IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.5079 and 5080 of 2015

M/s.Sarita Steels
rep by its Proprietor Subod Kumar Garg
No.26/37, Meenu Apartments
Barnaby Road, Chennai ..Petitioner in both cases

Vs

The Assistant Commissioner (CT)
Kilpauk Assessment Circle
Chennai-10 ... Respondent in both cases

Common Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records of the impugned assessment order in TIN.No.33381122706/2009-10 and 2010-11 dated 6.02.2015 and 31.12.2014 respectively on the file of the respondent and quash the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondent : Mr.Manoharan Sundaran, AGP(T)

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader, who took notice for the respondent.

2. The petitioner has come forward with these writ petitions challenging the order of the respondent dated 31.12.2014 and 06.02.2015.

3. Petitioner company is dealing in the business of steel supplies and they submitted their monthly returns for the assessment year 2009-10 and 2010-11. While so, an inspection was conducted by the Enforcement Wing officials on 13.06.2013,14.06.2013 and 17.06.2013. After such inpsection, they issued notice dated 02.07.2013 indicating that there was sales suppression and proposed to levy tax and penalty. A common reply

was also submitted by the petitioner on 25.07.2013. However, without accepting the same, the Enforcement Wing Officials, without affording an opportunity of personal hearing sought for by the petitioner, transferred the files to the respondent, with their report with a direction to decide the issue in the light of their proposal and in the light of the documents available. Based on such report, the respondent issued a revision notice on 16.05.2014, again a reply/objection was given by the petitioner on 03.06.2014 to the respondent and the petitioner requested the authority to drop the proposal of levy of tax and penalty under Section 27(3) of the TNVAT Act,2006. However, the respondent has passed the impugned order, dated 31.12.2014. In the impugned order, the respondent has over-ruled the objections and confirmed the said proposal of assessing the sales suppression and levy of tax and penalty. Aggrieved by the same, these writ petitions are filed.

4. Learned counsel for the petitioner contended that the respondent without application of mind, has chosen to follow the directions of Enforcement Wing Officials and contended that the respondent being a quasi judicial authority, ought to have examined the issue independently and passed orders and hence, she has sought for quashing of the impugne dorder dated 31.12.2014.

5. Heard the learned Additional Government Pleader appearing for the respondent on the above aspects.

6. This court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. In these writ petitions, this court is not going into the disputed facts. The admitted fact is that the objections made by the petitioner were over-ruled by the respondent mainly on the ground that the Enforcement Wing has directed for assessment of sales suppression and to levy tax and penalty. In the impugned order, the authority stated that the objections are over-ruled and the same were not properly considered. Hence, I am of the view that the writ petitioner is entitled to succeed on the ground that the respondent has not considered the objections in detail before proposing to levy tax and penalty on sales suppression.

8. In view of the above, the impugned order of the respondent in TIN.No.33381122706/2009-10 dated 06.02.2015 and TIN.No.33381122706/2010-11 dated 31.12.2014 are set aside and the matter is remitted back to the authority concerned to consider the case of the petitioner afresh, after affording an opportunity of being heard to the petitioner and pass appropriate orders on merits and in accordance with law. If on 25.03.2015, the petitioner fails to avail the opportunity, the respondent is directed to consider the case of the petitioner and pass appropriate orders, on merits and in accordance with law, based on the materials available on record, recording the absence of the petitioner.

9. Writ petitions are disposed of with the above observations and directions. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT)
Kilpauk Assessment Circle
Chennai-10.

2 cc to Ms.Aparna Nandakumar ,Advocate, SR.No.11894
1 cc to Spl.Government Pleader,Sr.No11967

W.P.Nos.5079 and 5080 of 2015

ca(co)
pmk.23.3.2015