IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.38978 to 38984 of 2015
and
M.P.Nos.1 of 2015

Aruna Hotels Limited
No.144 and 145
Sterling Road
Chennai 34 ... Petitioner in all WPs

Vs

The Assistant Commissioner (CT)
Valluvarkottam Assessment Circle
No.10 Greams Road
Palaniappa Maligai
Chennai 10 ... Respondent in all WPs

Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records of the order in TIN Nos. 33651500033/2006-2007 to 2012-13 respectively dated 9.1.2015 passed by the respondent and quash the same.

For Petitioner in all WPs : Mr.A.Thiagarajan, Senior Counsel for Mr.Adithya Reddy

For Respondent in all WPs : Mr.S.Kanmani Annamalai, Additional Government Pleader

COMMON ORDER

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent and with their consent, the main writ petitions are taken up for disposal.

2. These writ petitions are filed challenging the orders of the respondent issued in TIN Nos. 33651500033/2006-2007 to 2012-13 respectively dated 9.1.2015.

3.1 According to the learned Senior counsel for the petitioner, the petitioner Company has been in constant state of turmoil since the last few years. A group of shareholders of the petitioner had filed a company petition before the Company Law Board, Chennai, under Section 397 and 398 of the Companies Act, 1956, alleging acts of oppression and mismanagement in the affairs of the Company, by the persons who were in control of the Company's Management. In fact, certain Directors who were in control of the affairs of the Company, made an attempt to remove a group of shareholder and other Directors from the Board of the Company, as a result of which, civil suits came to be filed before this Court and interim orders were obtained. It is his further submission that during the pendency of the said proceedings, the parties to the disputes entered into an amicable settlement dated 12.02.2015, pursuant to which, the minority shareholders, who alleged oppression and mismanagement on the part of the controlling Directors, undertook to purchase the shares of other shareholders and thereafter the company is under their control subject to the following conditions:-

> (i) All statutory liabilities including dues payable to workmen will be the responsibility of the purchasers
>
> (ii) The liabilities determined by due diligence conducted by the purchasers as liabilities of the Company shall be accepted by the parties hereto. The parties shall not be liable in any manner whatsoever for any liability which are not ascertained as the liabilities of the Company".

The above compromise, which was filed before the Company Law Board was recorded.

3.2 The learned Senior counsel for the petitioner would further submit that pursuant to the above compromise and change of management, a new set of Directors took over management of the Company with effect from 02.03.2015 and some of the old Directors who continued also resigned with effect from October 2015. When that being the position, the petitioner Company received recovery notices dated 05.08.2015 threatening to attach the petitioner's properties for huge sales tax dues and luxury tax dues. Thereafter, pursuant to the request made by the petitioner, the respondent sent details based on which recovery was being made. Under the threat of attachment and under coercion, the petitioner paid the amounts demanded by the respondent upto the year 2006-07. It is the further submission of the learned Senior counsel for the petitioner that repeatedly the petitioner represented to the respondent that no such assessment orders were served and no records including show cause notices were available with the petitioner and therefore, the respondent furnished certified copies of the assessment orders allegedly dated 09.01.2015 under the TNVAT Act for the assessment years in question. On a perusal of the assessment orders, it is seen that the previous management of the Company has omitted to pay some taxes even in terms of the returns filed by the petitioner for the relevant years no tax was paid.

3.3 That apart, according to the learned Senior counsel for the petitioner, with respect to failure to pay tax as per the returns submitted, the petitioner is willing to pay the same. It is his further argument that only recently after taking over by the new management in the months of April and June, the various service tax were cleared by the Company and similarly for all admitted tax dues, the petitioner will settle the same to the respondent. However, with respect to turnover determined by the respondent with reference to the Balance Sheet of the Company under various heads, such as other incomes, sale of cigarettes, liquor etc,, the petitioner ought to have been given an opportunity to explain the same and make objections by grant of personal hearing.

3.4 Adding further, learned Senior counsel would submit that the respondent has not served the pre-revision notices before passing the impugned assessment orders and only when the petitioner came to know about the recovery proceedings, they applied for certified copies of the same. Hence, according to him, once notice was not served, the consequential impugned orders are against the principles of natural justice. It is his case that on a perusal of the impugned orders, it came to light that the same have been issued as if pre-revision notices were issued, but they did not refer to the receipt of the same by a person as defined in Rule 19 of the TNVAT Rules. Further, according to him, the respondent is duty bond to see that the orders are served on the assessee as held by the Hon'ble Division Bench of this Court reported in 54 VST 328. Hence, the impugned orders are liable to be set aside. Besides, according to him, in the impugned orders, the respondent has not given any finding that the omission on the part of the petitioner was wilful. Hence, there was no jurisdiction to invoke Section 27 (3) of the Act.

Based on these, the learned Senior counsel for the petitioner has prayed for allowing of the writ petitions.

4. For the assessment years 2006-2007 to 2012-2013, assessment orders came to be passed on 09.01.2015, without serving proper notices. At this juncture, it is pertinent to point out that certified copies of assessment orders themselves were served only pursuant to the request made by the petitioner for furnishing details based on which recovery notice came to be passed on 05.08.2015. The allegation made by the petitioner is that notices as well as impugned orders of assessment were not served on the petitioners before issuing attachment order, which is in violation of principles of natural justice. When the matters were taken up for hearing on 11.12.2015, on this aspect, the learned Additional Government Pleader (Taxes) was directed to get instructions after proper verification of the assessment files.

5. Today, when the matters are taken up for hearing, the learned Additional Government Pleader (Taxes) fairly submitted that the respondent may be directed to issue fresh notices and on receipt of the same, the petitioner may be directed to file their objections and on receipt of the same, the respondent may be directed to consider the objections and pass appropriate orders within a time frame.

6. The respondent has not complied with the statutory rules in respect of service of notice as well as assessment orders. Hence, for service of notice to be effected in the manner known to law, the impugned orders of assessment for the assessment years in question dated 09.01.2015 are set aside and the matters are remitted back to the respondent for passing orders afresh. The respondent is directed to issue fresh notices within a period of two weeks from the date of receipt of a copy of this order and on receipt of such notices, the petitioner is directed to file their necessary objections along with documentary evidences within a period of two weeks thereafter and on receipt of such objections, the respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter, after providing due opportunity to the petitioner.

The writ petitions are disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rg

To

The Assistant Commissioner (CT)
Valluvarkottam Assessment Circle
No.10 Greams Road
Palaniappa Maligai
Chennai 10

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.68446
+1cc to the Special Government Pleader(Taxes), S.R.No.69035

W.P.Nos.38978 to 38984 of 2015

EV(CO)
CA(11/01/2016)