IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.04.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.15691 of 2025
and
W.M.P.No.17748 & 17752 of 2025

Tvl. Devi Granites
rep. By its Proprietrix,
5 6F-2, Thattan Thottam,
Avinasilingampalayam,
Tiruppur – 641 654. ..Petitioner

Vs.

1. The Assistant Commissioner (ST)
   Avinashi Assessment Circle, Avinashi.

2. The Deputy Commissioner (CT)
   Erode. ..Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorari to call for records relating to the order-in-reference No.ZD331123136516R dated 22.11.2022, along with annexures passed by the first respondent and to quash the same.

For Petitioner : M/s.R.Sri Visvapriya
For Respondents : Ms.P.Selvi
Government Advocate (T)

Order

Heard M/s.R.Sri Visvapriya learned counsel appearing for the petitioner and Ms.P.Selvi, 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 22.11.2023 along with annexures and to quash the same.

3. The learned counsel appearing for the petitioner would submit that the assessment order has been passed by the first respondent is in violation of principles of natural justice, as no personal hearing opportunity has been provided; that though the petitioner challenged the assessment order by way of an Appeal by depositing 10%, the same came to be rejected by the rejected by the second respondent/Appellate Authority, on the ground of 'incomplete application, no grounds of Appeal", hence, having left with no other option, the petitioner has approached this Court, challenging the assessment order dated 22.11.2023. The learned counsel also further submits that the petitioner is also ready and willing to deposit 15% of the disputed tax, in the event, this Court is inclined to set aside the impugned order and remands the matter back to the authority for fresh consideration.

4. The learned Government Advocate (T) for the first respondent fairly submitted that since the petitioner has voluntarily come forward to deposit 15% of the disputed tax, the prayer sought for by the petitioner may be considered.

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 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. 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, confirming the proposals contained in the show cause notice.

6.1 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 notice, 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 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.

6.2 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 already deposited 10% of the tax amount at the time of filing Appeal and has now come forward to deposit 15% of the disputed tax in the event the impugned order is set aside, this Court is inclined to pass the following orders/directions:-

i) The impugned order dated 22.11.2023 passed by the first respondent along with annexures are set aside.

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

iii) The petitioner is granted liberty to deposit 15% 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 14 clear 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, respondent-Department, upon verification of the proof with regard to the payment of 15% of the disputed tax made by the petitioner, is directed to issue appropriate direction on the petitioner's banker towards de-freez ure of the petitioner's bank account forthwith and permit the petitioner to operate the bank account.

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

30.04.2025

sd

Index : yes/no
Neutral Citation : yes/no

To

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   Avinashi Assessment Circle, Avinashi.

2. The Deputy Commissioner (CT)
   Erode.

Krishnan Ramasamy,J.,

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