IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-04-2025

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THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 12133 of 2025
AND
WMP NO. 13700 OF 2025,WMP NO. 13701 OF 2025

M/s.Sri Arulkumaran Fabrics
Represented By Its Proprietor
Balasubramanian,
No. 1/4 Na Jailliparty Chinapudur,
Sulur, Coimbatore, Tamilnadu 641 671

Petitioner(s)

Vs

1. The Assistant Commissioner (ST),
O/o. The Assistant Commissioner,
Palladam-I Assesement Circle
Palladam, Tirupur Zone 3.

2.The Deputy Commercial Tax Officer,
Palladam-I, Tirupur-III,
Tiruppur.

3.The Deputy State Tax Officer (FAC)
Palladam-I, Assessment Circle,
Palladam.

Respondent(s)

PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records with respect to the Impugned Order passed by the 3rd respondent bearing GSTIN No.33BLZPB3483R1Z8/2020-2021 dated 27.09.2024 and also the Impugned Order passed by the 2nd respondent under FORM GST DRC-07 bearing Ref.No.ZD330924191729S dated 27.09.2024 and also the Impugned Order passed by the 1st respondent vide GSTIN No.33BLZPB3483R1Z8/2020-2021 under FORM GST DRC-07 dated 24.02.2025 and also the Impugned Order passed by the 1st respondent bearing Ref.No.ZD330225246135R dated 24.02.2025 and quash the same and consequently direct the 1st respondent to drop the recovery proceedings initiated vide recovery notice bearing No. GSTIN 33BLZPB3483R1Z8/2024 dated 26.11.2024.

For Petitioner(s): Ms.Gayathri Vasudevan

For Respondent(s): Mr.V.Prashanth Kiran,
Government Advocate (t)

ORDER

This writ petition has been filed by the petitioner seeking to call for the for the records with respect to the Impugned Order passed by the 3rd respondent bearing GSTIN No.33BLZPB3483R1Z8/2020-2021 dated 27.09.2024 and also the Impugned Order passed by the 2nd respondent under FORM GST DRC-07 bearing Ref.No.ZD330924191729S dated 27.09.2024 and also the Impugned Order passed by the 1st respondent vide GSTIN No.33BLZPB3483R1Z8/2020-2021 under FORM GST DRC-07 dated 24.02.2025 and also the Impugned Order passed by the 1st respondent bearing Ref.No.ZD330225246135R dated 24.02.2025 and quash the same and consequently direct the 1st respondent to drop the recovery proceedings initiated vide recovery notice bearing No. GSTIN 33BLZPB3483R1Z8/2024 dated 26.11.2024.

2.Mr.V.Prashanth Kiran, learned Government Advocate (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 admission stage itself.

4.Learned counsel appearing for the petitioner would submit that, in the present case, initally the DRC-01 has been issued by the 2nd respondent on 03.03.2024 and since there was no reply filed by the petitioner, the impugned assessment order dated 27.09.2024 came to be passed by the 2nd respondent. Subsequently, on 26.11.2024, the recovery notice has been issued. On the very same day, another show cause notice in DRC-01 has been issued by the 1st respondent and the assessment order dated 24.02.2025 has been passed by the 1st respondent. For the assessment year 2020-21, two different assessment orders have been passed by the respondents 1 and 2. Further, all the notices and the reminders were uploaded in the GST portal and no physical copy of the notices were served to the petitioner. Since the petitioner had no ocassion to open the GST portal, he was not aware of the proceedings. Even the impugned orders dated 27.09.2024 & 24.02.2025 were also uploaded in the GST portal. He would further submit that the petitioner is ready and willing to pay 25% of the disputed tax demand in respect of the impugned assessment period and prayed to set aside the impugned order directing the respondent to permit the petitioner to file their reply and provide an opportunity of personal hearing so that the petitioner would be able to substantiate their case.

5.Learned Government Advocate appearing for the respondents would submit that as per the voluntary submissions made by the learned counsel for the petitioner, subject to the deposit of 25% of the disputed tax demand by the petitioner in respect of the impugned assessment period, if the Court feels it appropriate and it is a fit case for re-consideration, this Court may consider and pass orders.

6.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the repondents and perused the materials available on record.

7.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 notices were 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 notices were 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 notices.

8.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.

9.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 orders with terms, by issuing the following directions:-

> (i) The orders impugned herein are set aside on condition that the petitioner deposits 25% of the disputed tax amount in respect of the impugned assessment period, as agreed by the petitioner, before the concerned authority, within a period of four weeks from the date of receipt of a copy of this order.
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> (ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(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.

10.With the above directions, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

07-04-2025

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

To:-

1. The Assistant Commissioner (ST),
O/o. The Assistant Commissioner, Palladam-I
Assesement Circle Palladam, Tirupur Zone 3.

2.The Deputy Commercial Tax Officer,
Palladam-I, Tirupur-III,
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KRISHNAN RAMASAMY J.

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