

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.17137 to 17141 of 2015

and

M.P. Nos. 1 of 2015

M/s Hotel Aishwarya Park
rep. by Partner K.Venkatakrishnan
No.2, Venkitasamy Road East,
R.S.Puram, Coimbatore

..Petitioner in all WPs

Vs

Assistant Commissioner (CT) (FAC)
Mettupalayam Road Circle
Coimbatore

..Respondent in all WPs

PRAYER : These Writ petitions are filed under Article 226 of the Constitution of India praying for a Writ of certiorari to call for the records of the respondent in TIN.No.33252002713/2009-10 to 2013-14 respectively and quash the orders dated 30.03.2015 (received on 15.05.2015) passed therein.

For Petitioner :Mr.A.Thiyagarajan

For Respondent :Mr.S.Kanmani Annamalai, AGP(T)

O R D E R

There are five writ petitions filed by M/s Hotel Aishwarya Park, rep. by its Partner K.Venkatakrishnan, challenging the impugned orders passed by the Assistant Commissioner (CT) (FAC), Mettupalayam Road Circle, Coimbatore in TIN.No.33252002713/2009-10 to 2013-14 respectively dated 30.03.2015.

2. Heard Mr.A.Thiyagarajan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petitions are taken up for final disposal.

3. Learned counsel for the petitioner would submit that the impugned orders are challenged on the sole ground of violation of principles of natural justice inasmuch as the same were passed without considering the objections filed by the petitioner.

4. Adding further, learned counsel for the petitioner would submit that the petitioner was issued with notices dated 12.01.2015 and on receipt of the same, he made a written request for extension of time for filing detailed replies, as some of the documents were required to be looked into for preparing detailed replies. Subsequently, after obtaining two weeks' time, detailed objections dated 27.02.2015 were filed, but, unfortunately, the respondent, without considering the objections filed by the petitioner, wrongly passed the impugned orders.

5. According to the learned counsel for the petitioner, the petitioner is a registered assessee on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and their main activity is confined to provide lodging facilities and accordingly, registered its hotel under the Luxuries Tax Act for the same. The respondent has also categorized the petitioner as a single star hotel by the Tourism Department. Further, according to him, the petitioner has a Bar attached to the Lodge and paying tax at 14.5% for sale of liquor. However, there is no sale of food in the Bar and the snacks are provided free of cost along with liquor to the consumers. Whiles, the petitioner's place of business was inspected by the Enforcement Wing Officers on 19.05.2014 and they were of the view that the petitioner was not entitled to pay tax at 2% and on the other hand, is liable to pay tax at the rate of 14.5% on the sale of food and beverages. Although the petitioner had explained in person, notices were issued, for which, the petitioner, immediately sought for time and initially two weeks' time was also granted, subsequently, when detailed objections were given, for the reason best known to them, ignoring the detailed objections, the impugned orders were passed, as a result, the petitioner has been put to grave prejudice and inconvenience. This made the petitioner to come before this Court.

6. Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) appearing for the respondent, taking note of the fact that the petitioner after taking two weeks' time, has filed replies on 27.02.2015, would submit that the same ought to have been considered by the respondent, before passing the final orders.

7. It is not in dispute that the petitioner having received notices sought for time for filing detailed objections and the respondent considering the reasonable request of the petitioner, has granted two weeks' time and thereafter has filed their objections on 27.02.2015. Unfortunately, it is not known why the objections filed by the petitioner on 27.02.2015 have not been taken into account. Hence, this Court is of the considered view that in all fairness, the respondent ought to have considered the objections before passing final orders. As they did not do so, heavy prejudice has been caused, hence, this Court is inclined to interfere with the impugned orders.

8. Accordingly, the writ petitions are allowed and the impugned orders dated 30.03.2015 are set aside on the ground that the respondent while passing the orders has violated the principles of natural justice and the matters are remanded to the Assessing Officer to pass orders afresh after affording an opportunity of personal hearing to the petitioner.

No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

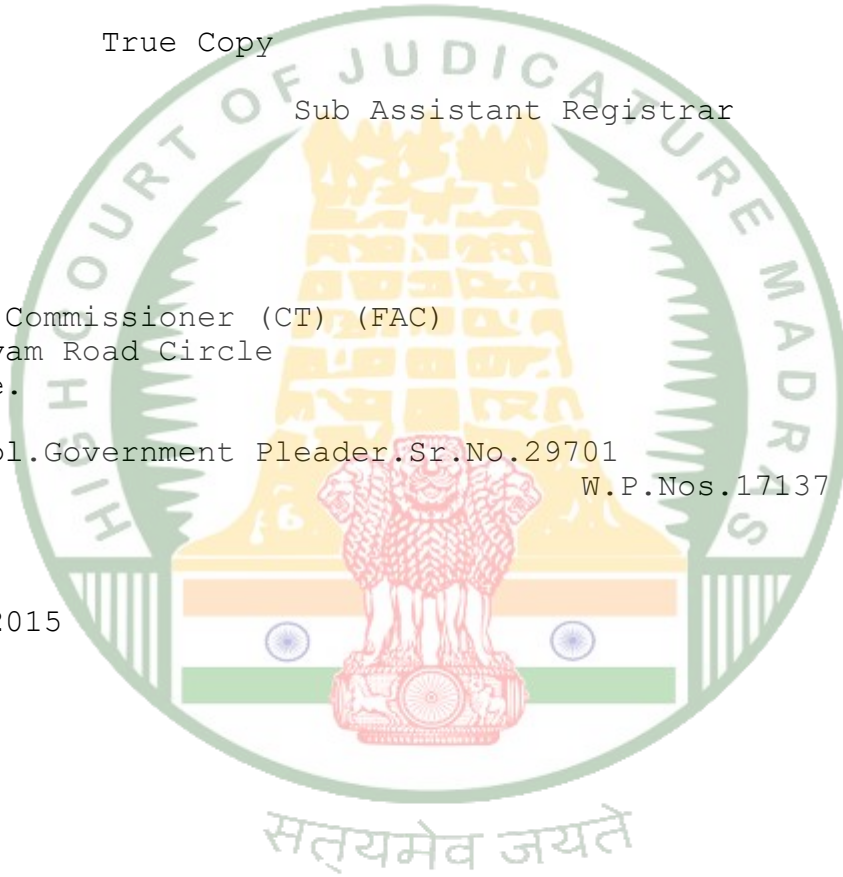
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To
Assistant Commissioner (CT) (FAC)
Mettupalayam Road Circle
Coimbatore.

1 cc to Spl.Government Pleader.Sr.No.29701

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pmk.29.7.2015



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