IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.07.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.27832 of 2025
and
W.M.P.Nos.31166 & 31167 of 2025

U SMILE PRIVATE LIMITED
Rep by its Managing Director Mr. Sulaiman 92
D5 OMR Food Street, OMR Road, Navalur
Chennai – 603103. ...Petitioner

Vs.

The Assistant Commissioner (ST)
Kelambakkam Assessment Circle 2nd Floor
Room No 220, Integrated Building for Commercial
Taxes and Registration Department
Nandanam chennai 600 035. ..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 of Impugned Assessment Order dated 31.10.2022 issued by the respondent in GSTIN.No. 33AABCU9514H1ZD /2017-18 and quash the same as arbitrary and violation of natural justice and consequently, to raise the petitioner's Bank Attachment in DRC 13 dated 04.07.2025.

For Petitioner : Mr.A.Abdul Rahman
For Respondent : Mrs.K.Vasanthamala
Government Advocate (T)

Order

Heard Mr.A.Abdul Rahman, learned counsel appearing for the petitioner and Mrs.K.Vasanthamala, learned Government Advocate (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 31.10.2022 and to quash the same and consequently, to raise the petitioner's Bank Attachment dated 4.07.2025.

3. Mr.A.Abdul Rahman, learned counsel appearing for the petitioner would submit that the petitioner's GST registration was cancelled during the year 2019, therefore, the petitioner had no occasion to view the portal, hence, the petitioner was unaware of the notice issued by the respondent, however, without affording an opportunity of personal hearing to the petitioner, the respondent passed the impugned order.

3.1 The learned counsel contended that the impugned order suffers from violation of principles of natural justice, as the petitioner has not been heard before passing the impugned order and is liable to be set aside. However, it is stated that the petitioner is also ready and willing to deposit 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 Government Advocate (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, under the 'Additional Notices and Orders". According to the petitioner, the petitioner was not aware of the issuance of the show cause notice, as the petitioner's GST registration was cancelled during the 2019. 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.

5.1 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 notice, 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. 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 Government Advocate (T) is also agreable, this Court is inclined to pass/issue the following orders/directions:-

i) The impugned order passed by the respondent dated 31.10.2022 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.

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.

vi) So far as the bank attachment order is concerned, upon production of proof with regard to the payment of 25% of the disputed tax made by the petitioner, respondent-Department 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 Petitions are closed.

25.07.2025

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To
The Assistant Commissioner (ST)
Kelambakkam Assessment Circle 2nd Floor
Room No 220, Integrated Building for Commercial
Taxes and Registration Department
Nandanam chennai 600 035.

Krishnan Ramasamy,J.,

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