IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.6563 of 2020
& WMP No.7966 of 2020

K.Guman Singh .. Petitioner

Vs

1 The State of Tamil Nadu
Represented by the secretry to Government
Department of Commercial Taxes Fort St. george Chennai 600 009

2 Joint Commissioner (CT)
Chennai North Division 1 PAPJM Building
3rd Floor Greams Road Chennai 600 006

3 Deputy Commissioner (CT)
Zone I 1 PAPJM Building 3rd Floor Greams Road Chennai 600 006

4 Assistant Commissioner (CT)
Kothawalchavadi Assessment Circle 48 / 39
Rajaji Salai Chennai 600 001

5 Commercial Tax officer
O/o. Assistant Commissioner (CT)
Kothawalchavadi Assessment Circle 48 / 39
Rajaji Salai Chennai 600 001

6 State tax officer
O/o. Assistant Commissioner (ST)
Kothawalchavadi Assessment Circle 48 / 39
Rajaji Salai Chennai 600 001

…Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus Calling for records relating to order vide No. TIN / 33320182906 / 2015-16 dated 25.10.2019 together with Forms O and Form RR annexed thereto dated 25.10.2019 passed by the 5th Respondent notice dated 31.12.2019 issued by the 6th Respondent further letter dated 03.01.2020 and 21.01.2020 issued by 5th Respondent and to quash the same and diret the 5th Respondent to furnish all particulars and documents referred to and relied for passing the impugned order and re-open the assessment.

For Petitioner : Ms.Pooja Jain
for Mr.Giridhar
For Respondents : Mr.ANR.Jayaprathap
Government Advocate

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O R D E R

Heard Ms.Pooja Jain, learned counsel for Mr.Giridhar, learned counsel for the petitioner and Mr.ANR.Jayaprathap, learned Government Advocate for the respondents.

2. The challenge is to an order of assessment dated 25.10.2019, passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the period 2015-16. Two issues arise, the first relating to reversal of Input Tax Credit (ITC) and the sales suppression, both based on internal web reports of the Commercial Taxes Department and based on cross verification of the annexures of the petitioner's returns along with annexures of the third party dealers, and the second relating to reversal of ITC on purchases from dealers whose registration are stated to be cancelled.

3. As far as the first issue is concerned, this Court had directed the setting up of an intra-departmental mechanism to look into issues of mismatch, and providing for an exchange of information between the Department and the concerned assessee in order to afford the latter an opportunity to respond/rebut such data.

4. Though this direction was issued as early as on 01.03.2017 in the case of JKM Graphics Solutions Private Limited V. The Commercial Tax Officer (99 VST 243) followed by the Commissioner of Commercial Taxes Department issuing a Circular in January, 2018 stating that all assessments involving the issue of mismatch are to be kept in abeyance till such mechanism is set up, nothing has transpired in this regard till date. I am hence of the view that the completion of assessment need not await the mechanism and have taken a view in other cases that the Department must collate all materials based on which the alleged mismatch is arrived at and furnish the same to the assessee for its response. Once this is done, the assessee is to be heard and a speaking order of assessment is to be passed. Accordingly, and reiterating the view in this case as well, the additions in the impugned order of assessment dated 25.10.2019 are set aside. I am also also inclined to set aside the impugned order on the ground that no pre-assessment notices have not been served upon the petitioner as admitted in paragraph 5 of the counter.

5. Let the petitioner appear before the Assessing Officer on Thursday, the 29th of April, 2021 at 10.30 a.m. along with material in support of its contention without expecting any further notice in this regard. The Assessing Officer shall, after hearing the petitioner either over video conference or by way of physical hearing, as may be mutually convenient, pass an order of assessment, de novo, within a period of six (6) weeks thereafter, in accordance with the law and principles of natural justice. It is made clear that if there is no compliance by the petitioner in regard to the hearing date as fixed above, impugned order dated 25.10.2019 will stand revived with full consequences.

6. The Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy// Sub Assistant Registrar

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To

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+1cc to Mr.Giridhar & Sai, Advocate SR.No. 22051

+1 cc to Spl Government Pleader Sr.No. 22093

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A.SK(18.05.2021)