IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.06.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.16985 of 2025
and
W.M.P.Nos.19282 & 19284 of 2025

SRM CONSTRUCTION
Represented by its Partner Mr. Pravesh Krishna
Previously Residing at 106 Periyar Nagar
Erode, Erode, Tamil Nadu 638001. ...Petitioner

Vs.

1 The ADDITIONAL COMMISSIONER, SALEM
BROUGH ROAD ERODE, ERODE TAMIL NADU.

2 The COMMISSIONER OF GST & CENTRAL EXCISE
MHU NO.692 Chennai South Commissionerate
MHU Complex, No. 692, 5th Floor
Anna Salai, Nandanam, Chennai-600 035. ...Respondents

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 on the file of the 1st Respondent and impugned order in Reference No. ZD330225049812K dated 05.02.2025 passed by the 1st Respondent under Section 74 of the CGST Act 2017 for the period 2017-2018 and quash the same as illegal and not in accordance with law and consequently direct the Respondent to conduct fresh assessment proceedings after providing a reasonable opportunity of hearing to the Petitioner in accordance with law

For Petitioner : Mr.S.Gautam Venkata Narayanan

For Respondents : Mr.S.M.Deenadayalan
Senior Standing Counsel

Order

Heard Mr.S.Gautam Venkata Narayanan learned counsel appearing for the petitioner and Mr.S.M.Deenadayalan, learned Senior Standing Counsel, who takes notice on behalf of the respondents. 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 first respondent dated 05.02.2025 under Section 74 of the CGST Act 2017 for the period 2017-2018 and to quash the same.

3. The learned counsel for the petitioner would submit that the show cause notice and allied hearing letters were uploaded in the GST common portal under the 'Additional Notices and Orders" tab, which were unknown to the petitioner, therefore, the petitioner could not file reply and appear for the personal hearing. 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 first 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 first 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 ready and willing to pay 10% 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 Senior Standing Counsel for the respondent fairly submitted that since the petitioner has voluntarily come forward to deposit 10% of the disputed tax, the prayer sought for by them 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 and personal hearing notices were uploaded in the GST common Portal Tab under the head, "Additional Notices and Orders. According to the petitioner, the petitioner was not aware of the issuance of those notices. 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, which is nothing but an exparte order.

5.1 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, 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. 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 10% of the disputed tax in the event the impugned order is set aside, to which course, the learned Senior Standing Counsel for the respondent is also agreable, this Court is inclined to pass/issue the following orders/directions:-

i) The impugned order passed by the first respondent dated 05.02.2025 is set aside.

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

iii) The petitioner is granted liberty to deposit 10% 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 first 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.

03.06.2025

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To

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Krishnan Ramasamy,J.,

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