IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos. 1758 to 1761 of 2015
and
M.P.Nos.1 and 1 of 2015

TVL.Hotel Cheran
Rep.by its Proprietor K.V.Jayaraman
No.48, Thiru Venkatasamy Road (East)
R.S.Puram,
Coimbatore - 641 002. ...Petitioner in all the petitions

Vs.

The Assistant Commissioner of Commercial Taxes
R.S.Puram, (West) Circle
Coimbatore. ...Respondent in all the petitions

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the impugned notice of the respondent vide Tin. 33481962089/2010-11; 2011-2012; 2012-2013 and 2013-2014 dated 31.10.2014 and to quash the same.

For Petitioner : Mr.V.Subramanian

For Respondent : Mr.Manohar Sundaram
Additional Government Pleader (T)



C O M M O N  O R D E R

The petitioner has come forward with the aforesaid Writ Petitions challenging the impugned notices dated 31.10.2014 on the ground that the same have been passed in violation of the Rules prescribed under the TNVAT Act, 2006.

2. According to the petitioner, they are running a hotel attached with bar duly registered under the Tamil Nadu Value Added Tax,2006. On 25.4.2014 and 10.5.2014, when the enforcement wing

officials inspected the petitioner's premises, they found that the petitioner had supplied variety of foods and snacks while providing liquor to the customers and the same has not been included in the bill. Therefore, the impugned notices have been issued by the authorities proposing to levy tax at the rate of 12.5%, as the petitioner has not produced any documents in the monthly returns filed in Form I.

3. It is the contention of the petitioner that the respondent has not followed the procedures prescribed under the Tamil Nadu Value Added Tax Act, 2006 for revision of the assessment. According to the petitioner when no order of assessment has been passed by the assessing authority in respect of the assessment years 2010 -2011; 2011-2012; 2012-2013 and 2013-2014 based on the returns filed by him, the respondent cannot make a revision of assessment. It is the further contention of the petitioner that as per Section 22 of the TNVAT Act, 2006, the assessing authority has to complete the assessment as per the returns filed by the petitioner, and if there is any mistake, they are entitled to review the assessment already made. According to him, the impugned notices dated 31.10.2014 in respect of the assessment years 2010-11; 2011-2012; 2012-2013 and 2013-2014 have been issued without passing the original assessment order and, therefore, the impugned orders are illegal and the same are liable to be set aside.

4. On a perusal of the impugned orders, it is very clear that the impugned orders are only a show cause notice calling upon the petitioner to submit his objection within 15 days. Even in the impugned orders, the authorities have clearly stated that they are willing to give personal opportunity to the petitioner, if required.

5. It is seen that pursuant to the impugned notices, the petitioner have also sent a reply dated 04.01.2015. However, merely because the petitioner has sent a reply, it does mean that the impugned orders, which are illegal, cannot be questioned before this Court.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

7. Admittedly, the impugned orders are only a show cause notices calling upon the petitioner to appear for enquiry. The authorities have also proposed to levy tax at 12.5% on the various items mentioned in the said notices. But the impugned notices are only a proposal and not the final orders. Even in the said impugned notices, it has been specifically stated that the petitioner is

entitled to file his objection. It is also stated in the impugned orders that the petitioner will be given an opportunity of personal hearing. No where, the petitioner was precluded from filing objection, if any, including, personal hearing apart from filing the documents.

8. That being the case, I am of the view that the writ petitions are premature one and the same cannot be entertained at this stage.

9. Accordingly, while declining the relief sought for by the petitioner in these writ petitions, the petitioner is directed to appear before the authority concerned along with objections and documents available with him in support of his claim on 11.2.2015. If one more opportunity is sought for by the petitioner on 11.2.2015 to produce any further documents, it is open to the authority to grant one more time by fixing final date to submit the records, if necessary. It is made clear that on 11.2.2015 or on the subsequent date to be fixed by the respondent, the respondent shall pass orders on merits and in accordance with law, based on the materials available with them including the objections and documents, if any, to be submitted by the petitioner, within a period of four weeks thereafter.

10. With the above observation and direction, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Commercial Taxes
R.S.Puram, (West) Circle,
Coimbatore

4 CCs to Mr.V.Subramanian, Advocate SR.No. 3996 to 3998
1 CC to the Spl. Government Pleader (T), SR.No. 4252

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RSK (CO)
PSI (06.02.2015)