BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :27.10.2015

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.19272 of 2015
and
M.P(MD)Nos.1 to 3 of 2015

Tvl. S.R.M.Hotel(P) Ltd.,
Rep. By its General Manager - R.M.Ravi ..Petitioner

Vs.

1.The Assistant Commissioner(CT),
Srirangam Assessment Circle,
Trichy - 06.

2.The Branch Manager,
City Union Bank,
No.26, Warners Road,
Cantonment, Trichy -1. ..Respondents

This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the impugned proceedings of the first respondent in TNLH No.L 4051/2011-2012, dated 25.09.2015, quash the same as illegal, violative of principles of natural justice and contrary to the provisions of the Act.

For Petitioner : M/s.R.Hemalatha
For R-1 : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

The Writ Petition has been filed praying for a Writ of Certiorari calling for the records of the impugned proceedings of the first respondent in TNLH No.L 4051/2011-2012, dated 25.09.2015, quash the same as illegal, violative of principles of natural justice and contrary to the provisions of the Act.

2. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the first respondent.

3. By consent, the Writ Petition itself is taken up for final disposal.

4. The case of the petitioner is that the petitioner hotel is a part of SRM Group Companies having various business concerns and they have registered themselves as an assessee on the file of the first respondent herein under the provisions of the Tamil Nadu Tax on Luxuries Act, 1981 vide registration No.TNLH No.L.4051. For the assessment year 2011-2012, the petitioner was originally assessed on a total and taxable turnover of Rs.1,32,99,500/- under the Act based on the returns filed and the books of accounts produced thereon. Thereafter, based on the data from the Office of the Deputy Commissioner, Income Tax Department, it is alleged by the first respondent that the the petitioner filed to report

collection of Luxury Tax to the tune of Rs.41,72,351/- during the year 2011-2012. Based on that, the first respondent proceeded to issue a series of Notices, dated 28.07.2015, 21.08.2015 and 07.09.2015 seeking to revise or re-assess in terms of Section 7(2) of the Act on the turnover escaped to assessment. The petitioner had sent reply letters dated 10.08.2015, 28.08.2015 & 23.09.2015 inter-alia contending that income tax accounting is done on a centralized way by the Head Office at Chennai and therefore, it is necessary that details collected from the Department ought to have been furnished to the petitioner so as to enable the petitioner to file their reply. But to the shock and surprise of the petitioner, the first respondent completed the revision of assessment vide proceeding in TNLH No.L.4051/2011-12, dated 25.09.2015. Further the first respondent had chosen to re-determine the total & taxable turnover to Rs.4,66,78,296/- arriving at a tax due of Rs.58,34,787/- against the actual tax paid of Rs.16,62,436/- to arrive at a balance tax due of Rs.41,72,351/-. Besides the same, the first respondent has imposed penalty @ 150% to the tune of Rs.62,58,527/- Hence, challenging the order of the first respondent, the petitioner has come forward with the present Writ Petition for the above stated relief.

5. The main grievance of the petitioner is that before passing the impugned order, the first respondent ought to have called for the records of the petitioner and thus, the impugned order has been passed by the first respondent in violation of principles of natural justice. Therefore, he submitted that by setting aside the impugned order, the matter may be remitted back to the first respondent with a direction to consider the petitioner's case afresh.

6. The learned Additional Government Pleader objected for the same.

7. Considering the facts and circumstances of the case, this Court passes the following order:-

> The petitioner firm is directed to remit 15% of the disputed tax in question to the first respondent along with their objection, within a period of two weeks from the date of receipt of a copy of this order. On such payment, the order impugned in the Writ Petition shall stand set aside and the first respondent is directed to provide an opportunity of personal hearing and pass appropriate orders, on merits and in accordance with law, within a period of four weeks, thereafter.

With the above direction, the Writ Petition stands disposed of. No costs, consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1.The Assistant Commissioner(CT), Srirangam Assessment Circle, Trichy - 06.

2.The Branch Manager, City Union Bank, No.26, Warners Road, Cantonment, Trichy -1.

+1cc to M/s.R.Hemalatha, Advocate in SR.No.62664

W.P(MD).No.19272 of 2015
27.10.2015

pm
PBK/SK-SKN/SAR-I 30/10/2015 ::3P-4C:: (IT)