in the GST portal without serving physical copy of the same to the petitioner. Therefore, the petitioner was not aware of the same and hence failed to file reply. Since the petitioner failed to file reply to the said show cause notice, the respondent has confirmed the proposals contained in the show cause notice and passed the present impugned order and the same was also uploaded in the GST portal. The petitioner came to know of the same only after getting a call from the respondent office. In the mean time, the respondent has recovered a sum of Rs.13,37,907/-. Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and is liable to be aside, as the petitioner has not been heard before passing the impugned order.

3.1. It is also submitted by the learned counsel for the petitioner that the petitioner is ready and willing to deposit 25% of the disputed tax, in the event, this Court is inclined to set aside the impugned order and remand the matter back to the Authority for fresh consideration.

4. The learned Additional Government Pleader (Taxes) 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. 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 and the original of the said show cause notice was not furnished to them. 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, confirming the proposals contained in the show cause notice.

6. No doubt sending notice by uploading in portal is a sufficient service, but, the Officer who is sending the repeated reminders, inspite of the fact that no response from the petitioner to the show cause notices etc., the Officer 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 it will not be an effective service, rather, it would 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 will only 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.

7. Therefore, this Court finds that there is a lack of opportunities being provided to serve the notices/orders etc., effectively to the petitioner. Hence, this Court is inclined to set-aside the impugned order with terms, by issuing the following directions:-

i) The impugned order passed by the respondent dated 21.07.2023 is 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 had 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.

vi) Upon production of proof with regard to the payment of 25% of the disputed tax made by the petitioner, the respondent-Department is directed to issue appropriate direction on the petitioner's banker towards de-freezure of the petitioner's bank account, in case of any bank attachment made by the respondent.

8. With the above observations & directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

15.04.2025

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Index : yes/no
Neutral Citation : yes/no

To

The Assistant Commissioner (ST)(FAC),
N.S.C.Bose Road Assessment Circle,
Chennai (North) Division,
Chennai 600 003.

Krishnan Ramasamy,J.,

arr

W.P.No.11277 of 2025

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