IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2025

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.10965 of 2025 and
W.M.P.Nos.12362 and 12364 of 2025

Tvl.Indus Resources
(GSTIN:33AEUPG6469B1ZD)
Represented by its Proprietor Shri Gunasekaran J,
SF No.87,88, Annai Indra Nagar,
Sidco Post, Coimbatore-641 024. ... Petitioner

..Vs..

The State Tax Officer,
Gandhipuram Circle, Commercial Tax Building,
Dr.Balasundaram Road, Coimbatore-641 018. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order in Form GST DRC 07 bearing reference no.ZD330424066193L/2018-19 dated 08.04.2024 issued by the Respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam

For Respondent : Mr.C.Harsha Raj
Special Government Pleader (Taxes)

ORDER

The challenge in this writ petition is to the order dated 05.12.2023 passed by the respondent and to quash the same.

2. Mr.C.Harsha Raj, learned Special Government Pleader (Taxes), takes notice on behalf of the respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. The learned counsel for the petitioner submits that initially show intimation notice was issued to the petitioner on 09.10.2023, for which the petitioner submitted its reply on 27.10.2023. Thereafter, the respondent issued show cause notice on 08.04.2024 followed by impugned order on the very same date i.e., 08.04.2024. Therefore, they are non est in the eye of law. Further, he would submit that show cause notice ought to have issued on or before 31.01.2024 and hence is time barred and that apart both the show cause notice as well as impugned order were uploaded in the GST portal without serving physical copy of the same and therefore the petitioner is not aware of the same. The petitioner came to know of the impugned order only after recovery of a

sum of Rs.7,55,978/-(which is more than 55%) from the account of the credit ledger of the petitioner.

5. Further, he would submit that impugned assessment order came to be passed without affording an opportunity of personal hearing to the Petitioner and therefore the same is passed in violation of principles of natural justice. Hence he prays to set aside the impugned order.

6. The learned Government Advocate (Taxes) appearing for the Respondent submitted that after issuance of intimation notice and the show cause notice and after affording an opportunity of personal hearing impugned order came to be passed. Therefore, he would submit that principles of natural justice has been duly complied with. As far as the contention of the petitioner with regard to the payment of morethan 55% tax liability is concerned, the learned Government Advocate (Taxes) would submit that appropriate orders may be passed subject to verification.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the Respondent and also perused the materials available on record.

8. In the present case, both the show cause notice as well as the impugned order were passed on the same date i.e., 08.04.2024.

9. It is settled law that violation of principles of natural justice is a failure of due process. If any order is passed against the petitioner with demand, that order has to be passed after giving an opportunity of personal hearing to the petitioner otherwise, it will amount to depriving the interest of the petitioner and the same amounts to violation of principles of natural justice.

10. In the case on hand, the impugned orders came to be passed without hearing the petitioner. Hence, this Court is of the view that the impugned order passed is in violation of principles of natural justice and it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned assessment order 08.04.2024 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The order impugned herein are set aside.

(ii) The Petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks from the date of receipt of a copy of this order.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same 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.

(iv) The Respondent is at liberty to recover 25% of disputed tax liability in case, if no amount has been paid by the petitioner as stated by the learned counsel for the petitioner.

11. Accordingly, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

26.03.2025
(2/2)

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
arr

Krishnan Ramasamy,J.,

arr

To

The State Tax Officer,
Gandhipuram Circle, Commercial Tax Building,
Dr.Balasundaram Road, Coimbatore-641 018

W.P.No.10965 of 2025

26.03.2025