IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10128 of 2024 and
W.M.P.Nos.11169 & 11170 of 2024

M/s.K.A. & Co.,
Represented by its Partner Mr.N.Murali Nalliyah,
No.1 S.S.Sahib street,
Aminjikarai, Chennai-600 029. ...Petitioner

Vs.

The State Tax Officer,
Group-XI, Intelligence-1,
Station No.1, PAPJM Building,
Greams Road, Chennai-600 006. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in the impugned order GSTIN:33AADFK6688B1ZE/2017-2018 dated 29.12.2023 and quash the same as it has been passed in violation of principles of natural justice.

For Petitioner : Ms.Sharanya Vijay K.

For Respondent : Mr.V.Prashanth Kiran,
Government Advocate (T)

O R D E R

An order dated 29.12.2023 is assailed both on the ground of breach of principles of natural justice and on the ground of non application of mind. Pursuant to an inspection at the registered place of business of the petitioner in March 2023, proceedings were initiated by issuing an intimation followed by a show cause notice dated 28.09.2023. The petitioner did not reply to the show cause notice because the notice was uploaded on the “View Additional Notices and Orders” tab on the GST portal and not communicated to the petitioner through any other mode.

2. Learned counsel for the petitioner referred to the impugned order and pointed out that tax liability was imposed with regard to non payment to creditors within 180 days by using the balance sheet for financial year 2018-2019 as the basis instead of the balance sheet for financial year 2017-2018. In this regard, she submits that the financial statements were made available to the respondent during the course of inspection. As a consequence of the patent error, she submits that the taxable turnover was taken as Rs.8,95,91,806/- instead of Rs.2,65,31,910/-. Even with regard to the other heads of the tax proposal,

she submits that the impugned order indicates complete non application of mind.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He points out that the petitioner admitted liability and discharged dues in respect of two of the six issues specified in the intimation dated 14.09.2023. Consequently, he submits that the petitioner was aware of proceedings, but opted not to reply to the show cause notice or participate in proceedings pursuant thereto.

4. The petitioner has placed on record the balance sheets for the financial years ended 31.03.2018 and 31.03.2019. The amount payable by the petitioner to sundry creditors as on 31.03.2018 was a sum of Rs.2,65,31,910/-. For the financial year ended 31.03.2019, the amount payable to sundry creditors was Rs.8,95,91,806/-. It is unclear as to whether these balance sheets were placed before the respondent. Nonetheless, while undertaking adjudication for assessment period 2017-2018, it was incumbent on the respondent to call for and examine the financial statement for the year ended 31.03.2018 and not use the financial statement for year ended 31.03.2019 as the basis. To that extent,

the order calls for interference.

5. The justification of the petitioner for not responding to the show cause notice is not convincing in as much as the petitioner is under an obligation to monitor the GST portal on an ongoing basis as a registered person. Therefore, it is also necessary to put the petitioner on terms.

6. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit a sum of Rs.10,00,000/- as a condition for remand.

7. For reasons set out above, the impugned order dated 29.12.2023 is set aside on condition that the petitioner remits a sum of Rs.10,00,000/- (Rupees Ten lakhs only) towards the disputed tax demand as agreed to within a period of three weeks from the date of receipt of a copy of this order. The petitioner is permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that the sum of Rs.10,00,000/- was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter

issue a fresh order within a period of three months from the date of receipt of the petitioner's reply.

8. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

17.04.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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To

The State Tax Officer,
Group-XI, Intelligence-1,
Station No.1, PAPJM Building,
Greams Road, Chennai-600 006.

SENTHILKUMAR RAMAMOORTHY,J.

Kj

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