IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.36738 to 36740 of 2015
and
M.P.Nos.1, 1 and 1 of 2015

M/s.Kwality Steels
Rep. by its Proprietrix Malathi Ben
206, Mint Street
Chennai - 600 003. ...Petitioner in all WPs

Vs

The Assistant Commissioner, (CT)
Park Town Assessment Circle,
Chennai - 600 001. ... Respondent in all WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorari, calling for the impugned proceedings of the Respondent in TNGST/0320341/1999-2000, TNGST/0320341/2000-2001 and TNGST/0320341/2001-2002 respectively dated 05.10.2015 quash the same.

(In all WPs)

For Petitioner : Ms.Nishanshiya
for Mr.S.Ravee Kumar

For Respondent : Mr.V.Haribabu
Additional Government Pleader (Tax)

COMMON ORDER

The petitioner is on the 3rd round of litigation before this Court and challenges notices dated 05.10.2015 for the periods 1999-2000, 2000-2001 and 2001-2002 in terms of the provisions of the Tamil Nadu General Sales Tax Act, 1959 ('Act').

2. The relevant sequence of dates and events is as follows:

Originally orders of assessment appear to have been passed on 24.10.2001 for the periods 1999-2000 and 2000-2001. Pursuant to orders of the Tamil Nadu Taxation Special Tribunal dated 08.10.2002 and 19.06.2003, revised orders of assessment for the periods 1999-2000 and 2000-2001 and an original order of assessment for the period 2001-02 were passed on 30.09.2005. These orders were assailed in W.P.Nos.3427 to 3429 of 2006.

3. A learned Single Judge of this Court by order dated 08.02.2006 set aside the assessments remanding the matters to the file of the respondents for fresh consideration. The respondent was originally directed to furnish an opportunity for cross examination of witnesses, but upon consideration of the submission of the Government Advocate to the effect that the Department might not be in a position to secure the witnesses at that stage, the Department was permitted to circulate documents such as cancellation of R.C. among others for perusal of the petitioner, and pass orders thereafter based on the documents and not on the evidences recorded.

4. Thus this Court, as early as on 08.02.2006, had afforded ample opportunity to the Commercial Taxes Department to complete the assessments after furnishing opportunity of hearing to the petitioner. Pursuant thereto, the department appears to have fallen into a slumber and the 1st notice issued is dated 22.09.2010, calling upon the petitioner to appear in person before the assessing authority within 15 days from date of receipt of the notice to peruse relevant records. The assessing authority threatens that non-appearance would result in reiteration of the original order passed on 30.09.2005 without any further reference to the petitioner.

5. The petitioner in affidavit states that in response to the aforesaid notice it appeared on 08.10.2010 before the assessing authority, but was only 'shown' the documents, but not given copies of the same. A subsequent notice dated 05.10.2015 was thereafter issued five years after the first notice and nine years after the order passed by this Court, again calling upon the assessee to appear before the office and advance submissions. The notice states as follows:

> 'Aggrieved with the assessment passed, they have filed writ petition before the Hon'ble High Court at Madras in their W.P.No.3427 of 2006, stating that they have the documents to produce, in support of their request under section 84 of the Act, (read with sec. 55 of the TNGST Act 1959) to rectify the assessment finalised and the opportunity is not given to them properly. The High Court at Madras, in their orders, have set aside the assessment, with a direction to the assessing officer, to entertain the application, by

awarding the opportunity of personal hearing and pass fresh orders.

In compliance of the High Court order, the dealers are hereby awarded with the opportunity of being personally heard on 26.10.2015 at 12.00 Am They are requested to appear before the undersigned and represent their contention, along with the connected documents, pertaining to the rectification of concern assessment and break up details of the assessment, failing which it is proposed, in compliance of the Court Order, to retain the original order, without any further opportunity.'

6. It is these notices that are under challenge before me. I am of the view that these writ petitions are liable to be allowed straightaway, simply on account of the substantial and unexplained delay on the part of the Department. It is very clear that this Court had, as early as in 2006 permitted the respondents to complete the assessments based on the evidences available. This opportunity was unutilised by the revenue and in a way, this inaction could well tantamount to contempt of the order of this Court. There is no rhyme or reason for the delay except that the notices issued in 2010 and 2015 are by two different officers.

7. What appears apparent is that the earlier officer has issued the notice, but not bothered to complete the proceedings and the second officer thus proceeded to issue a notice again. It was incumbent upon the assessing authority to have completed the assessments in time and in line with the directions issued by the High Court, and this has, admittedly, not been done. I see no reason to permit the Department another innings, merely for the asking and in the absence of any valid reason put forth for the delay that has been occasioned. The impugned notices are quashed and the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

vs

To

The Assistant Commissioner, (CT),
Park Town Assessment Circle,
Chennai - 600 001.

+3cc to Mr.S.Ravee Kumar, Advocate SR.No.79927

+1cc to Special Government Pleader(T) SR.No.80344

W.P.Nos.36738 to 36740 of 2015
and
M.P.Nos.1, 1 and 1 of 2015

CA(CO)
GMY(03/01/2020)