IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.32656 of 2025
& W.M.P.Nos.36576 & 36577 of 2025

Tvl. A. T. Sabuthomas contractor
Represented by its Proprietor Sabu Thomas,
14/89A, School Road, Erumad Konnachal,
Nilgiris-643 239

... Petitioner

Vs.

The State Tax Officer
Office Of The Commercial Tax Officer,
Gundalur Circle, Gundalur, Nilgiris.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings passed by the Respondent in the Order vide GSTIN 33AEGPT4611N3Z7/ 2019-20 dated 17.08.2024 along with consequential proceeding under section 73 of the act through Form GST DRC -07 vide reference number ZD330824140201X dated 17.08.2024 along with the rectification order dated 05.12.2024 along with the consequential rectification order through GST FORM DRC-08 vide reference number ZD331224045928A dated 06.12.2024 along with the order of rejection of application for rectification vide reference number GSTIN 33AEGPT4611N3Z7/2019-20 dated 10.12.2024 along with the consequential rectification rejection order vide reference number ZD331224077185I dated 10.12.2024 for the Assessment Year 2019 -20 to quash the same

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mrs.K.Vasanthamala, GA

ORDER

This writ petition has been filed challenging the impugned order dated 17.08.2024 passed by the respondent.

2. Ms.K.Vasanthamala, learned Government Advocate, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that the show cause notice was issued by the respondent on 22.05.2024. Subsequently, 3 reminder notices were also issued by the respondent.

However, the said notices were uploaded in the GST Portal and no physical copy of the same were served to the petitioner. Hence, being unaware of the said notices, the petitioner failed to file their reply within the time. Under these circumstances, the impugned order came to be passed by the respondent without providing any opportunity of personal hearing to the petitioner. Hence, this petition has been filed.

4. Further, he would submit that one of the issues involved in the present writ petition is with regard to the claim made by the petitioners for ITC, which is barred by limitation in terms of Section 16 (4) of the CGST Act, 2017. He would also submit that the said issue has been squarely covered by the common order dated 17.10.2024 passed in W.P.Nos.25081 of 2023, etc, whereby, this Court had quashed the impugned order passed by the Department.

5. He would also submit that the petitioner is willing to pay 25% of the disputed tax amount, to the respondent. Hence, he requests this Court to grant an opportunity to the petitioner to present their case before the respondent by setting aside the impugned order.

6. On the other hand, the learned Government Advocate appearing for the respondent would submit that the respondent had duly issued the show cause notice to the petitioner. But the petitioner failed to avail the said opportunity. Further, she has fairly admitted that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Therefore, she requested this Court to pass appropriate orders.

7. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent and also perused the materials available on record.

8. 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 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.

9. 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.

10. 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.

11. Further, it was submitted by the learned counsel for the petitioner that the petitioner is willing to pay 25% of the disputed tax amount to the respondent.

12. That apart, it was also submitted by the learned counsel for the petitioner that one of the issues involved in this petition is with regard to the claim made by the petitioners for ITC, which is barred by limitation in terms of Section 16 (4) of the CGST Act, 2017. As submitted by the learned counsel for the petitioner, the said issue was already dealt with by this Court in W.P.Nos.25081 of 2023, etc, whereby, this Court, vide common order dated 17.10.2024, had quashed the impugned order passed by the Department. In such view of the matter, this Court is inclined to quash the impugned order only the aspect of aforesaid issue pertaining to Section 16(4) of GST Act. As far as other issues are concerned, this

Court is inclined to set aside the impugned order dated 30.06.2023 passed by the respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 17.08.2024 is quashed only to the extent of issue relates to the claim made by the petitioner for ITC, which is barred by limitation in terms of Section 16 (4) of the CGST Act, 2017

(ii) As far as other issues are concerned, the impugned order dated 17.08.2024 is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay 25% of the disputed tax amount to the respondent 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.

13. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

28.08.2025

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

To

The State Tax Officer
Office Of The Commercial Tax Officer,
Gundalur Circle, Gundalur, Nilgiris.

KRISHNAN RAMASAMY.J.,

nsa

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& W.M.P.Nos.36576 & 36577 of 2025

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