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

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.15545 of 2025
and
W.M.P.Nos.17565 & 17568 of 2025

M/s. SSS Enterprises
rep. By its Proprietor, Mr.Soundarapandi. ...Petitioner

Vs.

The Deputy Commercial Tax Officer
Vanagaram Assessment Circle,
Poonamallee Zone, Chennai. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records from the file of the respondent and to quash the impugned assessment order dated 19.08.2024 bearing No.33ATUPM5805C1Z0/2019-20 passed by the respondent as arbitrary.

For Petitioner : Mr.J.Ashish

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

Order

Heard Mr.J.Ashish learned counsel appearing for the petitioner and Mr.T.N.C.Kaushik, learned Additional Government Pleader (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 19.08.2024 and to quash the same.

3. The learned counsel for the petitioner would submit that the show cause notice and the reminder notices were uploaded in the GST notices tab, which were unknown to the petitioner until 20.03.2025, only when the respondent-GST officials informed the petitioner about the impugned proceeding, the petitioner came to know of the impugned order dated 19.08.2024. Therefore, it is contended that the act of non-responding to the show cause notice and not participating in the assessment proceedings is neither wilful not wanton, but, purely owing to the fact that the petitioner was totally not aware of those notices, however, the respondent, without even affording of an opportunity of personal hearing, passed the impugned order.

3.1 Hence, the learned counsel for the petitioner contended that the impugned assessment order passed by the respondent suffers from violation of principles of natural justice and is liable to be aside. However, it is stated by the learned counsel for the petitioner that the petitioner is also ready and willing to pay 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 Additional Government Pleader (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. 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 allied reminders 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 the reminder notices, which were 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 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 order passed by the respondent dated 19.08.2024 is 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.

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.

29.04.2025

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To

The Deputy Commercial Tax Officer
Vanagaram Assessment Circle,
Poonamallee Zone, Chennai.

Krishnan Ramasamy,J.,

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W.P.No.15545 of 2025

29.04.2025