IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-04-2025

CORAM

THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 13473 of 2025
and
W.M.P.Nos.15119 & 15121 of 2025

Tvl. Sasi Enterprises
Rep. by its Proprietor
R. Panneerselvam,
6/25, Kulathupalayam,
Varapatti, Sulur 641 669.

Petitioner(s)

Vs

The State Tax Officer (FAC)
Office of the Commercial Tax Officer,
Palladam 1 Assessment Circle,
Tiruppur.

Respondent(s)

PRAYER: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records on the files of Respondent in Impugned Order vide GSTIN:33ACYFS0796B1ZS/2019-20 dated 01.08.2024 along with Consequential Order in Form GST DRC-07 bearing Ref No.ZD330824003350Y dated 01.08.2024 for the tax period April, 2019 to March, 2020 and quash the same.

For Petitioner(s): Mr.Vignesh Kumar K

For Respondent(s): Mr.T.N.C.Kaushik, Additional Government Pleader (tax)

ORDER

The present Writ Petition is filed challenging the impugned order dated 01.08.2024 passed by the respondent relating to the tax period April 2019 to March 2020.

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader (tax), who takes notice on behalf of the respondent. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

3. The learned counsel for the petitioner would submit that the petitioner is the assessee on the file of the respondent and is registered under the Tamil

Nadu Goods and Services Tax Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. While so, the petitioner's return was scrutinized under Section 61 of the Act, it was noticed that there was ITC mismatch between GSTR-3B and GSTR-2A.

4. Pursuant thereto, an intimation notice in Form DRC-01A was issued to the petitioner on 20.07.2023, followed by which, a show cause notice in Form DRC-01 was issued to the petitioner on 09.03.2024 through GST common portal. Thereafter, personal hearing opportunity was also granted to the petitioner. However, the petitioner had neither filed any reply nor availed an opportunity of personal hearing. Hence, the impugned order came to be passed, confirming the proposals. 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 submitted that the impugned order is challenged on the premise that neither the show cause notices nor the

impugned order of assessment has been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings.

6. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that he 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.

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 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.

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 order with terms, by issuing the following directions:-

i) The impugned order dated 01.08.2024 is set aside and the matter is remanded to the respondent for fresh consideration.

ii) The petitioner is directed to deposit 25% of the disputed tax, which the petitioner had voluntarily come forward to make such payment, within a period of two weeks from the date of receipt of a copy of this order.

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

iv) 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.

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

17-04-2025

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

To

The State Tax Officer (FAC)
Office of the Commercial Tax Officer,
Palladam 1 Assessment Circle, Tiruppur.

KRISHNAN RAMASAMY J.

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