IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.15656 and 15657 of 2015
and
M.P.Nos.1 & 1 of 2015

Nikee Enterprises,
Rep. By its Proprietrix,
Deepa D Davda,
642, Easwaran Chettiar Lay-out,
Tatabad,
Coimbatore 641 012. ... Petitioner in both Writ Petitions

-Versus-

The Assistant Commissioner (CT),
Ram Nagar Assessment Circle,
Coimbatore. ... Respondent in both Writ Petitions

Writ Petitions filed under Article 226 of the Constitution of India for the relief of issuance of Writs of Certiorarified Mandamus calling for the records of the respondent relating to CST No.582333/2006-07 & 2007-08 dated 07.05.2015 and to quash the same and for a consequential order directing the respondent to consider the detailed objections dated 27.01.2014, 19.03.2015, 24.03.2015 and 22.04.2015 and pass appropriate orders afresh.

For petitioner in both WPs : Mr.N.Inbarajan

For respondent in both WPs : Mr.S.Kanmani Annamalai, AGP (Taxes)

COMMON ORDER

The petitioner in both the writ petitions is one and the same with a common issue. Hence, both these writ petitions are taken up, heard together and disposed of by this common order.

2. In both these writ petitions, the petitioner challenges the impugned final assessment and demand.

3. The case of the petitioner in brief is that she is a dealer and engaged in trading foundry chemicals, pig iron and coke. In respect of inter-state sale covered under Section 6(2) of the CST Act, 1956, deemed assessments were contemplated for the years CST 2006-07 & 2007-08 by orders dated 15.02.2010 and 11.02.2011 respectively. While so, based on the inspection made by the Commercial Tax Officer, Enforcement Group VI, Coimbatore, and the statement obtained on 08.06.2010 along with VAT Audit report, by notice dated 31.03.2010/31.12.2013 (CST 2007-08), the exemption granted on transit sales covered under Section 6(2) of the Act was proposed to be disallowed and the petitioner filed objections and thereafter, an order was passed without any opportunity. In those circumstances, the petitioner earlier approached this court questioning the action of the respondent by writ petitions in W.P.Nos.8223 & 8224 of 2014 and this court by common order dated 25.03.2014 allowed the writ petitions thereby setting aside the orders impugned therein and directed the respondent to consider the objections filed by the petitioner and pass fresh orders on merits and in accordance with law.

4. Thereafter, pursuant to the notice dated 17.11.2014, the petitioner filed objections on 26.11.2014. But, despite the request of the petitioner for further opportunity, the respondent passed orders thereby confirming his earlier orders. Aggrieved by the same, the petitioner again approached this court by writ petitions in W.P.No.2816 and 2817 of 2015 and this court, by order dated, again directed the petitioner to appear before the respondent and to file documents and objections and also directed the respondent to pass orders afresh thereafter. In the mean time, the petitioner caused a notice through his Advocate explaining the position in this regard and the petitioner submitted his objections and submitted certain documents. But, this time also, without referring to the objections and the details furnished by the petitioner, the respondent proceeded to pass non speaking orders. Hence, challenging the impugned orders of final assessment and demand, the petitioner is now before this court with these writ petitions.

5. Heard both sides and also perused the records carefully.

6. Admittedly, the assessments in question relate to 2006-07 and 2007-08. In the earlier round of litigations in W.P.No.8223 and 8224 of 2014 this court, after considering the arguments made on either side, was pleased to set aside the orders of the respondent dated 10.02.2014 and directed to pass orders afresh on merits and in accordance with law. Thereafter, in compliance of the same, notices were issued on 17.11.2014, fixing a date of hearing on 26.11.2014. On the basis of the said notices, the petitioner appeared for personal hearing, but, according to the respondent, the petitioner had not produced any documents. Hence, the subsequent order came to be passed on 02.01.2015. Aggrieved by the same, again the petitioner filed W.P.Nos.2816 and 2917 of 2015 on the ground that he was not given an opportunity of person hearing. Thereafter, this court by order dated 05.02.2015 fixed a date for final hearing. But, without affording the same, the present orders came to be passed.

7. According to the petitioner, he had produced copies of objections dated 27.11.2014 , 30.11.2014 and 19.03.2015 which were received by the respondents. Thereafter, yet another objection was filed on 22.04.2015 and personal hearing was also availed, by producing documents. But, no proper verification of documents had taken place during the personal hearing. On the other hand, the respondent without referring the same or discussing passed the impugned order, which is a non speaking one.

8. The respondent in his counter affidavit stated that personal hearing was given and only during such hearing the final objection dated 19.03.2015 was received.

9. The learned counsel for the petitioner would,however, submit that the earlier direction issued by this court is only to the effect that the objections submitted by the petitioner are to be considered and appropriate orders are to be passed on merits and in accordance with law. The learned counsel for the petitioner would further add that the orders impugned are only non speaking orders which cannot be sustained in law, which submission of the counsel for the petitioner has not been refuted in the counter affidavit.

10. It is apparent that the impugned orders are non speaking, contain no reasons which are essential features of dispensation of justice. The mandatory duty cast upon the respondent has been floated. Hence, in order to give quietus to the issue, this court is inclined to set aside the impugned orders and

to remit the matters back to the respondent for passing orders afresh with certain directions.

11. In the result, these writ petitions are disposed of, and the impugned orders are set aside and the matters are remitted back to the respondent for fresh consideration. The respondent is directed to consider the objections dated 27.01.2014, 19.03.2015, 24.03.2015 and 22.04.2015 submitted by the petitioner and pass appropriate orders in the matters after affording an opportunity of personal hearing to the petitioner. The date of personal hearing shall be fixed by the respondent and be intimated to the petitioner well in advance. On the date so fixed for final hearing, the petitioner shall appear without fail, otherwise, it is open to the respondent to pass speaking orders on merits and in accordance with law within a period of four weeks thereafter. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Assistant Commissioner (CT),
Ram Nagar Assessment Circle,
Coimbatore.

+1cc to Mr.M.Inbarajan, Advocate, S.R.No.42299
+1cc to the Special Government Pleader(Taxes), S.R.No.42359

Writ Petition
Nos.15656 & 15657 of 2015

CTK(CO)
CA(10/09/2015)