IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-04-2025

CORAM

THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 13415 of 2025
AND
WMP NO. 15035 OF 2025 & WMP NO. 15037 OF 2025

Sri Palaniandavar Timber
Represented by its Proprietor Jaya
73/3, Erumakutta Pallam,
Opp. Don Bosco Anbu Illam,
Kondapanaickenpatty, Salem 636 008.

Petitioner(s)

Vs

Commercial Tax Officer / Proper
Officer
Ayothyapattinam, Salem 636 008.

Respondent(s)

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records on the files of the Respondent herein in FORM GST DRC-07 with Reference No.: ZD330824133236J dated 16.08.2024 along with detailed proceeding in GST:

33BAMPJ8013P1ZC/2019-20 dated 16.08.2024 for the tax period 2019-20, and quash the same.

For Petitioner(s): Mr.N.Chandirasekar

For Respondent(s): Ms.Amirtapoonkodi Dinakaran, Government Advocate (Tax)

ORDER

The present Writ Petition is filed challenging the order dated 16.08.2024 passed by the respondent, relating to the assessment year 2019-20.

2. Ms.Amirtapoonkodi Dinakaran, learned Government Advocate (Tax) takes notice on behalf of the respondent. By consent of the parties, the main Writ Petition is taken up for disposal for final disposal at the stage of admission.

3. The learned counsel for the petitioner submitted that the petitioner is inter-alia involved in the business of timber and is registered under the Central Goods and Service Tax Act, 2017. During the relevant period viz. 2019-20, the petitioner had filed its return and paid the appropriate taxes. However, on

examination of the information furnished by the petitioner, it was noticed that the petitioner had availed an excess claim of ITC. Pursuant thereto, a show cause notice in Form DRC-01 dated 21.05.2024 was issued to the petitioner through GST common portal, followed by which, personal hearing opportunities were also granted to the petitioner. However, the petitioner had neither filed its reply nor availed the opportunities of personal hearing. Hence, the impugned orders came to be passed by the respondent, confirming the proposals.

4. The learned counsel for the petitioner submitted that the impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal under the head "Additional Notices and Orders" tab, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings.

5. It was further submitted that the petitioner is ready and willing to pay

25% of the disputed tax and that he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

6. 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.

7. 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.

8. 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 dated 16.08.2024 passed by the respondent 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.

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

17-04-2025

Jd

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

To

Commercial Tax Officer / Proper Officer
Ayothyapattinam, Salem 636 008.

KRISHNAN RAMASAMY J.

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