IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.04.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.15484 of 2025
and
W.M.P.Nos.17488 & 17491 of 2025

M/s. Omkar, rep. by its Proprietor,
Mrs. Gyantidevi ...Petitioner

Vs.

The State Tax Officer
Choolai Assessment Circle, Chennai Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records from the file of the respondent and to quash the impugned assessment order dated 15.11.2024 bearing No.33BEKP G4049E1ZS/2022-23 passed by the respondent as arbitrary.

For Petitioner : Mr.J.Ashish

For Respondent : Mr.V.Prashanth Kiran
Government Advocate (T)

Order

Heard Mr.J.Ashish learned counsel appearing for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (T) 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.

2. The challenge in this Writ Petition is to the order passed by the respondent dated 15.11.2024 and to quash the same.

3. The learned counsel for the petitioner would submit that the show cause notice and three reminder notices have been merely uploaded in the GST portal and not served on the petitioner by any other mode of service, as contemplated under Section 169 of the CGST Act, 2017, and hence, there has been no proper service of show cause notice, but, the impugned assessment order came to be passed against the petitioner, without even affording an opportunity of hearing to the petitioner. Therefore, it is the contention of the learned counsel that the impugned assessment order passed by the respondent suffers from violation of principles of natural justice and is liable to be aside. Further, it is stated by the learned counsel for the petitioner that the respondent, in furtherance of the impugned proceeding, the respondent has already recovered entire disputed tax from the petitioner, and thus, prays for appropriate orders.

4. The learned Government Advocate (T) for the respondent fairly submitted that since entire disputed tax has already been recovered from the the petitioner, subject to the verification of such statement, 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 and three reminder 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 and other allied notices 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 notices, 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 submission made by the petitioner that in furtherance of the impugned proceeding, entire disputed tax has already been recovered from the petitioner, this Court is inclined pass the following orders/directions:-

i) The impugned order dated 15.11.2024 passed by the respondent is set aside.

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

iii) With regard to the payment of 25% of the disputed tax by the petitioner is concerned, it is made clear that, in case, the respondent has already recovered entire disputed tax from the petitioner's bank account, the petitioner need not make any further payment, however, in the event of non-recovery of the disputed tax, the petitioner is directed to deposit 25% of the disputed tax 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.

and

v) Thereupon, the 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.

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

30.04.2025

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Index : yes/no
Neutral Citation : yes/no

To
The State Tax Officer
Choolai Assessment Circle, Chennai

Krishnan Ramasamy,J.,

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