

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.7674 of 2021 and
WMP.Nos.8208 & 8209 of 2021

M/s.View Max,

Represented by its Proprietor M.Ramavidyadharan,
No.26/52, Balaji Bhavan,
48th Street, 9th Avenue, Ashok Nagar,
Chennai-600 083.

.. Petitioner

Vs

The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
6th Floor, MHU Complex,
692, Anna Salai, Nandanam,
Chennai-600 035.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying for the issuance of Writ of
Certiorari, calling for the records of the case relating to the
impugned Order-In-Original No.05/2020 (C) dated 01.06.2020
issued by the Respondent and to quash the same.

For Petitioner : Mr.J.Shankarraman

For Respondent : Ms.Lydia
for Mr.Rajnish Pathiyil
Senior Standing Counsel

O R D E R

Heard Mr.J.Shankarraman, learned counsel appearing for the
petitioner and Ms.Lydia, learned counsel for Mr.Rajnish
Pathiyil, learned Senior Standing Counsel appearing for the
respondent.

2.This matter had come up for admission on 24.03.2021, when
I passed the following orders:

'Mr.Rajnish Pathiyil, learned Senior Standing Counsel
accepts notice for the respondent and seeks some time to obtain
instructions and file a counter.

2. The short point involved is whether the petitioner is eligible for exemption from levy of service tax in terms of Section 66 D(g) of Finance Act, 1994. The petitioner, vide reply dated 10.03.2020 to the show cause notice dated 08.09.2019, sought exemption relying upon other cases of similarly placed assesseees where exemption is stated to have been granted.

3. However, while acceding to the position that the reply has been filed and was available on record, the request for exemption and reliance upon other similar matters has not been answered.

4. I am of the view that the petitioner may well, in the aforesaid circumstances, seek rectification, since the non-consideration of reply dated 10.03.2020 on this score, amounts to an error apparent on record.

5. List on 25.03.2021 immediately after admission. Counter/written instructions by then with an advance copy served upon the petitioner.'

3.The matter was adjourned at request of Mr.Pathiyil to study the limited aspect of whether the decision in re: Chennai Digital Print Advertising Private Limited (cited by the petitioner in its reply), wherein an identical issue is stated to have been held in favour of that assessee, has been considered, distinguished by the authority in the impugned order.

4.Today, learned counsel appearing for the respondent confirms that though the order has been noted by the officer while recording the submission of the petitioner, its ratio has neither been taken note of by the officer nor distinguished. In any event, she seeks to point out that, that order is, in fact, adverse to the assessee. This submission, prima facie, does not appear to be factually correct as the tax has been appropriated since the assessee in that case had collected the tax from its customers. In any event, it was incumbent upon the officer to have taken note of the order and any amount of explanation in this regard before me will not account for such lapse on the part of the authority.

5.In such circumstances, the only recourse is to set aside the impugned order and remand the matter back to the authority to be heard afresh and a speaking order passed after taking note of the ratio of the order in Chennai Digital Print Advertising Private Limited in Order-in-Original No. C.No.IV/9/108/2016-GST

Ch.N-Adj. Dated 11.09.2017 as well as any other order passed by co-ordinate officer on this issue.

6.Let this exercise be completed within a period of eight (8) weeks from today, after hearing the petitioner. This writ petition is allowed. Connected Miscellaneous Petitions are also closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

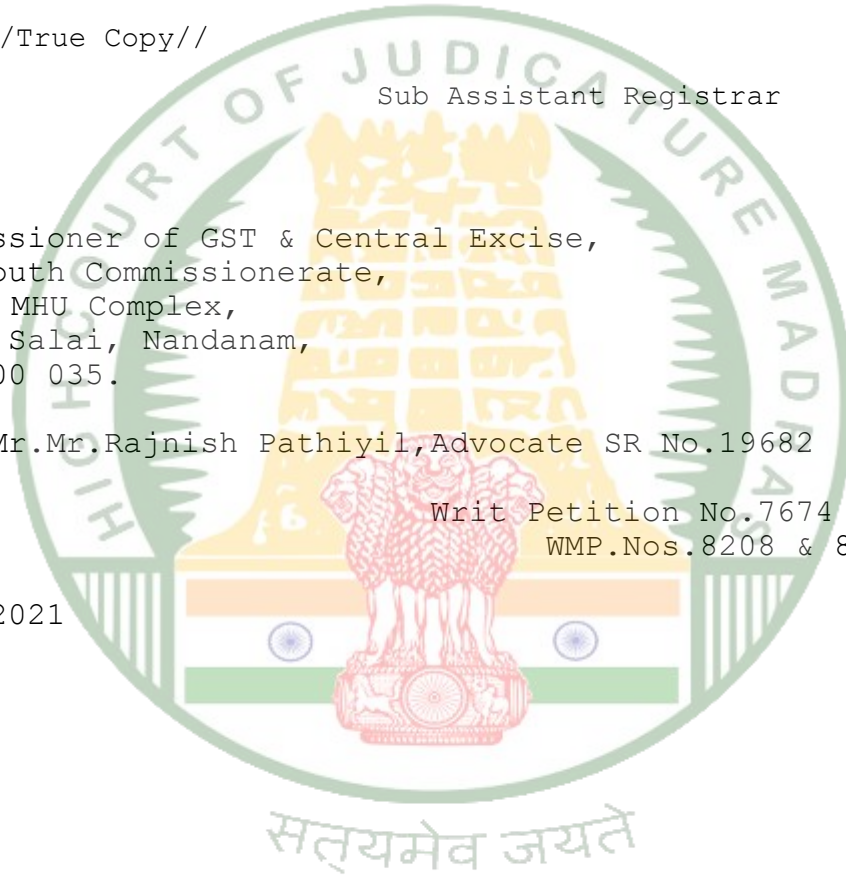
To

The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
6th Floor, MHU Complex,
692, Anna Salai, Nandanam,
Chennai-600 035.

+1 CC to Mr.Mr.Rajnish Pathiyil,Advocate SR No.19682

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PMK(CO)
RG.19.03.2021



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