2026:MHC:4028

Case Citation: (2026) taxcode.in 1624 HC

Order QR

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2026

Coram

The Hon'ble Mr.Justice S.Raveekumar

W.P.Nos.21889, 21892 and 21894 of 2022
and
W.M.P.Nos.20911, 20914 & 20908 of 2022

M/s.Coramandal Leather
Rep. By its Proprietor Thameem Sheriff.

...Petitioner in all W.Ps.

Vs.

The State Tax Officer, Group-I
Inspection -1/Intelligence -I
No.1, PAPJM Buildings, Greams Road,
Chennai – 600 006. . Respondent in all W.Ps.

Common Prayer

Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for records of the respondent in his proceedings in GSTIN:33AONPT3017K2Z0/2017-18, 2018-19 and 2019-20 respectively dated 31.05.2022 and to quash the same.

For Petitioner in all W.Ps. : Mr.S.Ramanathan
For Respondent in all W.Ps. : Ms.Amirta Poonkodi Dinakaran
Additional Government Pleader

Common Order

These Writ Petitions are filed challenging the assessment orders passed by the respondent under Sections 74 and 122 of the TNGST/CGST Act, 2017 dated 31.05.2022 for the assessment years 2017-18, 2018-19 and 2019-20 respectively and to quash the same.

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2. Since the issue involved in all these Writ Petitions is identical in nature and the parties herein are also one and the same, all these Writ Petitions are taken up together and disposed of vide this Common Order.

3. The learned counsel appearing for the petitioner submits that petitioner had closed his business in the year 2019 (i.e. on 31.12.2019); that therefore, when the surprise inspection was conducted by the respondent's Intelligence Wing Officer on 17.12.2020 nobody was available, but, the respondent misconstrued that the petitioner's place of business does not exist and issued summon on 07.01.2021 and called upon the petitioner to produce certain documents; that since the petitioner was not well at that relevant point of time, vide reply/letter dated 02.02.2021 sought time for production of documents.; that despite the fact that the respondent has granted time till 14.02.2021, all of a sudden, the petitioner has been slapped with a Show Cause Notice (first) dated 02.02.2021; that the petitioner vide letter dated 12.02.2021 produced the books of accounts containing tax invoices for inward and outward supplies for the subject assessment years and audited income tax records along with bank statement and subsequently, vide letter dated 15.02.2021 produced the document of purchases and sales for the

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subject assessment years; that the aforesaid documents and letters were in fact received and acknowledged by the respondent on 13.02.2021 and 22.02.2021; that, however, the respondent proceeded to issue Show Cause Notice (second) dated 25.05.2022 reiterating the same contentions, as mentioned in the earlier Show Cause Notice dated 02.02.2021; that since the said Show Cause Notice dated 25.05.2022 calling upon the petitioner to appear for personal hearing before the respondent on 28.05.2022 itself was received by the petitioner only on 30.05.2022, the petitioner could not appear for the personal hearing, however, the respondent, without even affording an opportunity of personal hearing to the petitioner passed the impugned order.

3.1 The learned counsel for the petitioner further submits that only in the event, the reply filed by an assessee is satisfactory and the respondent is convinced with the reply filed by the assessee and intends to pass orders in favour of the assessee, the question of affording personal hearing opportunity does not arise, and in the event, the Tax Authority intends to pass any adverse orders against the assessee, in terms of Section 75 (4) of the CGST Act, it is mandatory to provide an opportunity of hearing to the assessee before passing any adverse order; that in the present case, no such

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opportunity was granted to the petitioner before confirming the demand made in the Show Cause Notice, therefore, the impugned order is not only against the provisions contemplated under Section 75 (4) of CGST Act but also suffers from violation of principles of natural justice, as the petitioner has not been heard before passing such order.

3.2 It is the further contention of the learned counsel for the petitioner that the impugned order passed by the respondent by invoking provisions of Sections 74 and 122 of the TNGST Act is arbitrary, to invoke the said provisions, there should be an allegation of suppression, *mala fide* intention, fraud or misrepresentation on facts on the part of the petitioner-assessee, and in the present case, though it is alleged that the petitioner (taxable person) has taken an inward supply from a dealer, whose GST registration has been cancelled, the petitioner would aver that the purchases were effected only when the registration of the supplier was in force, and in fact, the petitioner has also obtained registration certificate from the supplier before effecting such purchases and therefore, the petitioner was in possession of necessary documents to prove their *bona fide*, whereas, the respondent, merely based on the submission of one Thiru.Hakim, the Authorized Signatory of the petitioner, who appeared before the respondent at the eleventh hour, i.e. on

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31.05.2022, (who was not in possession of relevant documents) proceeded to confirm the proposals contained in the show cause notice in a mechanical manner and hence, the learned counsel prayed to set aside the impugned order.

4. Per contra, Ms.Amirta Poonkodi Dinakaran, learned Additional Government Pleader for the respondent would submit that during the surprise inspection conducted by the respondent's Intelligence Wing Officer at the petitioner's place of business on 17.12.2020, it was found that no such business existed in the said place; that therefore, the petitioner was initially issued with a Summon dated 07.01.2021 requiring the petitioner to produce documents; that subsequently, on verification of the documents viz., GSTR-2A filed by the petitioner, it was noticed that the petitioner (taxable person) has taken inward supply from a dealer, whose GST registration has been cancelled, therefore, first Show Cause Notice dated 02.02.2021 was issued to the petitioner's business place via. RPAD; that the said Show Cause Notice returned with an endorsement ' No such person', and that one Sheriff Proprietor has appeared on 02.02.2021 and received the Show Cause Notice on 02.02.2021 and requested for 10 days time for production of documents; that thereafter, on production of documents filed by the

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petitioner vide reply/letters dated 12.02.2021 and 15.02.2021, Show cause notice was issued to the petitioner on 25.05.2022 and the petitioner was called upon to appear along with supportive documents on 28.05.2022 at 11.a.m.; that pursuant to which, one Hakim, Authorized Signatory of the petitioner appeared; thereafter, certain defects were pointed out to him and since no valid documentary evidence was produced, the respondent, having left with no other option, confirmed the proposals contained in the Show Cause Notice dated 25.05.2022.

4.1 Therefore, the learned Additional Government Pleader for the respondent submits that the petitioner has been provided with opportunity of personal hearing on two occasions, i.e. on 22.01.2021 at 4.00 p.m. and 28.05.2022 at 11.a.m. to appear before the respondent and putforth their case and it is only thereafter, the respondent passed the impugned order and therefore, there is no violation of principles of natural justice.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and perused the materials placed on record.

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6. The petitioner is an assessee on the files of the respondent under the provisions of the CGST/SGST Act. On 17.12.2020, a surprise inspection was conducted by the respondent-Intelligence Wing Officer at the petitioner's place of business. During such inspection, it was found that the petitioner-Concern does not exist. Thereafter, the respondent issued a summon under section 70 (1) of the TNGST Act, 2017 dated 07.01.2021 to the petitioner's place of business via. RPAD fixing the date of personal hearing of the petitioner on 22.01.2021. Since the petitioner has already closed his business after due intimation, the said notice was returned with an endorsement, 'No such name'. Thereafter, the respondent, after verification of documents, viz., GSTR-2A filed by the petitioner, construed that invoices were received with a fraudulent intention to avail fake ITC, as the petitioner has effected purchases from a dealer (supplier) whose GST registration was cancelled. Therefore, the respondent proposed to reverse the ITC already availed by the petitioner. Thereafter, a show cause notice was issued on 02.02.2021 to the petitioner's residential address, pursuant to which, the petitioner by letter dated 12.02.2021 produced books of accounts, tax invoices for inward and outward supplies, audited income tax records and bank account statements and subsequently, by letter dated 15.02.2021 filed the documents of purchases and sales, GSTR-1, GSTR-3B payment receipts

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for the subject assessment years, i.e from 2017-2018, 2018-2019 and 2019-2020. However, the respondent issued a show cause notice dated 25.05.2022 reiterating the same contentions as mentioned in the earlier show cause notice dated 02.02.2021 and fixed the personal hearing date on 28.05.2022 at 11.00 a.m. The Show Cause Notice dated 25.05.2022 itself was received by the petitioner only on 30.05.2022. The said notice was followed by a notice in DRC-01A dated 30.05.2022. However, the respondent without even affording an opportunity of hearing to the petitioner, passed the impugned order on the very next day, i.e. on 31.05.2022 confirming the proposals contained in the show cause notice dated 25.05.2022.

7. The main contention of the learned counsel for the petitioner is that the assessment order suffers from violation of principles of natural justice, as, the petitioner has not been afforded with an opportunity of personal hearing. In terms of Section 75 (4) of the CGST Act, it is mandatory on the part of the respondent to provide an opportunity of hearing to the assessee before passing any adverse order, whereas, in the present case, no such opportunity was granted to the petitioner before confirming the demand made in the show cause notice, therefore, the impugned order is not only against the provisions contemplated under the Section 75 (4) of CGST Act but also suffers from violation of principles of natural justice.

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8. The procedure contemplated under the provisions of the GST Act was that prior to assessment under Section 73 (9) or 74 (9) of the GST Act, an assessee must be issued with a notice under Section DRC-01A (as it stood then) followed by a detailed show cause notice accompanied by DRC-01. In any case even after the amendments once the assessing authority decides to issue DRC-01A, it has to be before the issuance of show cause notice accompanied by DRC-01. In case, the assessee refuses to the proposal or fails to submit his objections to the proposals in DRC-01A, the Assessing Officer, shall issue a notice under Section 73(1) or 74(1) as the case may be. In case the Assessing Officer decides to confirm the proposal made, he then has to provide a personal hearing under Section 75(4). This process of fixing a personal hearing can thus be only after the reply of the Assessee or after the period to file the reply had expired, with or without extension. Thus, the respondent-Assessing Officer only after following the due procedure contemplated and explained above can pass an order under Section 74 (9) of the GST Act.

9. On perusal of the records, it is revealed that the impugned order has been passed on 31.05.2022, however, a notice under Section 74 of TNGST/CGST Act has been issued only on 25.05.2022, whereby, the

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personal hearing date was fixed on 28.05.2022. As per Section 74(1) read with Rule 142 (1A), the proper officer shall along with show cause notice serve a notice in DRC-01. In fact, a summary of show cause notice in Form DRC-01 has been issued subsequent to the assessment order on 02.06.2022. The respondent cannot put the cart before the horse. In this case, the show cause notice unaccompanied by DRC-01 preceded DRC-01A and on the very next day of receipt of the show cause notice without DRC-01, the impugned order has been passed without granting a personal hearing. When the show cause notice unaccompanied by DRC-01 was served only on 30.05.2022, the contention of the respondent that the personal hearing was granted on 28.05.2022 cannot be accepted as such fixation is meaningless.

10. In the present case, it is clear that the respondent has not followed procedure contemplated under the GST Act. Therefore, as rightly pointed out by the learned counsel for the petitioner, the impugned order suffers from procedural lapses and violation of principles of natural justice. Hence, this Court is of the view that the impugned order is untenable and has to be set aside.

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11. Accordingly, this Court is inclined to pass the following orders/directions:

i) The impugned order passed by the respondent dated 31.05.2022 is set aside.

ii) The matter is remanded back to the respondent for fresh consideration.

iii) The respondent is directed to issue a notice along with Form DRC-01 spelling out the discrepancies and after considering the reply filed by the petitioner, afford an opportunity of personal hearing to the petitioner, then shall decide the matter and pass fresh orders in accordance with law.

iv) The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

12. In the result, the Writ Petitions are allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

18.08.2026

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Index ; yes
Neutral Citation : yes

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To
The State Tax Officer, Group-I
Inspection -1/Intelligence -I
No.1, PAPJM Buildings, Greams Road,
Chennai – 600 006.

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S.Raveekumar,J.,

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