IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.04.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

**W.P.No.15526 of 2025**
**and**
**W.M.P.Nos.17536 & 17537 of 2025**

M/s. Triway Container Freight Station Pvt. Ltd.,
rep. by its Authorized Signatory
Mr.Manimaran. ...Petitioner

Vs.

The Assistant Commissioner (ST)
Muthialpet 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 18.12.2024, bearing No.33AABCT8013A1Z0/2020-21 passed by the respondent.

For Petitioner : Mr.J.Ashish

For Respondent : Ms.P.Selvi
Government Advocate (T)

**<u>Order</u>**

Heard Mr.J.Ashish learned counsel appearing for the petitioner and Ms.P.Selvi, 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 18.12.2024 and to quash the same.

**3.** The learned counsel appearing for the petitioner would submit that a show cause notice dated 15.10.2024 has been issued by the respondent pointing out six defects; that the petitioner, on receipt of the said show cause notice, filed a reply dated 15.11.2024, pursuant to which, demand against five defects have been dropped, but in respect of defect No2, the proposal has been confirmed and the impugned order came to be passed against the petitioner, without even affording an opportunity of personal hearing to the petitioner. Therefore, it is the contention of the learned counsel for the petitioner that the impugned order suffers from violation of principles of natural justice and seeks for setting aside the same.

**4.** The learned Government Advocate (T) for the respondent would submit that the reply filed by the petitioner has been considered, whereby, in respect of six defects pointed out in the show cause notice, the proposals pertaining to five defects have been dropped, but, insofar as defect No.2 is concerned, since the reply is not satisfactory, the demand has been confirmed, however, she fairly submitted that, since, before confirmation of the demand in respect of defect No.2, the petitioner has not been heard, and hence, she sought for remanding the matter back to the respondent for fresh consideration in respect of defect No.2.

**5.** I have given due consideration to the submissions made on either side and perused the materials available on record.

**6.** Admittedly, in the present case on hand, a show cause notice has been issued to the petitioner pointing out six defects, out of which, five defects have been dropped based on the reply filed by the petitioner. However, in respect of one defect, viz., defect No.2, the respondent has proceeded to confirm the proposals and raised the impugned demand. This

Court would like to point out that, when the respondent, after taking into consideration of the reply file by the petitioner, dropped five defects, and in respect of defect No.2 he is not convinced with the explanation/reply offered by the petitioner in their reply, the respondent ought to have heard the petitioner in respect of one defect, by affording an opportunity of hearing to the petitioner before making such confirmation. Had the petitioner has been afforded with such opportunity, perhaps, the petitioner might have convinced the respondent in respect of defect No.2 as well, resulting in dropping of all proceedings. However, the respondent failed to do so and straightaway proceeded to confirm the demand in respect of defect No.2.

**6.1** Therefore, as rightly pointed out by the learned counsel for the petitioner, the impugned order is in violation of principles of natural justice and also against the provisions of Section 75 (4) of the TNGST Act, inasmuch as, in terms of Section 75 (4) an opportunity of hearing ought to have been granted, where any adverse decision is contemplated against taxpayer (petitioner in this case).

**6.2** Therefore, this Court is inclined to set aside the impugned order. Accordingly, this Court pass the following order/direction:-

i) The impugned order passed by the respondent dated 18.12.2024 in respect of defect No.2, pertaining to the issue of excess availment of ITC alone is set aside and insofar as the impugned order concerning other issues are concerned, the same stands confirmed.

ii) The respondent is directed to issue a 7 clear days notice affording an opportunity of personal hearing to the petitioner and thereafter, 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.

**29.04.2025**

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Index : yes/no

To
The Assistant Commissioner (ST)
Muthialpet Assessment Circle, Chennai.

**Krishnan Ramasamy,J.,**

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**29.04.2025**