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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 20TH DAY OF FEBRUARY 2025 / 1ST PHALGUNA, 1946

WP(C) NO. 23872 OF 2024

PETITIONER:

M/S. RAMANATTU MOTOR CORP.,
10/560 E, OTTAPPUNNA,
CHERTHALA, ALAPPUZHA, PIN - 688531
REPRESENTED BY ITS MANAGING PARTNER,
SHRI. ABHIN REJU,

BY ADVS.
SMT.G.MINI
SRI.A.KUMAR (SR.)
SRI.P.J.ANILKUMAR
SRI.P.S.SREE PRASAD
SRI.BALASUBRAMANIAM R.
SRI.REGHUNATHAN V.G.

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY (TAXES),
DEPARTMENT OF FINANCE,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 STATE TAX OFFICER,
TAX PAYER SERVICES CIRCLE,
KERALA STATE GOODS AND SERVICES TAX DEPARTMENT,
MINI CIVIL STATION, CHERTHALA,
ALAPPUZHA, PIN - 688524
- 3 STATE TAX OFFICER (ARREAR RECOVERY),
OFFICE OF THE JOINT COMMISSIONER,
KERALA STATE GOODS AND SERVICES TAX DEPARTMENT,
ALAPPUZHA, PIN - 688001



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**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04.02.2025, THE COURT ON 20.02.2025 DELIVERED THE FOLLOWING:**



“C.R.”

BECHU KURIAN THOMAS, J.**W.P.(C) No.23872 of 2024**Dated this the 20th day of February, 2025**JUDGMENT**

Petitioner challenges the show cause notice and the consequential order issued under section 73 of the Central Goods and Services Tax Act, 2017/State Goods and Services Tax Act, 2017 (for short ‘the GST Act’) imposing tax, interest and penalty.

2. Petitioner is a partnership firm. For the financial year 2018-19, pursuant to a show cause notice dated 16-11-2023 under section 73(1) of the GST Act, an order dated 06-03-2024 was issued, imposing a huge liability. The proceeding that resulted in the above-referred order was allegedly preceded by a notice dated 03.07.2023 as well, intimating certain discrepancies in the return filed. Petitioner pleads that neither of the two notices mentioned above nor the order of determination were served on the petitioner and that it was unaware of the proceedings until intimation of the recovery proceeding was uploaded in the portal. According to the petitioner, the show cause notice came to the knowledge of the petitioner much later, as it was uploaded in the tab for ‘Additional Notices and Orders’ and not that provided for ‘Notices and Orders’ in the portal. Since petitioner had no reason to verify the tab for ‘Additional Notices and Orders’, when there was no prior



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notice, the impugned order of determination under section 73 of the Act, according to the petitioner, was issued in violation of the principles of natural justice.

3. A counter affidavit has been filed on behalf of the second respondent stating that the GST common portal is notified under section 146 of the GST Act for facilitating registration, payment of tax, furnishing returns etc., and it acts as a platform for all activities carried out under the statute. It is also pleaded that if a taxpayer goes to the 'User Services', in the portal, the drop-down page of 'Notices and Orders' and 'Additional Notices and Orders' are clearly shown and while registering on the common portal, every dealer is taken through a detailed tutorial, explaining the workings of the portal, including the purposes of the tab meant for 'Notices and Orders' and that for 'Additional Notices and Orders'. It is also the case of the respondents that the drop-down page of 'Notices and Orders' pertains to administrative matters like registration, while, 'Additional Notices and Orders' pertain to matters of adjudication and hence the design of serving notices relating to adjudication assessment can only be uploaded in the 'Additional Notices and Orders' tab. The respondents contend that at the time of accessing the common portal, every taxpayer is made aware of the standard operating procedure and there is a unique structure with unique login credentials, including user-name and password. It is also stated that the user interface, including the web design, is in such a way that the common portal is easy to be navigated and accessed



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by registered taxpayers with minimum technical knowledge. Respondents further pleaded that failure of the party to effectively navigate through the portal cannot be a reason to challenge the proceedings of the department and that there is no instance of violation of natural justice.

4. I have heard Sri. A Kumar, the learned Senior Counsel instructed by Smt. G.Mini, learned counsel for the petitioner as well as Dr. Thushara James, the learned Senior Government Pleader on behalf of the respondents.

5. Undoubtedly there is a distinction between 'non-service of notice' and 'not noticing or lack of knowledge of service of notice'. While the former is a case of certain violation of the principles of natural justice, the latter cannot have such a legal effect in every situation. Lack of knowledge of service of notice can amount to a violation of principles of natural justice only in certain limited circumstances. When lack of knowledge is attributable to the default of the sender of the notice, then 'not noticing or lack of knowledge of service of notice' can amount to a negation of the principles of natural justice.

6. In the instant case, concededly, the notice that preceded the order of determination under section 73 of the GST Act was posted in the portal of the petitioner in the tab meant for 'Additional Notices and Orders'. There was yet another tab for 'Notices and Orders'. Normally, every person will access the tab meant for 'Notices and Orders' to check whether any notices have been issued. In the absence of any notices uploaded in the tab for 'Notices and Orders', a person may not check the tab for 'Additional Notices and Orders',



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unless there are proper instructions on the same page itself, indicating expressly, the manner in which the portal should be navigated. Of course, while accessing the portal, every taxpayer is bound to peruse every window. However, for all practical purposes, a taxpayer will not read through every user information given in all the windows to comprehend the mode in which the pages should be navigated. In the absence of specific notes or instructions given on the same page meant for 'Notices and Orders' or 'Additional Notices and Orders' it cannot be assumed that there has been an effective dissemination of information to taxpayers that the first notice regarding determination under section 73 or 74 of the GST Act will be uploaded only in the tab meant for 'Additional Notices and Orders'.

7. The learned Government Pleader took pains to explain to the Court how the dashboard is operated and illustrated by opening a page of the portal, as an example. It was noticed that in the page containing the tab for 'Notices and Orders' or 'Additional Notices and Orders', specific instructions are provided as a 'Note', stating that all matters of adjudication will be posted in the tab for 'Additional Notices and Orders' while those relating to registration will be uploaded in the tab for 'Notices and Orders'. However, the learned Senior Counsel for the petitioner pointed out that the instructions now seen in the portal were not in existence earlier and the information is now incorporated after directions from the High Court of Madras.

8. In this context, it is relevant to notice the decision of the Madras High



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Court in **M/s. Sabari Infra Private Limited v. Asst. Commissioner (ST)**

(W.P. No.22369 of 2023), wherein, a similar situation had arisen. In the said decision, the instructions in the web portal then existing, were extracted which is reproduced below:

"How can I view or download the notices and demand orders issued by the GST authorities?"

To view or download the notices and demand orders issued by the GST authorities, perform the following steps;

- 1. Access www.gst.gov.inURL. The GST home page is displayed.*
- 2. Login to the GST portal with valid credentials.*
- 3. 'Click the services – user services – view notices and orders command.'*

9. Based on the above instructions, the Madras High Court in the above decision came to the conclusion that the problem arose on account of the complex architecture of the web portal. It was observed that though the portal has been designed to facilitate easy access to information, the results were otherwise. The aforesaid observations reveal that there was no information in the portal at that point in time, that the notices of adjudication or determination alone would be posted in the tab for 'Additional Notices and Orders'. The significance of the abovementioned observation arises in view of another decision of the Delhi High Court in **Anhad Impex and Others v. Assistant Commissioner, Ward-16, Zone-2 and Others** [MANU/DE/1282/2024] wherein, after referring to the observations of the Madras High Court in **M/s. Sabari Infra's** case (supra), extracted earlier, it was held that, in a subsequent decision in **Murugesan Jayalakshmi vs.**



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State Tax Officer (Writ Petition No.2746/2024), the Madras High Court itself had observed that the issue noted in **M/s. Sabari Infra's** case has been addressed by the GST authorities and the portal has been redesigned and both the “View Notices” tab and “View Additional Notices” tab are made under one heading. In the said case, the Division Bench of the Delhi High Court set aside the order of determination and permitted the petitioner to file a response to the show cause notice and directed a fresh adjudication.

10. In view of the above decisions, it is evident that the portal as it is now visible, was not the manner in which it was prevailing in 2023.

11. In the present scheme, the tabs for view ‘Notices and Orders’ and ‘Additional Notices and Orders’ are placed on the same page where a ‘Note’ is prescribed at the bottom, giving appropriate information on how to navigate through the different tabs. The following is the ‘Note’ now existing:

"Note:

1. *Following Notices/Orders issued by tax authorities are available under "Notices and Orders".*

- *Notice/Orders/Intimations pertaining to registration including new registration, amendment, cancellation, revocation and other communications.*
- *Notices issued by System to return defaulters in Form GSTR-3A.*
- *Notices pertaining to Return module comprising GST DRC-01B and GST DRC-01C*
- *Summary of assessment orders issued in Form GST DRC-07 where notices and other proceedings were held offline.*

2. *Following Notices/Orders issued by tax authorities are available under "Additional Notices and Orders."*

- *Notices/Orders pertaining to modules Advance Ruling, Appeal, Assessment/Adjudication, Audit, Enforcement, Prosecution and Compounding, Recovery, LUT etc.*

3. *Notices/Orders pertaining to Refund module will be shown under case details page of respective ARN of refund. Please navigate to 'Services>User Services>*



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My application' and select ARN under Application Type as 'REFUNDS'."

12. It is evident that the above instructions, now incorporated in the page, to view notices or additional notices, were not in existence earlier. There is nothing to indicate the date when this change was incorporated. Respondents have not been able to either illustrate or specifically point out when the change was brought about. A perusal of the judgments mentioned above clearly reveals that as on 31.07.2023, when the judgment in **M/s.Sabari Infra Private Limited** was rendered, the web portal did not contain the instructions as it exists now, while, from the judgment of the Delhi High Court in **Anhad Impex**, it is evident that, by 16.02.2024 the changes, as are now seen, were incorporated.

13. In the instant case, Ext. P3 and Ext. P4 notices were issued on 03.07.2023 and 16.11.2023, both of which are before the decisions in **M/s. Sabari Infra Private Limited** (supra) as well as that in **Anhad Impex** (supra). It is therefore evident that the web portal as it now stands is different from what existed earlier. The scheme of arrangement of the portal was confusing and vague earlier, to identify where the notices for determination would be posted.

14. Considering the circumstances mentioned above, this Court is satisfied that the petitioner was unaware of the notice and was even not properly served with the notices due to the vagueness of the system. The



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lack of knowledge of the notice issued to the petitioner is therefore attributable to the respondents. Thus, there was neither any proper service of notice nor was sufficient opportunity granted to the petitioner to contest the matter. Therefore, it is essential that the order of determination dated 06.03.2024 be set aside and the petitioner be granted an opportunity to file response to Ext.P3 and Ext.P4 notices.

15. Hence, Ext.P1 order of determination is set aside, and the petitioner is granted an opportunity to file a reply to Ext.P3 and Ext.P4 notices within 30 days from today. If any reply is filed within the time mentioned above, the second respondent shall consider the matter afresh, after granting an opportunity of hearing to the petitioner. Otherwise, the respondent will be at liberty to proceed in accordance with law.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps



APPENDIX OF WP(C) 23872/2024

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE ORDER UNDER SECTION 73 DATED 6.3.2024 ISSUED BY THE 2ND RESPONDENT.
Exhibit P2	TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 1.6.2024 ISSUED BY THE 3RD RESPONDENT.
Exhibit P3	TRUE COPY OF THE FORM GST ASMT 10 DATED 3.7.2023.
Exhibit P4	TRUE COPY OF THE SHOW CAUSE NOTICE DATED 16.11.2023.
Exhibit P5	TRUE COPY OF THE SCREEN SHOT OF ADDITIONAL NOTICES/ORDERS.
Exhibit P6	TRUE COPY OF THE SCREEN SHOT NOTICES AND ORDERS.