IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2025

CORAM

THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

W.P No. 33085 of 2024 and
WMP.No.35841 of 2024

Tvl.P.M.S.Transports
Represented by its Proprietor, Mr.P.Senthilkumar,
No.13-249, Gonur, Bhavani Road,
Bharat Petroleum Petrol Pump, Kamaraj Nagar,
Veerakkalpudur, Salem -636404. Petitioner

..Vs..

The State Tax Officer,
Data Analysis Unit-II,
Intelligence, Salem. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for respondent's order dated 18.09.2024 in TN-GST:33CULPS5686R1ZD/2022-23 and to quash the same.

For Petitioner: Mr.Adithya Reddy

For Respondent: Ms.AmirthapoonkodiDinakaran
Government Advocate (Taxes)

ORDER

Heard Mr.Adithya Reddy learned counsel appearing for the petitioner and Ms.Amirta Poonkodi Dinakaran, 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 orders passed by the respondent dated 18.09.2024 and to quash the same.

3. The learned counsel for the petitioner would submit that the respondent has issued a show cause notice dated 05.06.2024, alleging certain discrepancies in the returns filed by the petitioner/assessee for the subject assessment year under Section 74 of the TNGST/CGST Act; that the petitioner, on receipt of such show cause notice, filed a reply stating that the services provided by the petitioner are taxable under reverse charge mechanism in accordance with Section 9 of the GST Act, and therefore, the burden to remit the tax due to the Government rests upon the customer/recipient and the petitioner, being a service

provider (supplier) is not liable to pay any tax; that so far as the recipient is concerned, they have already remitted the required tax due to the Government and as proof, the petitioner also filed certain documents, however, the respondent, without appreciating the same in a proper perspective, passed the impugned order by confirming the demand proposed in the show cause notice. Therefore, the learned counsel prays for remanding the matters back to the respondent for fresh consideration.

4. The learned Government Advocate (T) for the respondent, on instructions, fairly submitted that in the event of the petitioner, being a service provider, they are not liable to pay any tax, and as regards the remittance of tax, alleged to have been made by the recipient of service is concerned, the respondent-GST Department is in the process of verification, and therefore, she sought for remitting the matters back for fresh consideration.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. The petitioner is running a Goods Transport Agency and is a registered taxpayer on the files of the respondent under the provisions of TNGST/CGST Act, 2017. For the returns filed by the petitioner/assessee for the subject assessment year viz., 2022-23, the respondent has issued show cause notices alleging certain discrepancies. It is the bone of contention of the petitioner that, they being a service provider, they are not liable to pay the tax and in terms of Section 9 of the GST Act, it is the recipient of the service, who is liable to pay the tax due to the Government. According to the petitioner, the recipient of the service has already remitted the tax and as proof to the same, the petitioner also furnished all relevant documents, however, the respondent, disregarding the same, passed the present impugned orders. Challenging the same, the present Writ Petitions are filed.

6.1 However, this Court, taking into consideration of the submissions made by the learned Government Advocate (T), who fairly admitted that in case of the petitioner, being a service provider, they are not liable to pay tax and as regards the remittance of tax, which is alleged to have been made by the recipient of the service is concerned, the respondent- GST Department is in the process of verification and therefore, sought for remittance of the matters back to the respondent for fresh consideration, is inclined to set aside the impugned orders.

6.2 Accordingly, this Court is inclined to pass/issue the following orders/directions:-

i) The impugned order, dated 18.09.2024 passed by the respondent is set aside.

ii) Consequently, the matter is remanded to the respondent for fresh consideration.

iii) The respondent is directed to consider the petitioner's case in accordance with Section 9 of the GST Act, inasmuch as, in terms of the said Section, the services provided by the petitioner are taxable under reverse charge mechanism and thereafter, shall proceed to decide the issue by verifying as to whether the recipient of the service has remitted the tax or not, but before passing any final order, the petitioner shall be provided with an opportunity of personal hearing by issuing a clear 14 days to the petitioner and shall decide the matter in accordance with law.

iv) In the event, the petitioner intends to file any additional reply, the same shall be filed within a period of two weeks thereafter, which shall be taken into consideration by the respondent before passing the final order.

7. In the result, this Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

30.06.2025

arr

To

The State Tax Officer,
Data Analysis Unit-II,
Intelligence, Salem.

KRISHNAN RAMASAMY, J.

arr

WP No. 33085 of 2024

30.06.2025