IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15624 of 2015
&
M.P.Nos.1&2 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/33520681473/2013-14 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 directed against the impugned order dated 6.3.2015 passed by the Commercial Tax Officer, Thiruvallikeni Assessment Circle in TIN/33520681473/2013-14 on the ground that when the petitioner has filed a detailed written statement dated 3.2.2015 pursuant to the notice dated 14.1.2015 taking various grounds, none of the points pleaded by the petitioner in the said written statement have been considered by the assessing officer. Adding further, Mr.Joseph Prabakar, learned counsel for the petitioner, drawing the attention of this Court to the detailed written statement dated 3.2.2015 filed by the petitioner, stated that when the said detailed and exhaustive written statement had dealt with various points, the respondent has chosen to pass the impugned cryptic order, though running to 11 pages, without even touching upon the explanation

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submitted by the petitioner on major points. Adding further, he submitted that when the petitioner is engaged in the business of running a restaurant at No.35, Woods Road, Royapettah, Chennai and also registered with the respondent assessment circle, by reporting a total and taxable turnover of Rs.2,26,48,543/- for the assessment year 2013-14 in filing the monthly returns along with the payment of value added tax at 2% under Section 7(1)(b) of the Tamil Nadu Value Added Tax Act, 2006, he has meticulously prepared & filed the reply on receipt of the notice dated 14.1.2015, but the respondent proceeded on the assumption that the petitioner is holding a name or a trade mark registered or pending registration under the Trade and Merchandise Marks Act, 1958 in spite of a specific reply stating that neither their name nor the mark is registered or pending registration under the Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999, therefore, it was claimed by the petitioner that the proposal to levy tax at 14.5% on the entire sale turnover treating as sale of branded food and drinks is ex facie illegal and arbitrary. As these aspects have been completely lost sight of by the respondent, he prayed for interference with the impugned order.

2. Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent is also unable to support the impugned order. The reason is that when the petitioner, in response to the notice dated 14.1.2015, has filed a detailed reply as mentioned above taking various points, the cryptic impugned order passed by the respondent, in my considered view, is bereft of any merits, therefore, the same has to go on the ground that the respondent has not applied his mind to the detailed objections filed by the petitioner. Accordingly, the impugned order is set aside and the petitioner is entitled to raise all the points before the assessing officer. Needless to mention that the respondent shall provide an opportunity of personal hearing to the petitioner before passing final orders. The writ petitions stands allowed. Consequently, M.P.Nos.1 & 2 of 2015 are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.26337

+1cc to the Government Pleader, S.R.No.26468

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EU(19/06/2015)

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