IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.04.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.12003 of 2025
and
W.M.P.Nos.13569 of 2025

Tvl. MA.Traders ...Petitioner

Vs.

1.The Deputy Commercial State Tax Officer-II
Nandanam Assessment Circle, Chennai South
No.46, Greenway Road,
Mylapore Taluk Office Building,
2nd Floor, Chennai – 600 028.

2. The Assistant Commissioner (ST) (FAC)
Nandanam Assessment Circle
O/o.The Assistant Commissioner
Nandanam Assessment Circle, Chennai South
No.46, Greenway Road,
Mylapore Taluk Office Building,
2nd Floor, Chennai – 600 028.

...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 pertaining to the impugned order passed by the first respondent vide Ref.No.ZD330824023453M dated 03.08.2024 along with detailed order as annexure dated 03.08.2024 and the impugned order passed Vide Ref No.ZD330824281104 dated 29.08.2024, along with detailed order as attachment dated 24.08.2023, passed by the second respondent and to quash the same.

For Petitioner : Mr.R.Mansoor Ilahi

For Respondents : Mr.V.Prashanth Kiran
Government Advocate (T)

Order

Heard Mr.R.Mansoor Ilahi learned counsel appearing for the petitioner and Mr.V.Prashanth Kiran, 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 first respondent dated 03.08.2024 along with detailed order as annexure dated 03.08.2024 and the impugned order dated 29.08.2024, along with detailed order as attachment dated 24.08.2023 passed by the second respondent and to quash the same.

3. The learned counsel for the petitioner would submit that first respondent issued a show cause notice alleging that there was discrepancies in the ITC availed by the petitioner and subsequently, passed the impugned order dated 03.08.2024; that in respect of the very same issue, the second respondent also issued show cause notice and passed by the impugned order dated. 29.08.2024.

3.1 It is the contention of the learned counsel for the petitioner that the petitioner was unaware of any of the proceedings initiated against them, inasmuch as, none of the communications/show cause notice/personal hearing notice/reminder notices were served on the petitioner directly through physical mode of service but made it available only the Portal, hence, the petitioner failed to file reply and respond to such notices, however, both the first and the second respondents without even hearing the petitioner, passed the impugned orders. Furthermore, it is contended that when the petitioner failed to respond to any of the notice issued by the respondents, they ought to have adopted alternative mode of communication as envisaged under Section 169 of the TNGST/CGST Act, 2017, instead of repeatedly sending notice through the Portal. Therefore, it is contended that the impugned orders suffers from violation of principles of natural justice and therefore, prays this Court to set aside the impugned orders.

4. The learned Government Advocate (T) for the respondents though seeks time to get instructions in the matter, however, submitted that in the event of duplication of orders being passed by the respondents, the matter may be remanded back to the respondents for fresh consideration, in which case, the issue of the petitioner would be considered in accordance with law and appropriate orders would be passed.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. Considering the above submissions made by the learned counsel on either side and upon perusal of the materials, it is seen that the first respondent issued a show cause notice alleging that there was discrepancies in the ITC availed by the petitioner and subsequently, passed the impugned order dated 03.08.2024 without even hearing the petitioner. Further, it is seen that the second respondent also, in respect of the very same issue, issued another show cause notice and passed the impugned order dated. 29.08.2024, without affording an opportunity of hearing to the petitioner.

6.1 It is grievance of the petitioner that they were totally unaware of any of the proceedings initiated against them, inasmuch as, none of the communications/show cause notice/personal hearing notice/reminder notices were served on the petitioner directly through physical mode of service but made it available only the Portal, hence, the petitioner failed to file reply and respond to such notices, however, the respondent without even hearing the petitioner, passed the impugned orders.

6.2 Furthermore, it is contention of the petitioner that when the petitioner failed to respond to any of the notices issued by the respondents, they ought to have adopted alternative mode of communication as envisaged under Section 169 of the TNGST/CGST Act, 2017, instead of repeatedly sending notice through the Portal.

6.3 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.

6.4 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, ought to 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 be deemed to be an effective service, rather, it would only tantamount to 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.

6.5 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.

6.6 Further, in the case on hand, two orders were stated to have been passed by the respondents 1 and 2 respectively in respect of similar issue, and had the petitioner been heard before passing the final orders, the circumstances of passing duplication of orders could have been avoided. Therefore, this Court is inclined to set aside the impugned orders, as the same suffer from violation of principles of natural justice. Accordingly, this Court is inclined to pass the following orders/directions:-

i) The impugned order passed by the first respondent dated 03.08.2024 along with detailed order as annexure dated 03.08.2024 and the impugned order dated 29.08.2024, along with detailed order as attachment dated 24.08.2023 passed by the second respondent are set aside.

ii) Consequently, the matters are remanded to the respondents for fresh consideration.

iii) Thereafter, the petitioner is directed to file reply for both show cause notices along with supportive documents within a period of two weeks, to which, the petitioner receives an intimation from the respondent concerned.

iv) Thereupon, the respondent concerned 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.

and

v) It is for the respondent to drop any of the show cause notices on the ground of duplication.

7. In the result, the Writ Petition is allowed on the aforesaid terms. Therefore, it is contended that the impugned orders from violation of principles of natural justice.

09.04.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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