IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.5031 of 2021 and
W.M.P. No.5614 of 2021

Tvl. Alliance Projects
represented by its authorized signatory
No.199/8, First Street,
PT Rajan Salai, Chennai - 78.
Now at 36/1, Gandhi Mandapam Road,
Kottupuram, Chennai-85.

... Petitioner

Vs.

The State Tax Officer
KK Nagar Assessment Circle
Fifth Floor, PAPJM Annexue Building,
No.1, Greams Road,
Chennai - 600 006. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the respondent in TIN-33951562045/2015-16 dated 21.12.2020 and quash the same.

For Petitioner : Ms.R.Krithajnya for
Mr.Adithya Reddy

For Respondent : Ms.E.Ranganayaki
Additional Government Pleader

ORDER

The writ petition has been filed challenging the impugned order of assessment dated 21.12.2020 on the premise that it traverses beyond the show cause notice inasmuch while the notice proposed to reverse the Input Tax credit on the purchases allegedly effected from dealers whose registration certificate were cancelled and referred to the effective date of cancellation, however the impugned order of assessment looks to the date on which the proceedings for registration certificate cancellation was initiated.

2. Against this background it is submitted by the learned counsel for the petitioner that it is trite law that the petitioner must be put on notice on the grounds on which the order is proposed to be made so as to enable them to respond to the allegations / charges. However, after issuing the notice, if the order is made on grounds which are different from what is set out in the notice, there is no real opportunity for the petitioner to respond to it and the opportunity if any was only illusory and not real.

3. The learned counsel for the respondent would submit that notice having been issued, the submission that the order being made in violation of principles of natural justice is unsustainable. In any view, there is an alternate remedy by way of appeal.

4. It has been consistently held that departure from show cause notice or if the order traverses beyond show cause notice, it is necessary that the petitioner is put on notice on the basis of which the order was intended to be made. Else, as submitted by the learned counsel for the petitioner, the opportunity to reply becomes illusory and the notice would be an empty formality if the order is made on new / different grounds from the notice. This Court is conscious of the fact that writ petition under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is available. However, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article

226 of the Constitution of India.

5. The impugned order is set aside and it is open to the petitioner to file its objections within a period of 4 weeks from the date of receipt of copy of this order by treating the impugned order to be a notice. If any such reply / objections is filed, the same shall be considered and orders shall be passed after affording a reasonable opportunity. The writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

06.11.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Spp/ shk

To:

The State Tax Officer
KK Nagar Assessment Circle
Fifth Floor, PAPJM Annexue Building,
No.1, Greams Road,
Chennai - 600 006.

MOHAMMED SHAFFIQ, J.

Spp/ shk

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