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W.P.No.11748 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.06.2024**

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.11748 of 2024 and
W.M.P.Nos.12825 & 12827 of 2024

M/s. Jinvar Trading Company,
Represented by its Proprietrix,
No.27, Reddy Raman Street,
Sowcarpet, Chennai-600 079.

... Petitioner

-VS-

The Commercial Tax Officer-2,
Sowcarpet Assessment Circle,
Elephant Gate Bridge Road,
Chennai-600 003.

... 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 order dated 30.10.2023 in GSTIN:33AGXPI5094L1ZN/2018-2019 and quash the same as illegal, arbitrary and in violation of principles of natural justice.

For Petitioner : Ms.C.Rekhakumari

For Respondent : Mrs. K.Vasanthamala, Govt. Adv. (T)



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ORDER

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2. By asserting that the petitioner was unaware of proceedings culminating in the impugned order because the petitioner's part-time accountant did not verify the “View Additional Notices and Orders” tab on the GST portal, wherein the notices and orders were uploaded, the present writ petition was filed.

3. Learned counsel for the petitioner submits that the tax proposal pertains to the disparity between the petitioner's GSTR 3B return and the GSTR 1 statement. She further points out that such disparity arose on account of the calculation of GST at 36% in the GSTR 1 statement. She also points out that a sum of Rs.68,677/- was recovered from the petitioner by way of debit from the petitioner's electronic credit ledger. She points out that this amount represents a significant portion of the disputed tax liability of



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Rs.1,92,423/-. Therefore, she seeks an opportunity to contest the tax demand on merits.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. She points out that sufficient opportunity was provided to the petitioner to contest the tax demand on merits by issuing a notice in Form ASMT 10 and a show cause notice.

5. On perusal of the impugned order, as contended by learned counsel for the petitioner, it is clear that tax liability pertains to mismatch between the GSTR 3B return and the GSTR 1 statement. Learned counsel for the petitioner has placed on record *prima facie* evidence that GST was computed at the rate of 36% in respect of certain items in January and February of the relevant assessment period. It is also clear from the impugned order that the tax proposal was confirmed because the petitioner did not respond to the show cause notice or participate in the personal hearing. In the circumstances outlined above, the interest of justice warrants that an opportunity be provided to the petitioner especially because a substantial portion of the tax demand was recovered.



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6. For reasons set out above, the impugned order dated 30.10.2023 is set aside and the matter is remanded for reconsideration by the respondent.

The petitioner is permitted to submit a reply to the show cause notice dated 21.09.2023 within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of the petitioner's reply, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of the petitioner's reply. For the avoidance of doubt, it is made clear that the amount debited from the petitioner's electronic credit ledger towards tax liability under the impugned order shall abide by the outcome of the remanded proceedings.

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

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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SENTHILKUMAR RAMAMOORTHY,J

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To

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