



W.P.(MD)Nos.2052 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.01.2025**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.2052 of 2025

and

W.M.P.(MD)Nos.1458 of 2025

M/s.P.N.Traders,
Represented by its Proprietor,
A.Wisalam.

... Petitioner

/Vs./

The Deputy State Tax Officer -2,
Office of the State Tax Officer,
Nagercoil 1 Assessment Circle,
Nagercoil -629001.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of CERTIORARIFIED MANDAMUS, to call for the records on the file of the respondent in GSTIN. 33ABKPW9697E1ZV /2018-19 dated 26/04/2024 for the assessment year 2018-19 and to quash the same as illegal, arbitrary, wholly without jurisdiction, and direct the respondent to issue notice to the petitioner then pass an assessment order afresh after affording an sufficient opportunity within such time as may be directed by this Court.



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For Petitioner : Mr.N.Sudalai Muthu
For Respondent : Mr.J.K.Jeyaseelan
Government Advocate

ORDER

This writ petition has been filed challenging the assessment order passed by the respondent dated 26.04.2024 for the assessment year 2018-19.

2. Heard the learned counsel on either side and perused the materials placed before this Court.

3. The petitioner is dealer of exempted groceries and taxable supplies. The petitioner is filing monthly returns reporting inward and outward supplies in the prescribed GSTR-1 and GSTR-3B and paying tax after adjusting the eligible ITC, as per the Tamil Nadu Goods and Service Tax Act, 2017 (hereinafter referred to as “TNGST Act” for brevity). However, the assessment order was passed by the respondent dated 26.04.2024 for the assessment year 2018-19.



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4. The learned counsel appearing for the petitioner raised a specific ground that the petitioner was not served with any notice seeking explanation with regard to the alleged defects. As per Section 169 of the TNGST Act, a notice must be served in person or by registered post or to the registered e-mail ID alternatively and on failure or impracticability of adopting any of the aforesaid modes, the assessment order cannot be sustained. In support of his contention, he relied upon the judgment passed by this Court in a batch of writ petitions in WP(MD)No.26481 of 2024 etc., batch, dated 06.01.2025.

5. The learned Government Advocate appearing for the respondent, on instructions submitted that the petitioner was served with notice through respondent portal and therefore, admittedly, the petitioner was not served notice in compliance of Section 169 of the TNGST Act.

6. It is relevant to extract the provision of Section 169 of the TNGST Act, which is as follows:-



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“Section 169. Service of notice in certain circumstances.-

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or (d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by



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affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.”

7. The relevant portion of the judgment passed by this Court in a batch of writ petitions in WP(MD)No.26481 of 2024 etc., batch dated 06.01.2025 is extracted hereunder:-

”19. An application of the said Division Bench to Sub-Section (1) of Section 169 would mean that Clauses (a) to (c) would be alternative and if it was not practicable, then Clauses (d) to (f) would have to be followed. Only interpreting Section 169 in such a manner



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would effectively comply with the principles of natural justice and also condition stipulated by Sub-section (3) to Section 169 which mandates that when such decisions, orders, summons, notices or any communication sent by the Registered Post or speed post, it shall be deemed to have been received by the assesseees, unless the contrary is proved. A conjoined reading of Sub-Section (1)(2) & (3) of Section 169 would amply make it clear that the State is obliged to comply with the Clauses (a) to (c) alternatively and thereafter, comply with Clauses (d) to (f). Further, even though Clause (f) has also been proceeded with the word 'or' indicating it to be disjunctive / an alternative mode of services, a reading of the Clause (f) would indicate that Clause (f) could be resorted to by the State, if any of the Clauses preceding it, was not practicable. Here also, Clause (f) makes it imperative that such affixure shall be in a conspicuous place and the last known business or residence of the asseesse. Therefore, the object of Section 169 is for strict observance of the principles of natural justice.

20. A persuasive argument was made on behalf of the respondent that Rules 149 of the GST Rules only provides for electronically issuing of notices/ summons/ orders. It is to be noted that the Rules are creature of a Statute and the Rules cannot circumscribe the mode that had been provided under the Statute. When the Statute had also mandated issuance of notice in person/ registered



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post/ e-mail, etc., the Rules cannot be limited to only serving it through electronic modes. Therefore, the contention that the Rules will prevail over the Statute cannot be accepted.

21. It is to be noted that in the judgments relied upon by the learned counsel for the respondents have not dealt with Section 169 in its entirety. When the modes of service have been prescribed, such services should be effectively done as prescribed.

22. In such view of the matter, I am inclined to hold that Section 169 mandates a notice in person or by registered post or to the registered e-mail ID alternatively and on a failure or impracticability of adopting any of the aforesaid modes, then the State can, in addition, make a publication of such notices/ summons/ orders in the portal/ newspaper through the concerned officials.

23. In view of the aforesaid findings and reasoning, I am inclined to set aside the orders of assessment impugned in these Writ Petitions. The respective petitioners shall file their replies to the show cause notices, based upon which, the impugned assessment had been made, on or before 31.01.2025 and thereafter, the respective respondents shall afford an opportunity of hearing to the respective petitioners as provided under law and pass appropriate orders on merits and in accordance with law.”



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8. The aforesaid judgment of this Court is squarely applicable to the case on hand. In view of the same, the impugned assessment order passed by the respondent dated 26.04.2024 for the assessment year 2018-19 cannot be sustained and is liable to be quashed. Accordingly, the impugned assessment order passed by the respondent dated 26.04.2024 for the assessment year 2018-19 is hereby quashed. It is made clear that the impugned assessment order passed by the respondent dated 26.04.2024 shall be treated as show cause notice. The petitioner is at liberty to file their reply on or before **22.02.2025** and thereafter, the respondent shall afford an opportunity of hearing to the petitioner and pass orders on merits and in accordance with law.

9. In fine, this writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24.01.2025
(1/2)

Index : Yes / No
NCC : Yes / No
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TO:-

The Deputy State Tax Officer -2,
Office of the State Tax Officer,
Nagercoil 1 Assessment Circle,
Nagercoil -629001.



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G.K.ILANTHIRAIYAN, J.

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Order made in
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(1/2)

Dated:
24.01.2025