



W.P.No.12678 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.11.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.12678 of 2021
and
W.M.P.No.13469 of 2021

New Consolidated Construction Co., Ltd.,
Represented by its Vice President
Udayakumar B.N.,
Marathon Innova,
B-1-101, First floor,
Opp. Peninsula Corporate Park,
LowerrParel (W), Mumbai 400 013.

... Petitioner

Vs.

The Assistant Commissioner (ST)
Ayyanavaram Assessment Circle,
F-50, Third Floor,
Anna Nagar, Chennai 600 102.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in CST869679/2013-14 dated 15.04.2021 and quash the same and direct the respondent to pass appropriate orders on the objections dated 12.03.2021 by furnishing break up details.



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For Petitioner : Mr.R.Kumar

For Respondent : Ms.Amrita Dinakaran,
Government Advocate

ORDER

The writ petition has been challenging the impugned order of assessment dated 15.04.2021 on the premise that the Assessing Officer had furnished copies of consignor / consignee movement received from the check post only in relation to turnover of Rs.19,16,016-00 in respect of 5 transactions. However, the impugned order of assessment has been made by making an estimation of sales suppression at Rs.11,27,58,344-00 which, according to the petitioner, has no basis, in any event, the basis for arriving at the above sum was not disclosed to the petitioner.

2. The learned counsel for the respondent submitted that the above turnover, which is treated as sales suppression, was made on the basis of data collected / gathered from the Departmental website and check post data. It was further submitted that the writ petition ought not to be entertained inasmuch as an effective alternate remedy by way of an appeal is



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available. To a pointed question as to whether the respondent has furnished the basis viz., the data collected from the department website and the check post for arriving at the sales suppression of Rs.11.27 Crores, the Respondent was unable to place any material to show that the same was disclosed / made available to the petitioner. I find that there is merit in the submission of the petitioner that in the absence of the basis on which the suppression is arrived, being disclosed, the petitioner would not be in a position to respond. The opportunity if any in such circumstance is an empty formality/ritual. Any order passed pursuant thereto would stand vitiated as being made in violation of principles of natural justice. 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



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Constitution of India.

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4. In view of the above, the impugned order is set aside and the writ petition stands disposed of with a direction to the respondent to furnish the details, in the manner in which the above turnover was arrived at, within a period of 6 weeks from the date of receipt of a copy of this order to which the petitioner can respond. Thereafter, the respondent shall proceed after providing a reasonable opportunity of hearing. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking (or) Non Speaking Order

Index : Yes/ No

shk/spp



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To:
The Assistant Commissioner (ST)
Ayyanavaram Assessment Circle,
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MOHAMMED SHAFFIQ, J.

shk

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