IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.2290 and 2291 of 2014
and M.P.Nos.2 and 2 of 2014

M/s.Madras Hotel Ashoka (P) Ltd.,
Represented by K.Roshan Ballal,
Director,
47, Pantheon Road, Egmore,
Chennai - 8. .. Petitioner in both W.Ps

Vs

The Assistant Commissioner (CT),
Egmore II Assessment Circle,
88, Mayor Ramanathan Salai,
Chennai - 31. .. Respondent in both W.Ps.

Prayer in W.P.No.2290 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in TIN:33340540922/08-09 dated 29.11.2013, received on 06.12.2013 and quash the same as being violative of principles of natural justice, without jurisdiction and ultra vires the powers of the respondent in so far as the said order levies purchase tax once again under Section 12 of the Act and also levies tax on the turnover relating to "amenities and other collections" which had suffered tax under the Finance Act, 1994.

Prayer in W.P.No.2291 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in TIN:33340540922/09-10 dated 29.11.2013, received on 06.12.2013 and quash the same as being violative of principles of natural justice, without jurisdiction and ultra vires the powers of the respondent in so far as the said order levies purchase tax once again under Section 12 of the Act and also levies tax on the turnover relating to "amenities and other collections" which had suffered tax under the Finance Act, 1994.

For Petitioner
in both W.Ps. : Mr.V.Srikanth

For Respondent
in both W.Ps. : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard Mr.V.Srikanth, learned counsel appearing for the petitioner, Mr.K.Venkatesh, learned Government Advocate appearing for the respondent and perused the materials placed on record including the counter affidavit filed by the respondent.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 (TNVAT Act) (hereinafter referred to as "the Act"). In these writ petitions, the petitioner has challenged the orders of assessment for the year 2008-2009 and 2009-2010 respectively and the challenge is confined only to two issues, namely, regarding the purchase turnover in which tax has been levied under Section 12 of the Act and with regard to sale of assets. In so far as the other issues, namely, TDS, Works Contract, etc., the petitioner filed an appeal before the Appellate Authority and the appeal is pending. On a reading of the impugned assessment orders, more particularly, the findings rendered in paragraph 22/23 is concerned, it is seen that the Assessing Officer has accepted the stand taken by the petitioner in their objections for exempted sales (liquor sales) and also levy of tax under Section 12 and dropped the proposal. Thus the exemption to the tune of Rs.71,69,340/- for the assessment year 2008-09 and Rs.70,70,875/- for the assessment year 2009-2010 was granted in favour of the petitioner. The petitioner's case is that though such a finding was recorded by the Assessing Officer in the assessment orders while computing the tax in paragraph 24/25 of the assessment orders, the purchase turnover taxable under Section 12 has been included. This according to the petitioner is an error apparent on the face of the record and inconsistent with the finding recorded by the Assessing Officer in the assessment orders.

3.With regard to the demand of tax at the rate of 12.5% on the ground of sale of assets is concerned, the petitioner's case is that the figures under Assets Deletion in the fixed assets schedule to the Balance Sheet pertains to cost of asset sold in the books of accounts and not the sale value. Copies of records were furnished at the time of hearing. However, the Officer while completing the assessment has brushed aside the records and erroneously rendered a finding that these are the income earned by the dealer in the course of hotel business. Since the finding rendered by the Assessing Officer on these two issues, according to the petitioner was an error apparent on the face of the record, they filed an application under Section 84 of the Act for rectification of the mistake. Though other grounds were raised, since the appeal is pending in respect of other grounds, the same are not gone into in these writ petitions. However, the respondent rejected the application under Section 84 of the Act by an non-speaking order stating that the assessment has been completed on the basis of the details available in the returns and also the additional details furnished in the objections filed by the petitioner. Therefore, the petitioner seeks for setting aside the findings of the Assessing Officer on these two issues by setting aside the assessment on those two heads.

4.In the counter affidavit filed by the respondent, the above mentioned fact have not been controverted. But curiously enough in paragraph 9 of the counter affidavit, a stand has been taken that the petitioner has not filed any documents and details relating to the exempted sale to prove that the sales are eligible for exemption. Thus the averment in paragraph 9 of the counter affidavit is wholly inconsistent with the finding recorded in the assessment orders where the benefit of exemption has been extended to the petitioner. Thus the counter affidavit has been sworn to without proper application of mind.

5.Coming to exercise of power under Section 84 of the Act, the language employed in the said provision confers power on the Assessing Authority or an Appellate or Revising Authority including the Appellate Tribunal at any time within five years from the date of any order passed by it, rectify any error apparent on the face of the record. Thus, if the dealer is able to point out the errors which are apparent on the face of the record, then obviously the Authority can exercise its powers. However, in case where the Assessing Authority refused to exercise power, he should spell out the reason as to how he is of the prima facie view that there is no error apparent on the face of the record. In the instant case, the said finding is lacking as the order dated 24.12.2013 is devoid of reasons. Hence, to that extent, this Court is inclined to interfere in the orders passed by the respondent.

6.Accordingly, the writ petition is partly allowed and the order dated 24.12.2013 rejecting the petitioner's application under Section 84 of the Act is set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall re-consider the petitioner's application for rectification of error dated 13.12.2013, afford an opportunity of personal hearing and after considering the matter in its entirety, pass a speaking order on merits and in accordance with law on the two issues which have been pointed out by the petitioner, namely, with regard to the error in inclusion of the purchase turnover which has been exempted and with regard to the sale of assets. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

cse

To

The Assistant Commissioner (CT),
Egmore II Assessment Circle,
88, Mayor Ramanathan Salai,
Chennai - 31.

1 cc to Mr.C. Venkatraman, Advocate, Sr. 64151

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