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W.P.No.8860 & 8861 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.8860 & 8861 of 2023

and

W.M.P.No.9018 & 9022 of 2023

M/s. Thirumalai Sales Corporation,
rep. By its Proprietrix Santhi N.
1/94A1, N.A.Vennampatti,
Dharmapuri – 636 705.

...Petitioner in both W.Ps.

Vs.

The Assistant Commissioner (Circle)
Commercial Taxes Building,
Collector Office Campus,
Dharmapuri – 636 705.

...Respondent in both W.Ps.

W.P.No.8860 of 2023

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records relating to the impugned order bearing ref GSTIN 33BZQPS3239H1ZZ/2017-18 dated 15.12.2021 and to quash the same.



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W.P.No.8861 of 2023

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Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records relating to the impugned order bearing ref GSTIN 33BZQPS3239H1ZZ/2018-19 dated 15.12.2021 and to quash the same.

Appearance in both W.Ps

For Petitioner : Mr.G.Natarajan

For Respondent : Mrs.E.Ranganayaki
Additional Government Pleader (T)

COMMON ORDER

The challenge in both the Writ Petitions is to the orders passed by the respondent dated 15.12.2021 and to quash the same.

2. Since the issue involved in both the Writ Petitions is identical in nature, they were heard together and disposed of vide this Common Order.

3. The petitioner is an registered dealer under the Tamil Nadu General Sales Tax Act, 2017 (for short, TNGST Act'). The petitioner's



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Consultant, who has been appointed by the petitioner for filing their GST returns, failed to file returns and also never informed the same to the petitioner. Hence, the respondent cancelled the petitioner's GST registration and thereafter issued show cause notice and subsequently, by virtue of the impugned orders dated 15.12.2021 confirmed the demand made in the show cause notices. Aggrieved by the said orders dated 15.12.2021, the petitioner is before this Court by way of present Writ Petitions.

4. Mr.G.Natarajan, the learned counsel appearing for the petitioner would submit that due to non-filing of GST returns, which was due to the fault committed by the petitioner's Consultant, petitioner's GST registration was cancelled by the respondent and thereafter, show cause notice dated 09.07.2021 and notice of personal hearing were issued to the petitioner by uploading the same in the common GST Portal, however, since the petitioner's GST registration was cancelled, the petitioner could not have access over GST Portal, hence, the petitioner was not aware of the issuance of show cause notice and did not file any reply and also not appeared for personal hearing. However, the respondent, without hearing the petitioner,



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adjudicated the show cause notice and passed the impugned order, dated 15.12.2021 confirming the demand made in the show cause notice and the petitioner came to know about the impugned order only when they received property attachment notice.

4.1 It is the bone of contention of the learned counsel for the petitioner that the respondent is very well aware that GST registration of the petitioner has been cancelled w.e.f. 08.02.2019, as such cancellation was made only by the respondent, but, the respondent has not taken any steps to serve the show cause notice/notice of personal hearing to the petitioner directly through physical mode of service and made it available only in the GST Portal, but, owing to cancellation of GST registration, the petitioner was not aware any of the notice sent by the respondent through GST portal since, the petitioner can no longer have access over the GST portal due to cancellation of GST registration. Therefore, the learned counsel contended that the impugned orders suffer from violation of principles of natural justice since the petitioner has not been heard before passing such orders. Therefore, the learned counsel prayed for setting aside the impugned orders



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as also the property attachment notices dated 28.10.2022, which are the consequence of the impugned orders.

5. Mrs.E.Ranganayaki, learned Additional Government Pleader (T) for respondent would submit that since the petitioner failed to file GST returns, their GST registration was cancelled,; that despite such cancellation, the petitioner continued with the business and hence, the petitioner was issued with show cause notice dated in Form DRC-01 dated 09.07.2021; that as no reply was forthcoming from the petitioner, and also not appeared before the respondent during the personal hearing date fixed on 10.12.2021, the respondent proceeded to confirm the demand raised in the show cause notices dated 09.07.2021 and passed the impugned orders as also the consequential attachment orders, which are sustainable in law.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader for the respondent and perused the materials available on record.



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7. In the present case, the respondent cancelled the petitioner's GST registration due to non-filing of GST returns. Thereafter, the respondent issued notice dated 09.07.2021, to show cause as to why, the petitioner should not be imposed with tax liability along with interest for having conducted the business even after cancellation of their registration and also called upon the petitioner to appear on 10.12.2021 by virtue of the said show cause notice and since the petitioner failed to give response to the show cause notice and failed to appear, the respondent confirmed the proposals contained in the show cause notice, by virtue of the impugned orders

7.1 It is the contention of the learned counsel for the petitioner that no notice was served to the petitioner by way of physical mode and was served only through e-Portal and the respondent, despite knowing that the fact that the petitioner's GST registration was cancelled, continued to issue notice through e-Portal, which is not fair enough.



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7.2 Therefore, this Court posed a question as to whether the petitioner has been served with show cause notice and the impugned orders directly through physical mode or through e-Portal, the learned Additional Government Pleader fairly admitted that all the communications, viz., the show cause notice/notice affording opportunity of personal hearing and the impugned order were not served directly through the petitioner but were only uploaded in the GST Portal.

7.3 Hence, the grievance of the petitioner that they have not been served with the show cause notice and only when they received property attachment notice, they came to know about the impugned orders appears to be genuine. Further, it is clear that the respondent knowing fully well that the petitioner's GST portal was closed owing to cancellation of GST registration on 08.02.2019, since, it the respondent, who made such cancellation, ought to have issued the show cause notice directly to the petitioner by physical mode of service and not through e-Portal, which was closed on 08.02.2019 itself. When the petitioner could not open the e-Portal, due to cancellation of their GST registration, which act, was in fact



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done by the respondent, how come, the respondent could expect the petitioner to know of the issuance of show cause notice or any other communications which were sent through e-Portal. Further, even assuming that the petitioner failed to respond to the show cause notice, it is the duty of the respondent to hear the petitioner before passing orders, which are prejudicial to the interests of the petitioner, instead, the respondent proceeded to pass the impugned orders by stating that the petitioner failed to file reply, nor appeared for hearing on 10.12.2021, and hence, the proposals contained in the show cause notice are confirmed, which is not fair on the part of the respondent.

7.4 Therefore, this Court is of the view that the impugned orders are in violation of principles of natural justice and liable to be set aside and one more opportunity has to be granted to the petitioner to putforth their contention.

8. Accordingly, the Writ Petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for re-



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consideration, in which case, the respondent is directed to grant sufficient time to the petitioner to file their reply and fix a date for personal hearing of the petitioner and peruse the documents that may be produced by the petitioner by way of filing reply/objections and after conducting a full-fledged hearing, the respondent is directed to pass fresh orders or in the event, the respondent is not satisfied with the explanation/objections reply given by the petitioner, the respondent shall record reasons for such rejection of the reply as well. pSince the impugned orders are set aside by this Court, the other consequential proceedings initiated against the petitioner by virtue of property attachment notices are also liable to be set aside and accordingly, the same are set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.10.2023

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Index : yes/no

Neutral Citation : yes/no

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To
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The Assistant Commissioner (Circle)
Commercial Taxes Building,
Collector Office Campus,
Dharmapuri – 636 705.



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Krishnan Ramasamy,J.,

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