IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.21073 of 2025
and
W.M.P.No.23828 of 2025

Tvl Arul Garbage Cleaning
Rep. By Its Proprietor Mr. Nellurar Arul,
No 23, Gnt Road, Gummidipoondi,
Tiruvallur District 601201

... Petitioner

Vs.

The Assistant Commissioner Of Gst And
Central Excise
Gummidipoondi Division, Chennai 600 037

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records of the respondent dated 28.02.2023, culminating in Order in original No 10/2023 and quash the same

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.Rajendran Ragavan, SPC

ORDER

This writ petition has been filed against the impugned assessment order dated 28.02.2023 passed by the respondent.

2. The learned counsel for the petitioner would submit that in this case, a show cause notice was issued by the respondent on 22.10.2021, for which, the petitioner had file their replies on 31.12.2022 & 10.01.2023. Thereafter, the assessment order came to be passed by the respondent on 28.02.2023, however, the same was not served to the petitioner, due to which, the petitioner was under the impression that the respondent had accepted the reply and dropped the proceedings. Under these circumstances, during the 1st week of June, 2025, the petitioner had received a communication from the Bank with regard to the freezing of petitioner's bank account and at that time only, the petitioner came to

know about the impugned assessment order. The said aspect was clearly explained at paragraph No.6 of the affidavit. Now, the petitioners request this Court for one more opportunity to present their case before the respondent.

3. On the other hand, the learned Senior Panel counsel appearing for the respondent would submit that in this case, after the receipt of show case notices, the petitioner had filed their replies dated 31.12.2022 & 10.01.2023. Thereafter, the personal hearing was fixed by the respondent during 4 occasions on 09.12.2022, 13.12.2022, 20.12.2022 & 28.12.2022, however, the petitioner had not appeared before the respondent on the said dates. Under these circumstances, without any other option, the respondent had proceeded to pass the assessment order dated 28.02.2023. Hence, he would contend that the respondent had provided sufficient opportunities to the petitioner prior to the passing of impugned order.

4. Further, he would submit that now, the only recourse available to the petitioner is to file an appeal against the impugned assessment order. Hence, he requests this Court for dismissal of this petition.

5. In reply, the learned counsel for the petitioner would submit that now, the petitioner is willing to file an appeal against the said impugned assessment order. Further, he undertakes to pay any amount over and above the statutory pre-deposit for condoning the delay in filing the appeal.

6. Heard the learned counsel for the petitioner and the learned Senior Panel counsel appearing for the respondent and also perused the entire materials on record.

7. In the case on hand, the show cause notice was issued by the respondent on 22.10.2021. After the receipt of said show cause notice, two replies dated 31.12.2022 & 10.01.2023 were filed by the petitioner. Thereafter, the impugned order came to be passed by the respondent on

28.02.2023. According to the petitioner, since the said order was not served to him, he was under the impression that after considering the replies, the proceedings were dropped by the respondent.

8. On the other hand, a perusal of the impugned assessment order makes it clear that prior to the passing of the said order, the personal hearing was fixed by the respondent during 4 occasions, viz., on 09.12.2022, 13.12.2022, 20.12.2022 & 28.12.2022, however, the petitioner had not appeared before the respondent on the said dates. In such case, there is no doubt that the respondent had provided sufficient opportunities to the petitioner and hence, in this case, the question of violation of principles of natural justice would not arise. Now, the only recourse available to the petitioner is to file an appeal against the impugned order.

10. In view of the above, this Court is inclined to dismiss the present petition by granting liberty to the petitioner, to file an appeal against the assessment order, on terms.

11. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

12. While dismissing this petition, this Court grants liberty to the petitioner to file an appeal before the concerned Appellate Authority, within a period of 30 days from the date of receipt of copy of this order, subject to the payment of 20% of the disputed tax amount to the respondent, as agreed by the petitioner (10% of disputed tax amount towards statutory pre-deposit for filing the appeal along with additional 10% of disputed tax amount). In such case, the Appellate Authority shall consider the said appeal filed by the petitioner on its own merits and in accordance with law, by providing sufficient opportunity to the petitioner, without pressing for limitation.

02.07.2025

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

To

The Assistant Commissioner Of Gst And
Central Excise
Gummidipoondi Division, Chennai 600 037

KRISHNAN RAMASAMY.J.,

nsa

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