WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.04.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.11798 of 2025
and
W.M.P.Nos.13360 & 13363 of 2025

Tvl. Annai Earth Movers,
rep. by its Proprietor, S.Rajasekar ...Petitioner

Vs.

1. The State Tax Officer (ST)
   Kodungaiyur Assessment Circle.

2. The Assistant Commissioner (ST) (FAC)
   Kodungaiyur Assessment Circle. ...Respondents

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 of the second respondent's order dated 05.03.2025 with Ref.No.ZD330325026413V and to quash the same as arbitrary.

For Petitioner : Mr.Adithya Reddy
For Respondents : Mrs.K.Vasanthamala
Government Advocate (T)

Order

https://www.mhc.tn.gov.in/judis

WEB COPY

Heard Mr.Adithya Reddy learned counsel appearing for the petitioner and Mrs.K.Vasanthamala, 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 05.03.2025 and to quash the same.

3. The learned counsel appearing for the petitioner would submit that the respondent has merely uploaded the show cause notice in the GST Portal, under the head, "View Additional Notices and Orders", which was unnoticed by the petitioner. Further, it is the contention of the learned counsel for the petitioner the statutory notice that was uploaded in the GST Portal cannot be deemed to be a proper service of notice and only notice issued in terms of the provisions contemplated under Section 169 of the CGST Act, i.e. by physical mode, can be deemed to be sufficient service. Therefore, the learned counsel contended that the impugned assessment order passed by the second respondent is unsustainable as the same suffers

https://www.mhc.tn.gov.in/judis

WEB COPY

from violation of principles of natural justice. However, he fairly submitted that, in the event, this Court is inclined to set aside the impugned order, the petitioner is ready and willing to deposit 25% of the disputed tax and hence, prays for setting aside the impugned order and remanding the matter back to the respondent for fresh consideration.

3.1 Further, it is pointed out by the learned counsel for the petitioner that impugned order has been passed by the second respondent in respect of two issues, insofar as the first issue is concerned, earlier very exact claim was made against the petitioner for the same period, and considering the detailed response filed by the petitioner, an order dated 20.11.2023 was passed dropping the proceeding, and therefore, prays for appropriate orders.

4. The learned Government Advocate for the respondents would fairly submit that, the impugned order pertaining to second issue is concerned, this Court may remand the matter to the respondents for fresh consideration on payment of 25% of the disputed tax by the petitioner, and insofar as the first issue is concerned, since the proceedings were already

https://www.mhc.tn.gov.in/judis

WEB COPY

dropped, no condition may be imposed.

5. Considering the submission 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 under the different column, viz., 'View Additional Notices/Orders" column, hence,the petitioner was not aware of the said notice. Further, the original of the said show cause notice was not furnished to the petitioner in person. 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.

6. No doubt, sending notice by uploading in portal is a sufficient service, but, the Officer who finds no response from the petitioner to the show cause notices, instead of sending repeated reminders, 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, the service of notice will not

https://www.mhc.tn.gov.in/judis

WEB COPY

be deemed to 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 would 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.

6.1 Therefore, this Court is inclined to set aside the impugned order, as the same suffers from the 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, considering the fact that the petitioner has come forward to deposit 25% of the disputed tax in the event the impugned order is set aside, to which course, the learned Government Advocate is agreable, this

https://www.mhc.tn.gov.in/judis

WEB COPY

Court is inclined to pass/issue the following orders/directions:-

i) The impugned order passed by the second respondent dated 05.03.2025 insofar as it relates to second issue alone is concerned, is set aside and the matter is remanded to the second respondent for fresh consideration. 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. Thereafter, the petitioner is directed to file a reply along with supportive documents within a period of two weeks. Thereupon, the second respondent is directed to consider the reply and shall issue a 14 clear days notice affording an opportunity of personal hearing to the petitioner and shall decide the matter in accordance with law.

ii) Insofar as the impugned order pertaining to the first issue is concerned, taking into consideration of the fact that very exact claim made against the petitioner earlier were dropped vide order dated 20.11.2023, this Court is not inclined to impose any condition.

https://www.mhc.tn.gov.in/judis

WEB COPY

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

07.04.2025

sd

Index : yes/no
Neutral Citation : yes/no

To
1. The State Tax Officer (ST)
Kodungaiyur Assessment Circle.

2. The Assistant Commissioner (ST) (FAC)
Kodungaiyur Assessment Circle.

https://www.mhc.tn.gov.in/judis

WEB COPY

Krishnan Ramasamy,J.,

sd

W.P.No.11798 of 2025

07.04.2025

https://www.mhc.tn.gov.in/judis