IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.3.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.7204 to 7206 of 2015
and MP.Nos.01 to 02 of 2015 (6 petitions)

Airports Authority of India
Chennai International Airport
Chennai -600 027 ... Petitioner
rep by its General Manager,(F & A)

.Vs.

1. The State of Tamil Nadu
rep.through the Secretary
Department of Commercial Taxes
Secretariat, Fort St.George,
Chennai - 600 009.

2. Appellate Deputy Commissioner (CT)
Zone - IX, PAPJM Building
Greams Road, Chennai - 600 006

3. The Assistant Commissioner (CT)
Nandambakkam, Assessment Circle
No.17, Loganathan Nagar 2nd Street
100 Feet Road, Choolaimedu,
Chennai 94 ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records comprised in the impugned order dated 09.2.2015 in TIN No.33850846240/2012-2013,2013-2014,2014-2015 for the assessment years 2012-2013, 2013-2014 and for the assessment period from April 2014 to November 2014 on the file of the third respondent and quash the same.

For Petitioner : Mr.Fr.A.Xavier Arulraj

For Respondents : Mr.Manoharan Sundaram
Additional Government Pleader

C O M M O N O R D E R

Writ petitions have been filed for a mandamus to quash the impugned orders dated 09.2.2015 for the assessment years 2012-2013, 2013-2014 and from 2014 to November 2014 on the file of the third respondent.

2. The petitioner is a Public Sector Undertaking, involved in construction, maintenance and operation of Airports. The petitioner does not purchase or sell the catering goods and it provides Entry Passes to the Catering Agencies. The Catering Agencies pay a 'Royalty' to the petitioner for using the premises for this activity. The petitioner collects service tax from the Catering agencies and remits the same to the Central Government. Whileso, the third respondent issued notice to file the details of Royalty and the audited statements for various periods. The petitioner furnished records to the third respondent. However, without considering the same, the impugned deemed assessment orders have been passed by the respondent. Therefore, the petitioner is before this Court.

3. The learned counsel for the petitioner contended that the impugned orders dated 09.2.2015 in respect of the assessment years 2012-2013, 2013-2014 and from 2014 to November 2014 have been passed by the third respondent without considering the details submitted by the petitioner with regard to 'Royalty'. According to the learned counsel, while determining the turnover, the term 'Royalty' has not been properly discussed by the respondent. The learned counsel for the petitioner further submitted that the third respondent also levied penalty in the impugned order, even without issuing notice to the petitioner with regard to the same. Therefore, according to the learned counsel, the impugned orders are nothing but a double taxation and as such, it amounts to violation of principles of natural justice.

4. The learned Additional Government Pleader submitted that the petitioner has got a remedy of appeal and without exhausting the same, the petitioner has straight away approached this Court. The learned Additional Government Pleader fairly submitted that if this Court is going to accept the contention of the petitioner that there was no discussion about the 'Royalty' as stipulated in Entry 70 in Part B of the First Schedule and that no notice of hearing was given to the petitioner with regard to penalty, the matters may be remitted back to the respondent to pass fresh orders after giving opportunity to the petitioner.

5. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent and perused the materials available on record.

6. Admittedly, the authority has not discussed the term 'Royalty' as to whether the same falls under Item 70 of the Part B of the First Schedule. Insofar as penalty is concerned, no notice has been issued by the authority before passing the impugned order. Therefore, the impugned demand is in violation of principles of natural justice.

7. The learned counsel for the petitioner has placed reliance on the decision of the Hon`ble Supreme Court in ALL INDIA FEDEDRATION OF TAX PRACTIONERS AND OTHERS V. UNION OF INDIA [(2007 7 SCC 527], wherein it is held thus:

> Further it is important to note that "service tax" is a value added tax which in turn is a general tax which applies to all commercial activities involving production of goods and provision of services. Moreover, VAT is a consumption tax as it is borne by the client.

8. In view of the various decisions of the Hon`ble Supreme Court , I am of the view that the Central Legislation will prevail over the State legislation. Therefore, I am inclined to quash the impugned orders dated 09.2.2015 in respect of the assessment years 2012-2013; 2013-2014 and April 2014 to November 2014 on the ground of violation of principles of natural justice. Accordingly, the impugned orders are quashed and the matters are remitted to the authority concerned for fresh consideration. The authority concerned is directed to decide the matter as to whether the 'Royalty' falls under item 70 of Part B of the First schedule and the same is taxable under the Commodity Code 2070 under Section 3 (2) of the TNVAT Act 2006. The authority concerned is directed to issue fresh notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order with regard to penalty. The petitioner is also at liberty to file objections, if any, along with documents within a period of 15 days thereafter. The authority concerned shall consider the objections and the documents to be filed by the petitioner, after hearing him in person, and pass appropriate orders in accordance with law. The petitioner is also directed to co-operate with the enquiry.

9. The writ petitions are allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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   rep.through the Secretary
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   No.17, Loganathan Nagar 2nd Street
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   Chennai 94

+1cc to Mr.DR.FR.A.Xavier Arulraj, Advocate, S.R.No.14265
+1cc to the Special Government Pleader(T), S.R.No.14448

W.P.Nos.7204 to 7206 of 2015
and connected Mps.

LRS(CO)
CA(20/03/2015)