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W.P.No.30498 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2025

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.30498 of 2025

and

W.M.P.Nos.34187 & 34190 of 2025

M/s.VMC POLYCHEM LLP

Rep. by its partner Pritesh Rohit Mehta

No. 26 A3 Room No. B Alsa Lynnwood EVK

Sampath Road Vepery Chennai 07.

...Petitioner

Vs.

- 1 The Commercial Tax Officer
Choolai North III Chennai North
Tamil Nadu - 600 003.
- 2 The Deputy Commercial Tax Officer
Choolai North III, Chennai North
Tamil Nadu 600 003.
- 3 The Assistant Commissioner
Choolai Assessment Circle, No. 1 PAPJM
Annexure Building, Room No.106A, 1st floor
Greams Road, Chennai 06
- 4 The Branch Manager
Indusind Bank, No. 3,
Village Road, Nungambakkam, Chennai-600 034.

...Respondents



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Prayer

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Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records in order bearing reference No.ZD330125279072O dated 29.01.2025 issued under section 73 of the CGST Act along with summary of the order bearing reference No.ZD330125279072O dated 29.01.2025 on the file of the 1st Respondent relating to the FY 2021-2022 and to quash the same and to direct the Respondent No.3 to lift the Bank attachment of the Petitioner in A/C No. 650014148872 and A/C No.201029872418 held with Respondent No.4 and direct the 1st Respondent to assess the matter afresh.

For Petitioner : Mr.R.Sandeep Bagmar
For Respondents 1 to 3 : Mrs.K.Vasanthamala
Government Advocate (T)

Order

The challenge in this Writ Petition is to the order passed by the first respondent issued under section 73 of the CGST Act along with summary of the order both dated 29.01.2025 relating to the FY 2021-2022 and to quash the same and to direct the respondent No.3 to lift the Bank attachment of the Petitioner held with Respondent No.4 and direct the 1st Respondent to assess the matter afresh.



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WEB COPY 2. Mr.R.Sandeep Bagmar learned counsel appearing for the petitioner would submit that the first respondent has issued a notice in DRC-01A dated 28.10.2022, pursuant to which, the second respondent issued two show cause notices in DRC-01A dated 26.08.2023 and another dated 13.09.2023, in respect of the same tax period, subsequently, the proceedings under DRC-01 dated 13.09.2023 were dropped by order dated 13.09.2023; that in respect of the show cause notice dated 26.08.2023, the petitioner filed a reply along with supporting documents 08.09.2023. It is further contended by the learned counsel for the petitioner after filing the first reply, personal hearing opportunity was afforded to the petitioner on 14.09.2023, but, subsequently, vide notice dated 13.09.2024, the personal hearing fixed on 14.09.2024 has been cancelled; that thereafter, the petitioner filed reply on 10.10.2023 and after the said reply, no personal hearing was afforded to the petitioner and since there was no communication from the respondent-Department nearly for a period of 1 ½ year, the petitioner was under the bona fide belief that the proceedings contemplated under show cause notice dated 26.08.2023 would have been dropped, but, the first respondent, all of

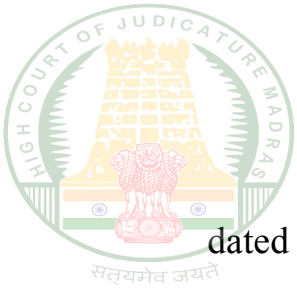


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a sudden, passed the impugned assessment order dated 29.01.2025, whereby, the reply filed by the petitioner has been summarily rejected.

3. Therefore, the learned counsel assailed the impugned order both on the ground of i) violation of principles of natural justice and ii) assessment proceedings passed under 73 of the GST after a lapse of 1 ½ years is untenable. It is finally contended by the learned counsel for the petitioner that though the impugned assessment order has been passed without providing an opportunity of personal hearing to the petitioner, the petitioner has voluntarily came forward to make 10% of the disputed tax in the event the impugned order is set aside and the matter is remanded to the respondent-Department for fresh consideration and prays for appropriate orders in that regard.

4. Mrs.K.Vasanthamala, learned Government Advocate (T) for the respondents 1 to 3 would submit that a show cause notice dated 26.08.2023 was issued by the first respondent fixing the personal hearing date on 14.09.2023, though the personal hearing was cancelled by virtue of notice



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dated 13.09.2023, however, pursuant to the detailed reply filed by the petitioner on 10.10.2023, another notice dated 25.10.2024 was issued to the petitioner, thereby, fixing the personal hearing on 04.11.2024, and the petitioner also participated in the proceedings and addressed the issue on duplication of proceedings, pursuant to which, proceedings were dropped therefore, the question of non-provision of personal hearing opportunity does not arise at all. Further, it is contended that the show cause notice dated 26.08.2023 has been followed by three reminder notices dated 17.07.2024, 16.08.2024 and 25.10.2024, and therefore, the petitioner cannot blame the respondent-Department that the assessment order has been passed without affording an opportunity of personal hearing and thus, prays for dismissal of the Writ Petition.

5. Heard Mr.R.Sandeep Bagmar learned counsel appearing for the petitioner and Mrs.K.Vasanthamala, learned Government Advocate (T) for the respondents 1 to 3 and perused the materials placed on record.

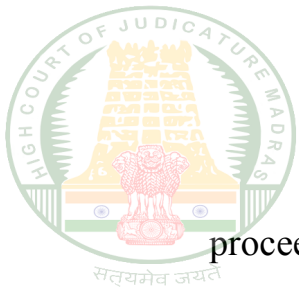


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6. On perusal of records, it is seen that a notice in Form GST DRC-

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01A dated 28.10.2022 was issued by the first respondent, based on which, two show cause notices were issued by the second respondent to the petitioner under DRC-01A dated 26.08.2023 and another dated 13.09.2023. Since the said two show cause notices were in respect of the same issue and for the same tax period, the proceedings contemplated vide subsequent show cause notice dated 13.09.2023 were dropped by the second respondent by order dated 13.09.2023. So far as the show cause notice dated 26.08.2023 is concerned, fixing the personal hearing on 14.09.2023, the petitioner filed a reply along with supporting documents on 08.09.2023. However, on 13.09.2023, a notice was issued to the petitioner stating that the personal hearing opportunity scheduled on 14.09.2023 was cancelled, hence, the petitioner, who was not able to make his submission in detail, uploaded the reply and other supporting documents on 13.09.2023 and 10.10.2023 and sought for personal hearing opportunity. Thereafter, since there was no communication from the respondent-Department, the petitioner was under the bona fide belief that proceedings contemplated under show cause notice dated 26.08.2023 might have been dropped. Whereas, the first respondent



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proceeded to confirm the proceeding contained in the show cause notice dated 26.03.2023 on the ground that the petitioner failed to respond to any of the notices issued by the respondent-Department dated 17.07.2024, 16.08.2024 and 25.10.2024 and passed the impugned order on 29.01.2025.

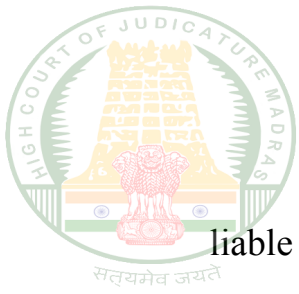
7. Thus, it is crystal clear that the reason assigned by the petitioner for non-responding to notices dated 17.07.2024, 16.08.2024 and 25.10.2024 is due to the fact that the same were uploaded only through the Portal, that too, after a lapse of nearly 1 ½ years, and further, the petitioner, who was under the bona fide belief that the proceedings would have dropped in furtherance of the show cause notice dated 26.03.2023, had not occasioned to open the portal and hence, such notices were totally unnoticed by the petitioner and only when the petitioner received an intimation from the respondent-Department as regards recovery proceedings dated 18.07.2025, which was received by the petitioner on 25.07.2025, the petitioner came to know of the impugned proceedings.



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8. Therefore, this Court is of the view that the reason cited by the petitioner for non-responding to the notices sent by the respondent-Department and non-appearance on the hearing date is acceptable and such failure on the part of the petitioner cannot be found fault with by the respondent-Department, when admittedly, the respondent-Department failed to serve such notice on the petitioner via. Physical mode of service, as contemplated under Section 169 of the Act but served only through the Portal. Therefore, as rightly pointed out by the learned counsel for the petitioner the impugned order is untenable on the ground of violation of principles of natural justice.

9. Apart from the above, normally, in a proceedings initiated under 73 of the TNGST Act, 2017, even if the statute prescribes no time-limit, within which, an order should be passed, overall reading of the provisions of said Section contemplates that issuance of show cause notice and order should be passed by the respondent not exceeding three months, however, in the present case, the respondent took nearly 1 ½ years to pass the assessment order. Therefore, this Court finds substance in the argument putforth by the learned counsel for the petitioner and the impugned order is



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liable to be set aside on this score as well. Therefore, this Court is inclined

to set aside the assessment order passed by the first respondent dated

29.01.2025. Accordingly, this Court pass the following orders/directions:-

i) The impugned order dated 29.01.2025 along with summary of order dated 29.01.2025 are set aside.

ii) The matter is remitted to the first respondent for fresh consideration.

iii) The petitioner is directed to pay 10% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order.

iv) Thereafter, the first respondent is directed to pass final orders after affording an opportunity of personal hearing to the petitioner.

and

v) Upon production of proof with regard to the payment of 10% of the disputed tax by the petitioner, the third respondent is directed to issue appropriate direction on the petitioner's banker, viz., fourth respondent towards de-freezure of the petitioner's bank account forthwith and permit the petitioner to operate the bank account.

10. In the result, the Writ Petition is allowed on the aforesaid terms.



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No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : yes/no

Neutral Citation : yes/no

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Krishnan Ramasamy,J.,



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