IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15561 of 2015

M/s Zaitoon Grills and Barbeque
represented by its partner Mr.N.K.Noufal
No.35, Woods Road
Royapettah, Chennai 600 014 .. Petitioner

-vs-

The Commercial Tax Officer
Thiruvallikeni Assessment Circle
No.48, Pasumpon Muthuramalinga Devar Salai
Chennai 600 028 .. Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records relating to the assessment order TIN/33520681473/2014-15 dated 06.03.2015 passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner :: Mr.Joseph Prabakar

For Respondent :: Mr.S.Kanmani Annamalai
Additional Government Pleader

ORDER

This writ petition has been filed by M/s Zaitoon Grills and Barbeque represented by its partner Mr.N.K.Noufal, Chennai challenging the impugned order passed by the Commercial Tax Officer, Thiruvallikeni Assessment Circle on various grounds.

2. Mr.Joseph Prabakar, learned counsel for the petitioner submitted that the issue raised in the present writ petition has already been seized of by this Court in W.P.No.2733 of 2015, therefore, the matter can be heard along with the other writ petition. Adding further, he submitted that the supply of food and drinks in hotels and restaurants would amount to 'service', but a deeming provision in Article 366 of the Constitution and the definition of 'sale' in the Central Sales Tax Act, 1956 has to be properly looked into. But, in the present case, the assessing officer has completely overlooked the issue, therefore, the matter deserves examination along with the pending writ petition.

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent, opposing the above prayer, submitted that since the present impugned order is relating to the assessment year 2014-15, the same cannot be clubbed along with the other pending Writ Petition No.2733 of 2015, which is relating to the assessment year 2012-13. Adding further, he submitted that in any event since the assessing officer has passed the impugned order before the closure of the assessment year/financial year, a direction may be given to the respondent to pass the regular assessment order for the year 2014-15, which would serve the ends of justice.

4. As rightly indicated by Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent, the impugned order having been passed before the closure of the financial year upto the month of October, 2014, this Court, by setting aside the impugned order, hereby directs the respondent- assessing officer to reconsider the issue and pass the final assessment order for the year 2014-15 after giving an opportunity of personal hearing to the petitioner. With the above direction, the writ petition stands allowed. Consequently, M.P.Nos.1 & 2 of 2015 are closed. No costs.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

ss

To

The Commercial Tax Officer
Thiruvallikeni Assessment Circle
No.48, Pasumpon Muthuramalinga Devar Salai
Chennai 600 028

1 cc to Mr. Joseph Prabakar, Advocate, Sr. 26338
1 cc to Spl.Government Pleader, (Taxdes), Sr. 26475

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