IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.24860 OF 2021
AND
W.M.P.NO.26163 OF 2021

(Through Video Conferencing)

M/s.Kumar Industries,
Represented by its Partner,
Mr.A.Muthukumar,
No.8 Ponniamman Nagar,
Ayhyambakkam,
Chennai - 600 095.

...Petitioner

Vs

The Assistant Commissioner (ST),
Vanagaram Assessment Circle,
No.4/109, 2nd Floor, Chennai Bangalore Highway,
Varadharapuram, Poonamallee,
Chennai - 600 123.

...Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned order dated 09.09.2021 issued in TIN:33231344676/2011-12 by the respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam

For Respondent : Mr.D.Ravichander
Special Government Pleader

ORDER

The petitioner has challenged the impugned assessment order dated 09.09.2021 in TIN No:33231344676/2011-12. By the impugned order, the respondent has confirmed the proposal in the notice issued to the petitioner under Section 27 of the TNVAT Act, 2006 based on the data calculated by the respondent in the Website. The dispute pertains to mis-match between the turnover declared by the petitioner in the return and the purchase turnover confirmed by the respondent based on the information gathered from their Website whereby a turnover of Rs.15,44,34,090/- has been alleged to have been suppressed by the petitioner.

2.The case of the petitioner is that the petitioner has not only replied to the notice issued but had also demonstrated that there was no neither purchase nor suppression of any turnover in the return. It is submitted that the respondent has passed the impugned order by stating that neither the petitioner has filed the reply nor any case is made out for taking a different view.

3.The learned counsel for the petitioner submits that as a matter of fact that the respondents have now issued a clarification in Circular dated 24.02.2021 in Circular No.5/2021 LW10/12521/2016. It is submitted that the impugned order is therefore liable to be set aside.

4.Appearing on behalf of the respondent, the learned Special Government Pleader for the respondent submits that the impunged order is well reasoned and requires no interference and therefore he prays for dismissal of the writ petition. He further submits that the petitioner was also given an adequate opportunity for hearing before the impugned order was passed.

5.Finally, the learned Special Government Pleader for the respondent submits that the petitioner has an alternate remedy by way of an appeal before the Assistant Commissioner and therefore this writ petition is liable to be dismissed.

6.Heard the learned counsel for the petitioner and the learned Government counsel for the respondent and perused the impugned order which proceeded a notice dated 05.02.2018 to re-open the assessment completed by an order dated 10.06.2016 in TIN No:33231344676/2011-12.

7.The records indicates that the petitioner has filed replies which has not been considered by the respondent while passing the impugned order. Further, the Principal Secretary, Commissioner of Commercial Taxes has also issued a guidelines to be followed in the case of re-assessment arising out of mis-match based on the data generated in the web portal. This circular has not been considered by the Assessing Officer while passing the impugned order.

8.Considering the same, I am inclined to quash the impugned order and remit the case back to the respondent to pass a speaking order within a period of 45 days from the date of receipt of a copy of this order. The respondent shall not only heard the petitioner but also consider the Circular No.5/2021 LW10/12521/2016 dated 24.02.2021 while passing a fresh order in accordance with law. The petitioner is given liberty to file additional reply if any/written submissions within a period of 15 days from the date of receipt of a copy of this order.

9.Accordingly, this writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST),
Vanagaram Assessment Circle,
No.4/109, 2nd Floor, Chennai Bangalore Highway,
Varadharapuram, Poonamallee,
Chennai - 600 123.

W.P.No.24860 of 2021
and
W.M.P.No.26163 of 2021

PL(CO)
RLP(13/12/2021)