IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-04-2025

CORAM

THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 13323 of 2025
AND
WMP NO. 14898 OF 2025, WMP NO. 14900 OF 2025

Tvl.Shri Rajasamy Traders,
Represented by its Proprietor, R Mani
No. 440B/3, Kottappatti village,
Elumichampallam Pochampalli,
Krishnagiri- 635 201.

Petitioner(s)

Vs

Assistant Commissioner (ST)
Krishnagiri-II Assessment Circle,
Commercial Taxes Building, First
Floor,
Krishnagiri- 635 115.

Respondent(s)

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 impugned order of the Respondent passed in GSTIN:33ANIPM1204D1ZP/2019-20 dated 12-08-

2024 and quash the same and issue any other writ or pass.

For Petitioner(s): Ms.A.Divya

For Respondent(s): Mrs.K.Vasanthamala, Government Advocate (tax)

ORDER

The present Writ Petition is filed challenging the impugned order dated 12.08.2024 passed by the respondent, relating to the assessment year 2019-2020.

2. Mrs.K.Vasanthamala, 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 at the time of admission stage itself.

3. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of trading coconut and agricultural products and is a micro sized enterprise (MSME) and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2019-20, the

petitioner had filed its returns and paid the appropriate taxes. However, during the scrutiny of the returns, it was noticed that there was excess claim of ITC on mismatch between GSTR-3B and GSTR-2A.

4. It is submitted by the learned counsel for the petitioner that, a show cause notice in Form DRC-01 dated 28.05.2024 was issued to the petitioner through GST common portal, followed by which, an opportunity of personal hearing was also granted to the petitioner. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies.

5. The learned counsel for the petitioner also submitted that, subsequent to the issuance of recovery notice dated 29.11.2024, the petitioner came to know about the impugned order dated 12.08.2024 passed by the respondent. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Additional Government Pleader 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 12.08.2024 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.

vi) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 25 % of the disputed taxes.

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

17-04-2025

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

Assistant Commissioner (ST)
Krishnagiri II Assessment Circle, Commercial Taxes Building, First Floor,
Krishnagiri- 635 115.

KRISHNAN RAMASAMY J.

jd

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