IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-06-2025

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THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 16667 of 2025
AND
WMP NO. 18852 OF 2025,WMP NO. 18864 OF 2025,WMP NO. 18866 OF 2025,WP NO. 16678 OF 2025

Tvl. Neka Sri Coir Suppliers,
(Rep, by its Proprietor R.Senthilmurugan)
7/557/ 55, Malaiyanu kadu, T.konagapadi,
Salem 636502.

Petitioner in both W.Ps

Vs

1.The Deputy State Tax Officer-1 (ST) (FAC),
Omalur Assessment Circle.

2.Deputy Commissioner (CT),
on behalf of Appellate Authority,
Commercial Tax Building, Salem 636007.

Respondents in both W.Ps

PRAYER in WP No. 16667 of 2025:-Writ Petition filed under Section 226 of the Constitution of India, praying for an issuance of Writ of Certiorari,calling for the records on the files of the 2nd Respondent, FORM GST APL-02 herein

Reference. No ZD3302252739829 in connection with GSTIN 33DSXPS6887M1Z9 dated 26.02.2025, passed by the 2nd respondent herein and to quash the same.

PRAYER in WP No. 16678 of 2025:-Writ Petition filed under Section 226 of the Constitution of India, praying for an issuance of Writ of Certiorari, calling for the records on the files of the 1st respondent herein in FORM GST DRC-07 with Reference No. ZD331022040837Q dated 29.10.2022 along with detailed proceeding in GSTIN 33DSXP56887M1Z9 dated 27.10.2022 for the tax period 2018-19, and to quash the same.

In both W.Ps

For Petitioner(s): Mr.N.Chandirasekar

For Respondent(s): Mrs.K.Vasanthamala,
Government Advocate (t)

COMMON ORDER

W.P.No.16667 of 2025 has been filed by the petitioner challenging the order dated 26.02.2025 passed by the 2nd respondent in Form GST APL-02 with Reference No.ZD3302252739829 in connection with GSTIN 33DSXPS6887M1Z9.

W.P.No.16678 of 2025 has been filed by the petitioner challenging the impugned assessment order dated 29.10.2022 passed by the 1st respondent in Form GST DRC-07 with Reference No. ZD331022040837Q relating to the assessment year 2018-19.

2.Mrs.K.Vasanthamala, learned Government Advocate (Taxes), takes notice on behalf of the respondents.

3.By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4.Learned counsel appearing for the petitioner would submit that, in the present case, the petitioner have not received any physical copy of the show cause notice and also personal hearing notice. The show cause notice dated 20.07.2022 was uploaded in the GST Portal tab in view additional notices column and the petitioner had no ocassion to open the GST Portal. Even the impugned order dated 29.10.2022 was also uploaded in the view additional notices column, which is violation of principle of natural justice. He would further submit that the petitioner after knowing about the impugned assessment order being passed by the 1st respondent, had preferred an appeal before the 2nd respondent by paying 10% statutory deposit of the disputed tax demand. However, the appeal got rejected on the ground of limitation vide order dated 26.02.2025. Hence, the petitioner is ready and willing to pay another 15% of the disputed tax demand in respect of the impugned assessment period and prayed to set aside the impugned orders directing the 1st respondent to permit the petitioner to file their reply and provide an opportunity of personal hearing so that the petitioner would be able to substantiate their case.

5.Learned Government Advocate appearing for the respondents would submit that as per the voluntary submissions made by the learned counsel for the petitioner, subject to the deposit of 15% of the disputed tax demand in addition to the 10% depsoite already being made by the petitioner in respect of the impugned assessment period, if the Court feels it appropriate and it is a fit case for re-consideration, this Court may consider and pass orders.

6.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

7.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 and the original of the said show cause notice was not furnished to them. 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.

8.No doubt sending notice by uploading in portal is a sufficient service, but, the Officer who is sending the repeated reminders, inspite of the fact that no response from the petitioner to the show cause notices etc., the Officer 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 it will not 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 will only 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.

9.Thus, in such circumstances, this Court is of the view that the impugned order dated 29.10.2022 came to be passed without affording opportunity of personal hearing to the petitioner to establish their case, thereby violating the principles of natural justice and that it is just and necessary to provide an opportunity to the petitioner to establish their case on merits and in accordance with law.

10.For the reasons stated above, this Court is inclined to set aside the impugned assessment order dated 29.10.2022 passed by the 1st respondent and the impugned rejection order dated 26.02.2025 passed by the 2nd respondent. Accordingly, this Court passes the following order:-

(i) The orders impugned herein are set aside on condition that the petitioner deposits 15% of the disputed tax amount in respect of the impugned assessment period in addition to the 10% statutory deposit already made, as agreed by the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the 1st respondent shall consider the same and issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

11.With the above directions, these writ petitions are disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

03-06-2025

rst

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

1.The Deputy State Tax Officer-1 (ST) (FAC)
Omalur Assessment Circle.

2.Deputy Commissioner CT
on behalf of Appellate Authority,
Commercial Tax Building,
Salem 636 007.

KRISHNAN RAMASAMY J.

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