



W.P. No. 37084 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2025

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 37084 of 2025

and

W.M.P.Nos.41503 & 41505 of 2025

Tvl.Sri Vigneshwara Trading

GSTIN:33ACSF55348H1ZO

Represented by its Partner Mr.Sathese Kumar

15/30 A, Avarampalayam Road,

K.R.Puram, Coimbatore – 641 006.

... Petitioner

Vs

Assistant Commissioner (ST) (FAC)

Avarampalayam Circle

Coimbatore.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, quashing the impugned Detailed Order No.33ACSF55348H1ZO/2020-21 dated 25.02.2025 along with the summary order bearing DRC 07 Reference No.ZD330225265052U dated 26.02.2025, passed by the Respondent as being arbitrary and not sustainable and thus render justice.



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For Petitioner : Mr.G.Natarajan
For Mohammed Zuhyar

For Respondent : Mr.Prashantha Kiran
Government Advocate

ORDER

This writ petition is taken up for final hearing and disposed of at the time of admission after hearing the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2. In this writ petition, the petitioner has challenged the impugned order dated 25.02.2025. The impugned order was preceded by a notice vide DRC-01 Reference ZD331124265385I dated 27.11.2024, which was replied by the petitioner in Form DRC-06 on 27.01.2025.

3. About three defects were pointed out in the aforesaid notice in DRC-01 dated 27.11.2024. Insofar as the first defect is concerned, the petitioner has agreed to pay the tax. Insofar as the second defect regarding excess claim of ITC is concerned, it is the specific case of the petitioner that under Section 16(2)(c) of the respective GST Enactments, every registered person is entitled to take input tax credit on the supply of



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goods and services, subject to the condition that the tax charged in respect of such supply has actually been paid to the Government, either in cash or through utilization of ITC admissible in respect of such supply. It is the specific case of the petitioner that the petitioner had correctly availed input tax credit on inward supplies. Specifically, it was argued by the learned counsel for the petitioner that, in terms of Section 17(1) & (2) of the respective GST Enactments, where the goods or services, or both, are used by the registered person partly for the purpose of business, partly for other purposes or partly for exempt supplies and partly for taxable supplies, then the amount of credit shall be restricted to the input tax attributable to the taxable supplies in the course of business. Therefore, the taxable person needs to make an apportionment of available input tax credit under Rule 42 & 43 to arrive at the eligible ITC. It is submitted that the petitioner complied with the above requirement under Rule 42 & 43 of the Rules.

4. It is further submitted that Section 2(47) of GST Act, 2017 “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under



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Section 11, or under Section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

5. Section 2(78) of GST Act, 2017 “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act. However, as seen from the GSTR-09 return filed it is evident that the petitioner have not made such apportionment, resulting in excess claim of ITC beyond what the petitioner is eligible for.

6. It is further submitted that the impugned order, dated 25.02.2025, is contrary to Section 75(4) of the respective GST Enactment.

7. It is submitted that in case, the Department was not convinced with the reply filed by the petitioner in Form DRC-06 dated 27.01.2025, the respondent ought to have called upon the petitioner for a personal hearing.



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8. It is submitted that the personal hearing opportunity was fixed on 03.12.2024. It is submitted that post facto, the petitioner also filed a reply on 27.01.2025. It is submitted that the petitioner was not heard thereafter. It is therefore submitted there is a manifest violation of Section 75(4) of the respective GST Enactment. It is submitted that the impugned order in any event violates the Principles of Natural Justice.

9. The learned Government Advocate for the respondent, on the other hand, would submit that the writ petition is devoid of merits and is liable to be dismissed for the relief sought for. It is further submitted that the petitioner had accepted to pay interest and late fee of Rs.4642/- and Rs.2475/- and therefore, implicitly accepted to the proposition in notice in Form DRC-01 dated 27.11.2024.

10. That apart unless an assessee asked for a personal hearing, there is no question of granting further personal hearing. It is submitted that in this case, after the reply was filed on 27.01.2025, the petitioner did not ask for any personal hearing and therefore, the impugned order has been passed on 25.02.2025, which strictly in accordance with Section 75



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of the respective GST Enactments.

11. The learned Government Advocate for the respondent relied upon the decision of the Writ Court in the case of ***Bright Steels Vs. State Tax Officer, Trichy***, vide order dated ***13.08.2021*** in ***W.P.(MD).Nos.14395 to 14398 of 2021***. The learned Government Advocate for the respondent submits that the said decision was also upheld by the Hon'ble Division Bench of this Court vide order dated ***06.10.2021*** in ***W.A.(MD).Nos.1902, 1903, 1904 & 1905 of 2021*** reported in ***[2021] 132 taxmann.com 145(Madras)***.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

13. There is no dispute that the petitioner was issued with the notice in DRC-01 dated 27.11.2024. In the said notice itself, time lines were specified. The last date for filing the reply expired on 26.12.2024 and the date for personal hearing was fixed on 03.12.2024. The petitioner



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replied to the notice belatedly on 27.01.2025 and thereafter, the impugned order has been passed on 25.02.2025.

14. A reading of Section 74(5) makes it clear that an opportunity of hearing shall be granted under the following two circumstances:

- (a) Where a request is received in writing from the person chargeable with tax or penalty;
- (b) Where any adverse decision is contemplated against such person.

15. Thus, there is a violation of Principles of Natural Justice. Although the petitioner had failed to respond to the notice in DRC-01 in time, considering the fact that the petitioner's reply was taken on file, it was incumbent on the part of the respondent to call upon the petitioner for a personal hearing as the reply was not acceptable. Since an adverse order has been passed, it has to be treated as an interim order insofar as the demand that had been confirmed.

16. The decision of the writ Court, which has been upheld by the



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Division Bench, was on facts peculiar to that case. There, the Writ Court in ***W.P.(MD).Nos.14395 to 14398 of 2021*** dated ***13.08.2021*** held as under:

“15. In this context, he relies upon proviso to Sub Section 5 of Section 75, which reads that, “provided that no such adjournment shall be granted for more than three times to a person during the proceedings.”

16. That means, one opportunity must be given mandatorily, and if need arises, time shall be given on the request of the Assessee, and such kind of adjournments maximum shall be granted three times and not beyond that. Therefore, what has been restricted under the proviso to Sub Section 5 is concerned, to grant maximum number of adjournments only three times, hence, that would be treated only maximum but not minimum. If the Assessee has not utilised the same, another opportunity need not be given to the Assessee as a matter of right. If we strictly construe the provision of Sub Section 4 of Section 75 of the Act, it is mandated that, only one opportunity shall be given, if that opportunity has not been utilised, on sufficient reasons, by way of any adjournment letter, if any other/further opportunity was sought for, that can be considered and granted only by the Officer concerned, who deal with the matter and in this regard, the law does not mandate that, mandatorily three such



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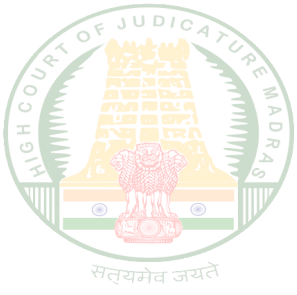
personal hearings shall be given to the Assessee.

Therefore, the interpretation sought to be given as claimed by the counsel for the petitioner that Sub Section 4 of Section 75 is untenable, therefore, it is liable to be rejected, accordingly, the said contention is rejected.”

17. However, it has to be emphasized that the decision in Paragraph Nos.15 and 16 (extracted supra) was in the context of the facts as recorded in Paragraph 17, which reads as follows:

“17. Coming to the factual matrix of this case, as has been quoted hereinabove, it has been recorded that, more than twice, an opportunity had been given and last such opportunity was given on 30.12.2020, where the petitioner did appear and therefore, it cannot be stated that no opportunity had been given, and by thus, it has followed the mandatory provisions of Section 75(4) of the Act.”

18. Therefore, impugned order is quashed in so far as Defect No.2 alone. The case is remitted back to the respondent to pass a fresh order on merits as expeditiously as possible, preferably within a period of three (3)



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months from the date of receipt of a copy of this order. It is made clear that the petitioner shall appear before the respondent and co-operate with the respondent for personal hearing pursuant to the order in the de novo proceedings. In case, the petitioner fails to appear, the respondent is at liberty to reconfirm the order confirmed vide impugned order dated 25.02.2025.

19. In fine, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.10.2025

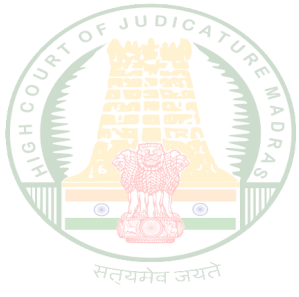
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Index: Yes/ No
Speaking order/Non-Speaking order
Neutral Citation Case: Yes/No

To

The Assistant Commissioner (ST) (FAC)
Avarampalayam Circle
Coimbatore.

C. SARAVANAN, J.

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