IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.08.2025

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.28794 & 28801 of 2025
& W.M.P.Nos.32281, 32282 & 32284 of 2025

M/s.SS Crusher and M sand Industry,
(Rep. by its Partner Mr.Sekar),
No.114, Maragathmmal Complex,
Sadras Main Road, Narasankuppam Village,
Mullikolathur Post, Kancheepuram,
Tamil Nadu - 603 109. ... Petitioner in both W.Ps.,

Vs.

1.The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Nagar, Thirukazhukundram,
Chengalpattu, Tamil Nadu - 603 109.

2.The Deputy Commissioner (CT),
(GST Appeals), Chennai - II,
Commercial Taxes Building,
1, Greams Road, Chennai - 600 006.

3.The Deputy Commissioner (ST),
Chengalpattu Zone. ... Respondents in both W.Ps.,

Prayer in W.P.No.28794 of 2025:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the first respondent herein in his proceeding in FORM GST DRC-07 with Reference No: ZD331223007533Z dated 01.12.2023 along with detailed order in GSTIN: 33ADMFS2750C1ZA/2017-18 dated 01.12.2023 for the assessment year July 2017 - March 2018 and quash the same.

Prayer in W.P.No.28801 of 2025:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the files of the second respondent herein in his FORM GST APL-02 dated 05.11.2024 and quash the same while directing the second respondent herein to admit the appeal and re-dispose the appeal on merits filed by the petitioners in form GST APL-01 dated 08.04.2024.

For Petitioner in both W.Ps.,	:	Mr.Sayed Abdul Wakeel
For Respondents 1 to 3 in both W.Ps.,	:	Ms.P.Selvi, Government Advocate (T)

COMMON ORDER

These writ petitions have been filed challenging the impugned assessment order dated 01.12.2023 and the impugned appeal rejection order dated 05.11.2024, passed by the respondents 1 & 2.

2. Ms.P.Selvi, learned Government Advocate, takes notice on behalf of the respondents in both writ petitions. By consent of the parties, these two main writ petitions are taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that in these cases, all notices/communications were uploaded by the first respondent under the "View Additional Notices and Orders" column in the GST common portal. Since the petitioner was not aware of the said notices, they failed to file their reply within the time. Under these circumstances, the assessment order dated 01.12.2023 came to be passed by the first respondent without providing any opportunity of personal hearing to the petitioner. Challenging the said assessment order, the petitioner filed an appeal with a delay of 8 days, which was also rejected on the ground of limitation on 05.11.2024. He further submitted that since the assessment order is also under challenge before this Court, he

requested this Court to condone the delay in filing the Appeal and direct the second respondent/Appellate Authority to consider and pass appropriate orders.

4. Further, he would submit that the petitioner has already deposited 10% of the disputed tax amount to the respondents and now, the petitioner is willing to pay 10% of the disputed tax amount. Hence, he requests this Court to grant an opportunity to the petitioner to present their case before the respondents by setting aside the impugned appeal rejection order dated 05.11.2024.

5. On the other hand, the learned Government Advocate appearing for the respondents would fairly admit that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned assessment order dated 01.12.2023. Therefore, she requested this Court to remit the matter back to the respondents, subject to the payment of 10% of the disputed tax amount by the petitioner.

6. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and also perused the materials available on record.

7. In the case on hand, it is evident that the show cause notice was uploaded on the GST Portal Tab. According to the petitioner, he was not aware of the issuance of the said show cause notice issued through the GST Portal 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 assessment order dated 01.12.2023 came to be passed without affording any opportunity of personal hearing to the petitioner, confirming the proposals contained in the show cause notice. Challenging the said assessment order, the petitioner preferred an appeal on 08.04.2024, which was also rejected on the aspect of limitation, since the delay is beyond the condonable period i.e., after 8 days from the date of assessment order.

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.

9. 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. Therefore, this Court finds that there is a lack of opportunities being

provided to serve the notices/orders etc., effectively to the petitioner.

10. Further, it was submitted by the learned counsel for the petitioner that they had already deposited 10% of the disputed tax amount and now, they are willing to pay 10% of the disputed tax amount. In such view of the matter, in order to avoid unnecessary further litigations, this Court feels it appropriate to set aside the impugned assessment order dated 01.12.2023, instead of condoning the delay in filing the appeal and directing the appellate authority to take appeal on record. Accordingly, this Court passes the following order:-

(i) The impugned order dated 01.12.2023, is set aside and the matter is remanded to the respondents for fresh consideration, subject to the payment of additional 10% of the disputed tax to the respondents as agreed by the petitioner, within a period of four weeks from the date of receipt of a copy of this order. The setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of three weeks from the date of payment of amount as stated above.

(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.

11. With the above directions, the W.P.No.28794 of 2025 is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

In view of the order passed in W.P.No.28794 of 2025, the writ petition viz., W.P.No.28801 of 2025 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.08.2025

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