IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.4379 of 2017
And
W.M.P.Nos.4569 and 4570 of 2017

M/s.Kay Kay Overseas Corporation,
rep. by its Partner Sharad Khandelwal ..Petitioner

Vs.

The Assistant Commissioner (CT),
Nolambur Assessment Circle,
176-B, MTH Road,
Villivakkam, Chennai-49 ..Respondent

Prayer:
Petition filed under Article 226 of The Constitution of India, praying for issuance of a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN No.33671351806/2014-15 dated 30.12.2016 and quash the same as illegal.

For Petitioner .. Mr.S.Ramanathan
For Respondent .. Mr.K.Venkatesh
Government Advocate

O R D E R

The petitioner is aggrieved against the assessment order dated 30.12.2016 for the assessment year 2014-2015.

2.Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

3.The petitioner is a dealer in Information Technology Products and got themselves registered under the TNVAT and CST Acts. They reported a total and taxable turnover of Rs.9,99,33,283/- for the assessment year 2014-15 and the above turnover was accepted and assessment was deemed to have been made as per the provision of Section 22(2) of the TNVAT Act. Thereafter, on 03.10.2016 a notice of revision was issued in respect of six issues namely:

(i) Difference in purchase and difference in sales

(ii) Disallowance of ITC in respect of purchase invoices not produced in original.

(iii) Disallowance of sales return.

(iv) Tax liability on stock transfer made against 'F' Forms.

(v) Sales against 'C' Forms.

(vi) Liability of cross verification (invoice – wise mismatch), based on web report.

4.It is stated by the petitioner that on receipt of such notice they gave their objections on 09.11.2016 with all the material details and particulars. However, the assessment order was passed by the respondent by stating that the petitioner did not file any objection, even though, they sought for time on 03.11.2016. Thus, the Assessment Officer revised the assessment and confirmed the proposals.

5.The learned counsel for the petitioner submitted that the objections were filed by the petitioner on 10.11.2016 in detail and however the Assessing Authority has not considered the same. He invited this Court's attention to the said objection filed along with the enclosures, which are made available in the typed set of papers. Thus, he submitted that when the objections are already filed on 10.11.2016 in respect of each issue, the respondent failed to consider any of the objection and on the other hand, erroneously found as if the petitioner has not at all filed their objection.

6.A counter affidavit is filed by the respondent wherein, it is stated that the dealer replied in their letter dated 10.11.2016 that they have already submitted original invoice sent by M/s.Dell Co. which is in accordance with Rule 10 of the TNVAT Rules, 2007. It is also admitted in the counter that the petitioner has filed 'C' and 'F' Forms and that they filed copy of ledger print out of sale return details with certain credit note along with Form-WW filed under Section 63-A.

7.The learned Government Advocate appearing for the respondent submitted that the Assessing Officer has considered the issues with regard to tax liability on stock transfer made against 'F' Forms and sales against 'C' Forms and found that the particular turnover will be dealt with under the CST Act, 1956. He further submitted that insofar as the other issues are concerned, the Assessing Officer has dealt with in detail as to why the proposals are confirmed. Therefore, he submitted that the impugned assessment order does not require any interference.

8.Heard both sides.

9.Based on six issues, the respondent wanted to revise the assessment and for which purpose the revision notice dated 03.10.2016 was issued on the petitioner. It is the case of the petitioner that they filed their reply / objection on 10.11.2016 with supporting material documents.

10.Though the Assessing Officer has stated in assessment order that the petitioner has not filed their objections, such statement is found to be factually incorrect, in view of the averments made in the counter affidavit filed by the very same respondent in this writ petition, wherein, it is admitted by him that on 10.11.2016, the petitioner has filed a letter which is already made available in the typed set of papers filed by the petitioner.

11.I have already pointed out that the said letter/ objection contains several details and material particulars by way of annexures meeting out the individual issues raised in the revision notice dated 03.10.2016. Therefore, the finding of the Assessing Officer that the petitioner did not file objections, is factually not correct.

12.No doubt, the learned Government Advocate wanted to contend that reading of the assessment order would show that the Assessing Authority has considered the issues and the contention of the petitioners in respect of each issue in detail. I do not think that the learned Government Advocate is correct in his submission since perusal of the revision notice and the order of assessment would amply disclose that what is stated in the revision notice dated 03.10.2016 in respect of six issues are simply reproduced in the assessment order as the issues that arise for consideration for revision of assessment. However, after extracting such issues and while dealing on those issues, the Assessing Officer, except by stating that the petitioner has not filed any objection, has not given any independent finding on such issues.

13.When admittedly, the petitioner has given the objection on 10.11.2016 with materials as admitted in the counter affidavit, the Assessing Officer has totally erred in passing the assessment by ignoring such objection filed by the petitioner. Therefore, it shows that the order of assessment is an outcome of total non application of mind.

14.Therefore, I find that the order of assessment cannot be sustained and the same has to be set aside for remitting back to the Assessing Officer for redoing the exercise once again after considering the objections already filed by the petitioner and also by giving an opportunity of personal hearing to them.

15.Accordingly, the writ petition is allowed and the impugned order of assessment is set aside and matter is remitted back to the Assessing Officer for passing the fresh order of assessment after considering the objection raised by the petitioner and also giving the petitioner a personal hearing. Such exercise shall be done by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

at/pri

To

The Assistant Commissioner (CT),
Nolambur Assessment Circle,
176-B, MTH Road,
Villivakkam, Chennai-49

+1cc to M/s. s. Ramanathan, Advocate, S.R.No.18385
+1cc to the Government Pleader, S.R.No.18392

NRI(CO)
EU 10.4.17

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