IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-04-2025

CORAM

THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP Nos. 15377 & 15380 of 2025
AND
WMP Nos. 17392, 17393, & 17395 of 2025

Tvl. V.K.R Gas Agencies
Represented by its Proprietor,
Smt. Vairaperumal Gomathy,
27, K S Complex Main Road,
Andagalur Gate PO Rasipuram TK,
Namakkal Dt, Tamil Nadu 637 401.

Petitioner(s) in both W.P's

Vs

1 The State Tax Officer,
Rasipuram Circle, Namakkal District,
Tamil Nadu.

Respondent in both W.P's

2.The Deputy Commissioner (CT) Appeals,
Salem, Tamil Nadu.

Respondent No.2 in
W.P.No.15380 of 2025

PRAYER in W.P.No.15377 of 2025: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari, calling for the records on the files of the Respondent herein in the proceedings in FORM GST DRC-07 vide Reference No. ZD330824241635C dated 27.08.2024 along with detailed order in dated 27.08.2024 for the tax period APR 2019 - MARCH 20 and quash the same.

PRAYER in WP No. 15380 of 2025: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records on the files of the 2nd Respondent herein in FORM GST APL-02 dated 29.03.2025 vide Reference No.ZD330325255263N, quash the same while directing the 2nd Respondent herein to re-dispose the appeal filed by the Petitioners on 25.03.2025 vide Form GST APL-01 in Case ID No: AD330325148992X.

For Petitioner(s): Mr.B.Syed Abdul
For Mr.K.A Parthasarathy

For Respondent(s): Ms.Amirtapoonkodi Dinakaran,
Government Advocate (tax)

COMMON ORDER

Since the issue involved in both these Writ Petitions is one and the same, the same were heard together and disposed of vide this common order.

2. Challenging the orders dated 27.08.2024 passed by the State Tax Officer, the petitioner has filed W.P.No.15377 of 2025. Assailing the order of

the Appellate Authority dated 29.03.2025, rejecting the appeal filed by the petitioner challenging the order dated 27.08.2024, on the ground that the delay in filing the appeal, the petitioner had filed W.P.No.15380 of 2025.

3. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of retail trade in LPG domestic cylinder and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2019-20, the petitioner filed its returns and paid the appropriate taxes. However, on scrutiny of the returns filed by the petitioner, the following discrepancies were noticed:

(i) Under declaration of output tax

(ii) Excess claim of ITC

Pursuant thereto, a show cause notice in Form DRC-01 dated 18.05.2024 was issued to the petitioner through GST common portal. Thereafter, three reminder notices were issued mentioning the date of personal hearing opportunity to the petitioner. Since, the petitioner had not responded to any of the above notices/intimation, the impugned order dated 27.08.2024 was thus passed confirming the proposal. It is submitted by the learned counsel for the petitioner that neither the show cause notice nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded under the head “view additional notices and orders” tab on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings.

4. Being aggrieved over the order dated 27.08.2024, the petitioner has filed rectification application dated 07.11.2024 and the same was rejected. Thereafter, the petitioner had preferred an appeal before the Appellate Authority/Deputy Commissioner (CT) Appeals along with relevant documents with condonation of delay petition. The Appellate Authority rejected the appeal on 29.03.2025 for the reason that the appeal was filed belatedly, that too without taking into consideration of the rectification application was filed within the prescribed time limit. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies.

5. It was further submitted that the petitioner is ready and willing to pay 15% of the disputed tax over and above the statutory deposit of 10% of the disputed tax already paid by the petitioner by way of pre-deposit at the time of filing an appeal. It is also submitted that the petitioner may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

6. Considering the submissions made by the learned counsel on either side and taking into consideration the undertaking given by the petitioner that the petitioner is ready and willing to deposit 15% of the disputed tax over and above the statutory deposit of 10% of the disputed tax already paid, this Court passes the following orders:

> (i) The impugned order dated 27.08.2024 is set aside and the matter is remanded to the Authority concerned for fresh consideration on condition that the petitioner shall pay 15% of the disputed tax over and above the

statutory deposit of 10% of the disputed tax already paid by way of pre-deposit at the time of filing the appeal in respect of the impugned assessment period, within a period of two weeks from the date of receipt of a copy of this order; and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(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 Authority concerned shall consider the same and issue a 14 days clear notice by fixing the date for 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.

7. In view of the above order, the order under challenge in W.P.No.15380 of 2025 is set aside.

8. Accordingly, the W.P.No.15377 of 2025 is disposed of in aforesaid terms and W.P.No.15380 of 2025 is allowed. No costs. Consequently, connected Miscellaneous Petitions are allowed.

29-04-2025

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

To

1 The State Tax officer,
Rasipuram Circle, Namakkal District, Tamil Nadu.

2.The Deputy Commissioner (CT),
Salem, Tamil Nadu.

KRISHNAN RAMASAMY J.

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