IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.04.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.11667 of 2025
and
W.M.P.Nos.13193, 13195 & 13197 &13198 of 2025

Shahulhameed Ahamed Fazil
No.23/1, 1st Floor, 16th Street Kavery Nagar Colony,
Kodungaiyur, Chennai, T.N. - 600 118.

...Petitioner

Vs.

1. The Assistant Commissioner (ST) (FAC
Kodungaiyur Assessment Circle,
Kodungaiyr Zone II, Chennai,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Chennai – 600 003.

2. The Deputy Commissioner (ST)
O/o the Deputy Commissioner (ST)
GST Appeal, Chennai -I,
Greams Road, 2nd Floor, Room No.210,
Chennai – 600 006.

3. The Branch Manager,
Axis Bank, 82 Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

...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 the records from the file of the Respondents and quash the Impugned Order under section 73 of the Tamil Nadu Goods and Service Tax Act 2017/Central Goods and Service Tax Act 2017 including the Summary of the Order in Form GST DRC-07 both dated 26.06.2023 and having Reference Number ZD330623119792F and its annexure dated 26.06.2023 in GSTIN 33APYPA9122L1ZJ for the year 2021-22 passed by the First Respondent along with the acknowledgement in Form GST APL-02 dated 18.10.2024 issued by the Second Respondent under Rule 108 of Central Goods and Services Tax Rules 2017/ Tamil Nadu Goods and Services Tax Rules 2017 for the FY 2021-22.

For Petitioner : Mr.N.V.Balaji
For Respondents 1 and 2 : Mrs.K.Vasanthamala
Government Advocate (T)

<u>Order</u>

Heard Mr.N.V.Balaji learned counsel appearing for the petitioner and Mrs.K.Vasanthamala, learned Government Advocate (T) who takes notice on behalf of the respondents 1 and 2. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The learned counsel for the petitioner would submit that all the show cause notice/personal hearing notice, which culminated in the impugned orders, were merely uploaded in the GST Portal under the "View Additional Notices Tab", hence, the same were unnoticed by the petitioner, therefore, the petitioner could not file reply nor appear for the personal hearing, however, without hearing the petitioner, the impugned order came to be passed.

3. Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and is liable to be aside, as the petitioner has not been heard before passing the impugned order. Further, it is submitted that the respondent has already paid 22% of the disputed tax subsequent to the passing of the impugned order and is ready and willing to deposit Rs.15,000/-, hence, requested this Court to grant an opportunity to the petitioner to present their case before the respondent by setting aside the impugned order.

4. The learned Government Advocate (T) for the respondents 1 and 2 fairly submitted that since 22% of the disputed tax has already been paid by the petitioner and the petitioner is willing to deposit Rs.15,000/- the prayer sought for by the petitioner may be considered.

5. Taking into consideration of the submissions made on either side and perusal of record, there is no dispute on the aspect that notices, which culminated in the impugned order were merely uploaded in the GST portal, which were unnoticed by the petitioner as the petitioner had no occasion to view the Portal then and there, hence, the petitioner could not file reply or appear for the personal hearing. However, the first respondent passed the impugned orders without even affording any opportunity of hearing to the petitioner, which are nothing but an ex parte order, as the same suffers from violation of principles of natural justice.

6. Thus, once the orders are 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 22% of the disputed tax has already been paid by the petitioner and the petitioner has voluntarily come forward to deposit Rs.15,000/-, this Court is inclined to pass/issue the following orders/directions:-,

i) Impugned Order under section 73 of the Tamil Nadu Goods and Service Tax Act 2017/Central Goods and Service Tax Act 2017 including the Summary of the Order in Form GST DRC-07 both dated 26.06.2023 and its annexure dated 26.06.2023 passed by the First Respondent along with the acknowledgement in Form GST APL-02 dated 18.10.2024 issued by the Second Respondent are set aside.

ii) Consequently, the matter is remanded to the first respondent for fresh consideration.

iii) The petitioner is granted liberty to deposit Rs.15,000/- 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.

iv) Thereafter, the petitioner is directed to file a reply along with supportive documents within a period of two weeks.

v) Thereupon, the first 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.

vi) So far as the bank attachment order is concerned, upon production of proof with regard to the payment of Rs.15,000/- made by the petitioner, the respondent-Department is directed to issue appropriate direction on the petitioner's banker towards de-freezure of the petitioner's bank account forthwith.

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

02.04.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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