IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 26.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17222 of 2024
and W.M.P.Nos.19001 & 19003 of 2024

Gmap Ventures
Rep by its Partner
R.Amresh Chandran, No.40, 11th Street,
East Avenue, Korattur, Chennai 600 080. ... Petitioner

-vs-

The Assistant Commissioner (ST),
Korattur Assessment Circle,
Integrated Commercial Taxes Department,
Block No.19, T.S.No.02, 3rd Floor,
Govt. Farm Village, Room No.332,
Nandanam, Chennai 600 035. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the impugned order of the respondent passed in GSTIN: 33AAMFG5411H1ZM /

2017-18 dated 26.12.2023 and quash the same.

For Petitioner : Mr.N.Murali

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

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ORDER

An order in original dated 26.12.2023 is challenged in this writ petition on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. The petitioner asserts that a consultant was engaged for handling GST compliances. On account of the show cause notice and other communications being uploaded on the GST portal and not communicated to the petitioner through any other mode, it is stated that the consultant did not inform the petitioner about the proceedings culminating in the impugned order.

2. Learned counsel for the petitioner submits that the show

cause notice was limited to the mismatch between the petitioner's GSTR 3B and the auto populated GSTR 2A, whereas liability was imposed under the impugned order with regard to the additional issue of mismatch between the petitioner's GSTR 1 and 3B returns. He also submits that the petitioner has a good case on merits for the reasons set out in paragraph 10 of the affidavit. Without prejudice, learned counsel submits that the petitioner agrees to remit 10% of the dispute tax demand as a condition for remand.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that principles of natural justice were complied with by issuing show cause notice dated 28.09.2023 and by offering a personal hearing. As regards the mismatch between the petitioner's GSTR 1 and GSTR 3B returns, he submits that tax payable on self-assessment may be recovered under Section 79 without recourse to the procedure specified in Sections 73 or 74.

4. On examining the impugned order, it is clear that the tax proposal was confirmed because the tax payer failed to reply to the show cause notice or the reminder. By taking into account the assertion that such non participation was on account of not being aware of the proceedings and the contention that the issue relating to the mismatch between the GSTR 1 and GSTR 3B was not mentioned in the show cause notice, the interest of justice warrants re-consideration by putting the petitioner on terms. In order to enable the petitioner to respond to the issue relating to mismatch between the petitioner's GSTR 1 and 3B returns, it is just and necessary that the impugned order be treated as a show cause notice and the petitioner be permitted to reply thereto within fifteen days from the date of receipt of a copy of this order on condition that the petitioner remits 10% of the disputed tax demand as agreed to within the said period.

5. For reasons aforesaid, impugned order dated 26.12.2023 is directed to be treated as a show cause notice subject to the condition that the petitioner remits 10% of the disputed tax demand as agreed to within ***fifteen days*** from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to submit a reply. Upon receipt of such reply and on being satisfied that 10% of the disputed tax demand 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 ***three months*** from the date of receipt of the petitioner's reply.

6. W.P.No.17222 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.19001 and 19003 of 2024 are closed.

26.07.2024

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Index : Yes / No
Internet : Yes / No

Neutral Citation: Yes / No

SENTHILKUMAR RAMAMOORTHY,J

rna

To

The Assistant Commissioner (ST),
Korattur Assessment Circle,
Integrated Commercial Taxes Department,
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