IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2025

Coram:
The Honourable Mr.Justice KRISHNAN RAMASAMY

W.P.No.20509 of 2025
and W.M.P.Nos.23156 & 23157 of 2025

Tvl.Vels Film International,
5/109 D, Bharathi Avenue,
Injambakkam, Kancheepuram,
Tamil Nadu – 600 115.

...Petitioner

Versus

Deputy Commercial Tax Officer (ST),
Shollinganallur Assessment Circle,
Room No.241, 2nd Floor,
Integrated Commercial Taxes
and Registration Department (South Tower),
Nandanam,
Chennai – 600 035.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to calling for the records relating to the impugned order bearing No.GSTIN/33AAAPI4538D1Z9/2018-19 dated 29.04.2024 passed by the Respondent and quash the same as the same being arbitrary, passed in violation of the principles of natural justice.

For Petitioner	:	Mr.G.Natarajan
For Respondent	:	Mrs.K.Vasanthamala, Government Advocate (Tax)

ORDER

Mrs.K.Vasanthamala, learned Government Advocate (Tax) takes notice for the respondent.

2. With the consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

3. The present writ petition has been filed by the petitioner seeking to quash the Order dated 29.04.2024 bearing No.GSTIN/33AAAPI4538D1Z9/2018-19 passed by the Respondent.

4. The case of the petitioner is that the petitioner is engaged in the business of film production under the name and style of Tvl.Vels Film International. On scrutinization of the annual returns filed by the petitioner in GSTR 09 for the Financial Year 2018-19 as well as the information furnished by the petitioner in GSTR 01, GSTR 2A, GSTR 3B, EWD, it was found that the petitioner did not declare their correct tax liability while

filing the annual returns of GSTR 09. Hence, the respondent had issued a Show Cause Notice in Form DRC-01 dated 27.12.2023 bearing Ref.ID: ZD331223215050B calling upon the petitioner to submit their objections in DRC-06, within 30 days from the date of receipt of that notice. However, the said Show Cause Notice was only uploaded in the GST Portal Tab "View Additional Notices and Order" and the same was not served to the petitioner through physical mode. Since the petitioner was not aware of the Show Cause Notice, the petitioner could not file any reply to the Show Cause Notice. In this background, without hearing the petitioner, the respondent has passed the Order dated 29.04.2024 bearing No.GSTIN/33AAAPI4538D1Z9/2018-19, confirming the proposed demands in the Show Cause Notice. Aggrieved over the same, the petitioner has filed this writ petition for the relief stated *supra*.

5. The learned counsel for the petitioner submitted that the Show Cause Notice dated 27.12.2023 which culminated in the impugned Order was merely uploaded in the GST Portal Tab, "View Additional Notices and Order" and was not served to the petitioner through any other physical mode and hence, the petitioner could not file any reply to the said notice. Since

no reply was filed by the petitioner, the impugned order came to be passed by the respondent. Therefore, it is submitted that the impugned order suffers from violation of the principles of natural justice and is liable to be aside.

5.1. It is further submitted by the learned counsel for the petitioner that the respondent failed to note that for the very same Financial Year 2018-19, the Assistant Commissioner (ST), Sholinganallur Assessment Circle had issued a Show Cause Notice dated 31.01.2024 to the petitioner stating that difference in Input Tax Credit (ITC) availed in GSTR 3B vs. GSTR 2A, in response to which, the petitioner filed their Reply dated 24.04.2024 explaining that instead of paying the tax amount under CGST & SGST, they have paid the tax amount under IGST and hence, there was difference in ITC availed in GSTR 3B vs. GSTR 2A. However, without considering the petitioner's reply, the Assistant Commissioner (ST), Shollinganallur Assessment Circle vide Adjudication Order dated 26.04.2024, confirmed the demand proposed in Show Cause Notice dated 31.01.2024.

5.2. The learned counsel for the petitioner also submitted that the petitioner filed an Application dated 26.06.2024, for rectification of mistake in the Adjudication Order dated 26.04.2024. It is submitted that the Assistant Commissioner (ST), Shollinganallur Assessment Circle vide Order dated 30.07.2024, rectified the mistake in the Adjudication Order dated 26.04.2024 and reduced the demand raised against the petitioner. Therefore, it is submitted that the impugned order passed by the respondent suffers from non-application of mind since the Show Cause Notice dated 31.01.2024 which culminated in the order dated 30.07.2024 and the Show Cause Notice dated 27.12.2023 which culminated in the impugned order dated 29.04.2024 were issued for the same Financial Year 2018-19 and for the very same reason.

6. The learned Government Advocate (Tax) for the respondent prayed that the impugned order may be quashed and the matter may be remanded back to the respondent for reconsideration.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Tax) for the respondent.

8. From a perusal of the materials available on record, it is seen that the Show Cause Notice dated 27.12.2023 which culminated in the impugned order dated 29.04.2024 was merely uploaded in the GST Portal and the same was not served to the petitioner through any other physical mode. Since the petitioner was not aware of the show cause notice uploaded in the GST Portal, the petitioner could not reply to the show cause notice.

9. It is also seen that after the issuance of Show Cause Notice dated 27.12.2023, the Assistant Commissioner (ST), Sholinganallur Assessment Circle had issued a Show Cause Notice dated 31.01.2024 to the petitioner stating that difference in Input Tax Credit (ITC) availed in GSTR 3B vs. GSTR 2A, to which, the petitioner filed their Reply dated 24.04.2024 explaining that the difference between GSTR 2A and GSTR 3B is due to the payment of GST in IGST instead of CGST and SGST, but, without considering the same, the Assistant Commissioner (ST), Shollinganallur Assessment Circle vide Adjudication Order dated 26.04.2024, confirmed the demand proposed in Show Cause Notice dated 31.01.2024. Aggrieved over the same, the petitioner filed an Application dated 26.06.2024, seeking

to rectify the mistake in the Adjudication Order dated 26.04.2024. Thereafter, the Assistant Commissioner (ST), Shollinganallur Assessment Circle vide Order dated 30.07.2024, rectified the mistake in the Adjudication Order dated 26.04.2024 and reduced the demand raised against the petitioner. Under such circumstances, without even affording an opportunity of hearing to the petitioner to put forth their case, the respondent has passed the impugned order.

10. No doubt, sending notice by uploading in GST 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 Central Goods and Service Tax Act, 2017 (for brevity, "CGST Act") which are also the valid mode of service under the said Act, otherwise, the service of notice will not be deemed to be an effective service, rather, it would only fulfilling the empty formalities.

11. 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 CGST Act, preferably by way of RPAD which would ultimately achieve the object of the CGST Act.

12. Considering the above facts and circumstances of the case, this Court is of the opinion that the impugned order suffers from violation of principles of natural justice and further, the respondent has passed the impugned order without application of mind. Once the order is passed in violation of the principles of natural justice, this Court cannot impose any condition requiring the petitioner to make any deposit. Hence, this Court issues the following directions:

(i) The impugned order dated 29.04.2024 bearing No.GSTIN/33AAAPI4538D1Z9/2018-19 passed by the respondent is quashed.

(ii) Consequently, the case is remanded back to the respondent for fresh consideration.

(iii) The petitioner is directed to file their Reply/Objection along with the required documents, if any, within a period of three weeks from the date of receipt of a copy of this order.

(iv) On filing of such Reply/Objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice affording an opportunity of personal hearing to the petitioner. Thereafter, the respondent shall decide the case in accordance with law, as expeditiously as possible.

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

10.06.2025

mrr
Index: Yes/No
Neutral Citation: Yes/No
Speaking Order (or) Non-Speaking Order

To

Deputy Commercial Tax Officer (ST),
Shollinganallur Assessment Circle,
Room No.241, 2nd Floor,
Integrated Commercial Taxes
and Registration Department (South Tower),
Nandanam,
Chennai – 600 035.

KRISHNAN RAMASAMY, J.

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