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

W.P.No.16940 of 2025
and
W.M.P.Nos.19233 & 19234 of 2025

TVL Dineshkrishna Construction
REP BY ITS PROP,
No.5/73-A Salai Street,
Agarathirumangalam,
Poonthottam – 609 503, Thiruvarur District. ...Petitioner

Vs.

The Deputy State Tax Officer
Nannilam ASSESSMENT CIRCLE, Nannilam. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of CERTIORARI calling for the records pertaining to the impugned order passed by the respondent in FORM GSTIN : 33AEHPC7447Q2Z2/2021-22 dated 07.10.2024 and to quash the same.

For Petitioner : M/s.D.Kaladevi

For Respondent : Ms..Amirta Poonkodi Dinakaran
Government Advocate (T)

Order

Heard M/s.D.Kaladevi, learned counsel appearing for the petitioner and Ms..Amirta Poonkodi Dinakaran, 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 07.10.2024 and to quash the same.

3. The learned counsel appearing for the petitioner would submit that all the show cause notice and notice for personal hearing were not served on the petitioner either physically, through registered post or through e-mail of the petitioner, instead, the respondent has chosen to upload the same through the common GST portal under the column, "View Additional Notices', which were unnoticed by the petitioner and that even the GST Practitioner engaged by the petitioner also failed inform the petitioner about those notices, and hence, the petitioner, who was not aware of those notices has not filed reply or appeared before the respondent, however, the respondent, without even affording an opportunity of hearing to the petitioner, passed the impugned order.

3.1 Therefore, it is submitted 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 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 concerned for fresh consideration and thus, prays for appropriate orders.

4. The learned Government Advocate (T) for the respondent-Department 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 show cause notice and notice for personal hearing were not served on the petitioner either physically, through registered post or through petitioner's e-mail address, instead, the notices were uploaded through the common GST portal under the column, "View Additional Notices'. According to the petitioner, the petitioner was not aware of the issuance of the show cause notice through the GST Portal nor their GST practitioner informed the petitioner about those notices. 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.

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 notice, 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 now come forward to deposit 25% of the disputed tax in the event the impugned order is set aside, to which course, the learned Government Advocate for the respondent is also agreable, this Court is inclined to pass /issue the following orders/directions:-

i) The impugned order passed by the respondent dated 07.10.2024 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 Petition are closed.

03.06.2025

sd
Index : yes/no
Neutral Citation : yes/no

To

The Deputy State Tax Officer
Nannilam ASSESSMENT CIRCLE, Nannilam.

Krishnan Ramasamy,J.,

sd

W.P.No.16940 of 2025

03.06.2025