IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.06.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.16720 of 2025
and
W.M.P.Nos.18938 & 18946 of 2025

SRI BALAJI TRAVELS
Represented by its Partner Mr.D.Srinivasan
Plot No.4 Sri Balamurugan Nagar Part IV
Thiruninravur,Tiruvallur 602 204. ...Petitioner

Vs.

THE ASSISTANT COMMISSIONER (ST) (FAC)
AVADI ASSESSMENT CIRCLE
INTEGRATED COMMERCIAL TAXES BUILDING
(THIRUVALLUR DIVISION)
FIRST FLOOR, ROOM NO. 124
ELEPHANT GATE BRIDGE Road,
VEPERY, CHENNAI – 600 003. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records from the file of Respondent in impugned assessment order in Reference No.ZD330824220692H in GSTIN/ID : 33ACPFS3511D2ZD dated 24.08.2024 passed for the F.Y.2019-20 and to quash the same as illegal arbitrary and violative of principles of natural justice.

For Petitioner : Mr.R.Ananth
For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (T)

Order

Heard Mr.R.Ananth 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. 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 24.08.2024 for the F.Y.2019-20 and to quash the same.

3. The learned counsel for the petitioner would submit that the petitioner has entrusted the GST related matters, including the filing of returns, and responding to the notices and communications to a part-time GST Consultant, however, the Consultant failed to submit a reply to the show cause notice issued by the respondent, and therefore, it is contended that the act of non-responding to the show cause notice and not participating in the assessment proceedings is neither wilful not wanton, but, purely owing to the fact that the petitioner was totally not aware of those notice, however, the respondent, without even affording of an opportunity of personal hearing, passed the impugned order.

3.1 Hence, the learned counsel for the petitioner contended that 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 for fresh consideration and thus, prays for appropriate orders.

4. The learned Additional Government Pleader (T) for the 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 in the GST common Portal Tab. According to the petitioner, the petitioner was not aware of the issuance of the show cause notice and the petitioner became aware of the impugned order only after he received a telephonic communication from the respondent on 24.03.2025 Further, the original of the said show cause notice was not furnished to the petitioner in person. 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 finds no response from the petitioner to the show cause notices, 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 come forward to deposit 25% of the disputed tax in the event the impugned order is set aside, to which course, the learned Additional Government Pleader (T) is also agreable, this Court is inclined to pass/issue the following orders/directions:-

i) The impugned order passed by the respondent dated 24.08.2024 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.

and

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 Petitions 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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