IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.04.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.14513 of 2025
and
W.M.P.Nos.16397 & 16400 of 2025

M/s Saai Agencies
Rep by its Proprietrix Mrs.R.Sujatha
No. 227/212 Thambi Chetty Street
Mannady Chennai 600 001.

...Petitioner

Vs

The State Tax Officer
Habour Assessment Circle
Integrated Commercial Taxes office Complex
Room No.312 3rd Floor Elephant Gate bridge Road
Vepery Chennai- 03. ...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 of the respondent in DRC-01 dated 26/09/2023 and the consequential order in GSTIN/33CGJPS5681L1ZP/2017-18 dated 26/12/2023 and quash the same and further direct the respondent to verify the GST portal relating to the reversal of the Input tax credit recorded in the Electronic credit ledger in July 2018 itself even before the issuance of Show cause notice in DRC-01 dated 26/09/2023 and thereafter, to take action in accordance with the provisions of the Goods and Service Tax Act 2017 and pass

For Petitioner : Mr.V.Sundareswaran

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

Order

Heard Mr.V.Sundareswaran 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 show cause notice issued by the respondent in DRC-01 dated 26/09/2023 and the consequential order dated 26/12/2023 and to quash the same.

3. The learned counsel for the petitioner would submit that a show cause notice and other allied communications were uploaded on the GST on-line portal, but the petitioner was unaware of the said notices, as the same was handled by their Consultant, who had quit the job, and hence, the petitioner failed to file reply to such show cause notice and failed to appear, however, the respondent, without even affording an opportunity of hearing to the petitioner, passed the impugned order confirming the proposals contained in the show cause notice and uploaded the said order on the Gst On-line Portal, which even was unknown to the petitioner and only when the respondent informed the petitioner about the impugned proceeding, the petitioner came to know of the impugned proceedings and challenging the same, the present Writ Petition is filed.

3.1 Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and is liable to be aside. However, it is stated that the petitioner is also ready and willing to deposit 25% 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, and thus, prays for appropriate orders.

4. The learned Government Advocate (T) for the respondent fairly submitted that since the petitioner has voluntarily come forward to deposit

25% of the disputed tax, the prayer sought for by the petitioner may be considered.

5. 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, as the Consultant who used to file GST returns, quit the job. 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.

6. 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.

6.1 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 come forward to deposit 25% of the disputed tax in the event the impugned order is set aside, this Court is inclined to pass/issue the following orders/directions:-

i) The impugned show cause notice issued by the respondent in

DRC-01 dated 26/09/2023 and the consequential order dated 26/12/2023 are 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 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.

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.

24.04.2025

Index : yes/no

Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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