IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-06-2025

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THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 23021 of 2025
AND
WMP NO. 25850 OF 2025,WMP NO. 25851 OF 2025,WMP NO. 25853 OF 2025

Tvl.Sabari Construction,
Represented by its Managing Partner,
V.Thangamuthu,
No.4/13, Veeracholapuram, Kankeyam,
Tiruppur, Tamil Nadu.638 111.

Petitioner(s)

Vs

1. The Deputy Commercial Tax Officer I,
Vellakovil Assessment Circle,
Kangeyam, Tamil Nadu.

2.The Assistant Commissioner (Circle),
Commercial Tax, Vellakovil,
Kangeyam, Tamil Nadu.

3.The Branch Manager,
State Bank of India, Vellakoil Branch (04272),
16/2A, Semmandampalayam Road,
Vellakoil. 638 111.

Respondent(s)

PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, praying for an issuance of Writ of Certiorari, to call for the records on the files of the 1st respondent herein in GSTIN 33AAZFS6500Q1ZE/2019-20 dated 23.08.2024, Order under section 73 of the TNGST Act and the summary of the order in Form GST DRC-07 both dated 24.08.2024 issued in Reference No ZD330824219047H and to quash the same.

For Petitioner(s): Mr.A.N.R.Jayaprathap

For Respondent(s): Mrs.K.Vasanthamala
Government Advocate (taxes)
For Rr1 And 2

ORDER

This writ petition has been filed by the petitioner challenging the impugned assessment orders dated 23.08.2024 & 24.08.2024, passed by the 1st respondent.

2.Mrs.K.Vasanthamala, learned Government Advocate (Taxes), takes notice on behalf of the respondents.

3.By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4.Learned counsel appearing for the petitioner would submit that, in the present case, the petitioner have not received any physical copy of the show cause notice and also personal hearing notice. The show cause notice dated 20.05.2024 and two reminders were uploaded in the GST Portal tab in “Additional Notices and Orders” column and since the petitioner closed his business and his GST registration was cancelled by the 2nd respondent vide order dated 11.03.2022 itself, the petitioner could not open the GST Portal. Even the impugned order dated 23.08.2024 & 24.08.2024 were also uploaded in the GST Portal in “Additional Notices and Orders”, which is violation of principle of natural justice. He would further submit that the petitioner is ready and willing to pay 25% of the disputed tax demand in respect of the impugned assessment period and prayed to set aside the impugned order directing the 1st respondent to permit the petitioner to file their reply and provide an opportunity of personal hearing so that the petitioner would be able to substantiate their case.

5.Learned Government Advocate appearing for the respondents would submit that as per the voluntary submissions made by the learned counsel for the petitioner, subject to the deposit of 25% of the disputed tax demand by the petitioner in respect of the impugned assessment period, if the Court feels it appropriate and it is a fit case for re-consideration, this Court may consider and pass orders.

6.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the repondents and perused the materials available on record.

7.Considering the above submissions made by the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondent and upon perusal of the materials, it is evident that the impugned 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 since the GST registration of the petitioner was cancelled and the original of the said show cause notice was not furnished to them. 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.

8.No doubt sending notice by uploading in portal is a sufficient service, but, the Officer who is sending the repeated reminders, inspite of the fact that no response from the petitioner to the show cause notices etc., the Officer 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 it will not 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 will only 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.

9.Therefore, this Court finds that there is a lack of opportunities being provided to the petitioner. Hence, this Court is inclined to set-aside the impugned order with terms, by issuing the following directions:-

(i) The orders impugned herein are set aside and the matter is remanded back to the 1st respondent for fresh consideration on condition that the petitioner deposits 25% of the disputed tax amount in respect of the impugned assessment period, as agreed by the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

(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 respondent shall consider the same and issue a 14 days clear notice by fixing the date of 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.

(iv) Upon production of proof with regard to the payment of 25% of the disputed tax made by the petitioner, the respondent-Department is directed to issue appropriate direction on the petitioner's banker towards de-freezure of the petitioner's bank account forthwith.

10.With the above directions, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

26-06-2025

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

To

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2.The Assistant Commissioner (Circle),
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