IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2025

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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.15866 of 2025
and
W.M.P.Nos.17947 & 17951 of 2025

Velavan Associates
Represented by its Managing Partner,
Mr.Rubesh P,
225/3, Kumarapalayam, Thonguttipalayam Post,
Tiruppur, Tamil Nadu- 641 665. ...Petitioner

Vs.

1. The Deputy State Tax Officer-2,
   Anupparpalayam Assessment Circle,
   Tirupur-1.

2. The Branch Manager,
   HDFC Bank
   No.20, Ground Floor,
   Avinashi Road, Anupparpalayam
   Tiruppur-641 652. ...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 the records leading to issuance of assessment order bearing reference number

33ANFV1037F1ZC/2019-20 dated 24.08.2024 by the First Respondent herein and quash the same, and further direct the First Respondent to lift the bank attachment made to the petitioner's bank account lying with the Second respondent bank bearing reference No.33AANFV1037F1ZC/2024-2025 dated 19.12.2024.

For Petitioner : Ms.Sri Harshini S P

For Respondent : Ms.P.Selvi (R1)
Government Advocate (Taxes)

Order

Ms.P.Selvi, learned Government Advocate (Taxes), takes notice on behalf of the first 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 dated 24.08.2024 passed by the first respondent for the AY 2019-20 and to quash the same and also for a consequential direction to the the First Respondent to lift the bank attachment made to the petitioner's bank account lying with the Second respondent bank bearing reference No.33AANFV1037F1ZC/2024-2025 dated 19.12.2024.

3. The learned counsel for the petitioner would submit that the first respondent has issued a show cause notice followed by reminder notice on 25.05.2024 and 20.08.2024 respectively to the petitioner, unfortunately, the Auditor, who was engaged by the petitioner for filing returns, failed to intimate the petitioner about the aforesaid notices. Therefore, the petitioner was not aware of those notices and filed to file its reply. Since the petitioner failed to file reply to the said show cause notice, the first respondent has confirmed the proposals contained in the show cause notice and passed the present impugned order. Therefore, the learned counsel would submit that the impugned order suffers from violation of principles of natural justice and is liable to be aside, as the petitioner has not been heard before passing the impugned order.

3.1. It is also submitted by the learned counsel for the petitioner that the petitioner is ready and willing to deposit 25% of the disputed tax, in the event, this Court is inclined to set aside the impugned order and remand the matter back to the Authority for fresh consideration. He would further submit that there is bank attachment and the same may be lifted, subject to the payment of 25% of the disputed tax. Hence, he prayed for appropriate directions.

4. The learned Government Advocate (Taxes) for the first 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 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.

6. 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.

7. Therefore, this Court finds that there is a lack of opportunities being provided to serve the notices/orders etc., effectively to the petitioner. Hence, this Court is inclined to set-aside the impugned order with terms, by issuing the following directions:-

i) The impugned order passed by the first respondent dated 24.08.2024 is set aside.

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

iii) The petitioner is granted liberty to deposit 25% of the disputed tax, which the petitioner themselves had 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 first respondent is directed to consider the reply and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner and shall decide the matter in accordance with law.

vi) Upon production of proof with regard to the payment of 25% of the disputed tax made by the petitioner, the second-respondent bank is directed to de-freezure of the petitioner's bank account forthwith.

8. With the above observations & directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

30.04.2025

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Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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