IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2025

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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.16613 of 2025
and
W.M.P.Nos.18780 & 18784 of 2025

M/S.Narayanasamy Chandrasekaran
Rep by its proprietor
Mr.N.Chandrasekaran
41 Anna Nagar, Dharapuram, Tiruppur,
Tamil Nadu-638 656. ...Petitioner

Vs

1 The Deputy Commissioner (ST)
GST APPELLATE AUTHORITY, ERODE.

2 The State Tax Officer (FAC)
Dharapuram Assessment Circle Dharapuram

3 The Commercial Tax Officer
Dharapuram Tiruppur-III Tiruppur

4 The Branch Manager
Central Bank of India
256 Amman Complex Pollachi Road
Dharapuram 638 656. ...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 with respect to the Impugned Order passed by the 3rd Respondent vide Ref.No.ZD331223271343S dated 30.12.2023 under FORM GST DRC-07 and also the Proceedings of the 2nd Respondent vide GSTIN .33ACLPC3092K1ZM/2017-2018 dated 29.12.2023 and also the Order of Rejection of Appeal passed by the 1st Respondent under FORM GST APL-02 in ARN # AD330424043781A dated 23.03.2025 and quash the same and consequently direct the 4th Respondent to de-freeze the petitioner Bank Account 3097340737.

For Petitioner : M/s. Gayathri Vasudevan

For Respondents1 to 3 : Mr.T.N.C.Kaushik
Additional Government Pleader (T)

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Order

Heard M/s. Gayathri Vasudevan learned counsel appearing for the petitioner and Mr.T.N.C.Kaushik, learned Additional Government Pleader (T) who takes notice on behalf of the respondent-Department. 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 3rd Respondent dated 30.12.2023 and also the Proceedings of the 2nd Respondent dated 29.12.2023 and also the Order of Rejection of Appeal passed by the 1st Respondent dated 23.03.2025 and quash the same and consequently, direct the 4th Respondent to de-freeze the petitioner Bank Account.

3. The learned counsel for the petitioner would submit that the show cause notice was merely uploaded in the GST portal and not served on the petitioner by any other mode of service, therefore, there has been no proper service of show cause notice, and hence, the petitioner could not file reply and appear for the personal, however, without even affording an opportunity of hearing, the respondent-Department passed the impugned order. Further, it is contended that only when the Official from the respondent-Department handed over the proceeding of the second respondent, the petitioner was aware of the assessment order passed by the respondent-Department and on coming to know of the impugned order took steps to file an Appeal by depositing 10% of the disputed tax, however, since the said Appeal has been filed beyond the statutory period, the same has not been entertained. Therefore, it is submitted the impugned assessment order passed by the respondent-Department 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 also ready and willing to pay 15% of the disputed tax, in the event, this Court is inclined to set aside the impugned orders and remands the matter back to the Authority concerned for fresh consideration and thus, prays for appropriate orders.

4. The learned Additional Government Pleader (T) for the respondent-Department fairly submitted that since the petitioner has voluntarily come forward to deposit 15% of the disputed tax, the prayer sought for by the petitioner may be considered.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. 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 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. Further, the original of the said show cause notice was not furnished to the petitioner. 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.

6.1 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, instead of sending repeated reminders, 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.

6.2 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 already deposited 10% of the tax amount at the time of filing Appeal and has now come forward to deposit 15% of the disputed tax in the event the impugned order is set aside, to which course, the learned Additional Government Pleader is also agreable, this Court is inclined to pass the following orders/directions:-

i) The impugned order passed by the third respondent dated 30.12.2023 and also the proceedings of the 2nd Respondent dated 29.12.2023 and also the Order of Rejection of Appeal passed by the 1st Respondent dated 23.03.2025 are set aside.

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

iii) The petitioner is granted liberty to deposit 15% 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 second 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.

vi) So far as the bank attachment order is concerned, respondent-Department, upon verification of the proof with regard to the payment of

15% made by the petitioner, is directed to issue appropriate direction on the petitioner's banker towards de-freezure of the petitioner's bank account forthwith and permit the petitioner to operate the bank account.

7. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition are closed.

02.06.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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