IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.26512 to 26514 of 2014 &
10257 to 10261 of 2015 &
connected MPs

M/s Sakthi Hotels (Restaurant)
rep. By its Managing Partner C.M.Kamaraj
.. Petitioner in all W.Ps.

Vs

The Commercial Tax Officer (CT)
Pollachi (West)
Coimbatore District. .. Respondent in all W.Ps.

Common Prayer in W.P.Nos.26512 to 26514 of 2015: The Writ Petitions are filed under Article 226 of the Constitution of India, seeking for Writ of certiorari to call for the records of the respondent herein in proceedings in VAT Nos.33712240789/2009-2010; 33712240789/2010-2011, 33712240789/2011-2012; and quash the order dated 02.07.2014.

Common Prayer in W.P.Nos.10257 to 10261 of 2015: The Writ Petitions are filed under Article 226 of the Constitution of India, seeking for Writ of certiorari to call for the records of the respondent herein in proceedings in TIN Nos.33712240789/2009-2010; 33712240789/2010-2011, 33712240789/2011-2012; 33712240789/2012-2013 & 33712240789/2013-2014 and quash the order dated 17.03.2015.

For Petitioner : Mr.T.Balaji

For Respondent : Mr.Manokaran Sundaram
Additional Government Pleader

COMMON ORDER

Heard Mr.T.Balaji, learned Counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned counsel accepting notice on behalf of the respondent and with the consent of learned counsel appearing on either side, these writ petitions are taken up for final disposal.

2.In all these Writ Petitions, the petitioner is M/s Sakthi Hotels (Restaurant), No.144-A, Coimbatore Road, Pollachi. The petitioner has filed W.P.Nos.26512 of 2014 to 26514 of 2014, challenging the orders of assessment for the years 2009-2010; 2010-2011 & 2011-2012 dated 02.07.2014 and the petitioner has also filed Writ Petitions in W.P.Nos.10257 to 10261 of 2015, challenging the orders of assessments for the years 2009-2010; 2010-2011, 2011-2012; 2012-2013 & 2013-2014 dated 17.03.2015.

3.In fact, the Writ Petitions filed in 2014, which were the earlier cases were entertained by this Court and an order of interim stay was granted on 25.09.2014. The respondent without filing a counter affidavit in the Writ Petitions and seeking for vacating the interim order, once again passed fresh orders of assessment dated 17.03.2015, for the years 2009-2010; 2010-2011 & 2011-2012, which are challenged in W.P.Nos. 10257, 10258 & 10259 of 2015. On this sole ground itself, the orders of assessment for those three years dated 17.03.2015, are liable to be set aside. However, this Court is inclined to consider the other grounds on which the petitioner has challenged the impugned orders of assessment.

4.Pursuant to the inspection conducted by the Enforcement Wing in the place of business of the petitioner on 10.04.2014, it was alleged that the petitioner had not maintained and produced Purchase Bills, Sale Bills or any other accounts related to their business, details of their purchases and sales expenditure were found not maintained manually or in computer system. Further, it was stated that the petitioner being accredited Star Status (Single) Hotel from 20.07.2009 to 19.07.2014 by the Government of India, Tourism Department, the tax payable by them on their sales effected should be 12.5% / 14.5% as per section 7(1)(a) of the TNVAT Act from 20.07.2009, and the petitioner having paid lesser rate of tax, the respondent issued notices for revision of assessment. The petitioner was granted opportunity to submit their objections.

5.The petitioner accordingly submitted that their Restaurant is not registered under the Tourism Department, as one star status and the proposed addition is not applicable to them and prayed for dropping the proposed equal addition. In the objections submitted by the petitioner, they further stated that the assessment for the years 2001-2002 and 2002-2003 were re-opened on the same grounds and on an appeal filed by the petitioner before the Appellate Assistant Commissioner (CT), Pollachi, the same were set aside in A.P.Nos.151 and 152 of 2005 dated 26.10.2005. The appeals filed by the Department before the Sales Tax Appellate Tribunal in Appeal Nos. 11/06 and 12/06 were dismissed by the Tribunal by order dated 19.06.2014. Therefore, it was contended that there was no case for assessing the petitioner to tax at 14.5%. Further, it is submitted that the petitioner viz.Sakthi Hotels (Restaurant), is a separate firm, registered under the Tamil Nadu Value Added Tax Act and the firm is carrying on business at Door No.144-A, Coimbatore Road, Pollachi, and the property is a distinct property and assessed to property tax by the Municipal Authorities separately and the Income Tax Assessment is also separate and that the Sakthi Hotels (Lodging House) is a Proprietary concern located at Door No.144,Coimbatore Road, Pollachi, having separate registration under the provisions of the Tamil Nadu Lodging Houses Act. Further the petitioner state that the common prefix 'Sakthi' was used by them, since their business entities belong to the members of a large Hindu Family. Reliance was also placed on the decisions in the case of COMMISSIONER OF SALES TAX v. SHUKLA TRANSPORT BRANCH [84 STC 308] and in the case of WOODLANDS HOTELS PVT LTD., v. JOINT COMMISSIONER (CT) [122 STC 95].

6.Thus, the respondent is bound to consider as to how they could re-open the assessments on the same grounds which were negatived by the Sales Tax Appellate Tribunal, which dismissed the Appeal filed by the respondent against the orders passed by the Assistant Appellate Commissioner, Pollachi, who held that the petitioner is a separate entity and does not form part of the lodging, which alone had been granted the 'star' category by the Government.

7.On a perusal of the impugned assessment orders, it is seen that the respondent did not advert to the orders passed by the Sales tax Appellate Tribunal, but, made certain observations which appear to be the personal opinion of the Assessing Officer. That apart, the Assessing Officer was solely guided by the report submitted by the Enforcement Wing Officials, which could not have been straight away admitted by the Assessing Officer, since he is an Adjudicating Authority and he has to independently consider the same and failure to do so amounts to abdication of the powers of the Assessing Officer.

8.At this juncture, it would be useful to refer to the reasons assigned by the Sales Appellate Tribunal in the earlier round of litigation which was on identical grounds and the Tribunal rejected the contentions raised by the respondent and the operative portion of the order reads as follows:

> "7.We have considered the same and we have also perused the assessment records produced before us. It is an admitted fact that the dealer-respondents are running a restaurant in the name of Sakthi Hotels (Restaurant) in the city of Pollachi at Door No.144-A, Coimbatore Road, Pollachi and it is registered under the TNGST Act with registration No.2240789. The

assessment under Municipal Act was distinct No.6135. But, the Sakthi Hotels (Lodging House) is owned by one Thiru C.M.Kamaraj as it is a sole proprietor at Door No.144, Coimbatore Road, Pollachi and the registration No. is TNLH No.00458/Pollachi West. Its assessment under Municipal Act under Assessment No.6134. The restaurant run by the dealer-respondents is owned by four numbers of partners whereas the Sakthi Hotels (Lodging) which is registered under the Tourism Act is owned by Thiru C.M.Kamaraj as sole proprietor. Both the above are two different entities. In the above circumstances, one star category allowed to Sakthi Hotels (Lodging) is not a basis for making assessment at higher rate on the sales of foods and drinks as per the rate prescribed under the Schedule to TNGST Act is not warranted. The Id.Appellate Assistant Commissioner after verifying all the facts, came to the conclusion that the Department is not in a position to attribute any documentary evidence to indicate that the dealer-respondents restaurant were registered with Tourism Department of the State or Central Government either during the assessment years in question or during the earlier point of time. Therefore, the Id.first appellate authority declined to accept the contention of Revenue to sustain the levy of tax made on the dealer-respondents restaurant in respect of the above said assessment years. In the grounds of appeal, the Revenue has not raised any new grounds. It is only related to the restaurant attached to the hotel (Lodging House) which is registered under the Tourism Department is coming under scope and ambit of Entry No.20/29 of part-of First Schedule. The contention of the Revenue is not acceptable because the Revenue has not proved with records that the dealer-respondents restaurant is registered with the Tourism Department of either State Government or Central Government and accredited with stage category in order to levy higher rate of tax as per the entries provided under the First Schedule of the Act. In view of the above facts and circumstances of the case, we find there is no reason to interfere with the order of the Id.Appellate Assistant Commissioner setting aside the order of the Revisional Authority in respect of assessment years 2001-02 and 2002-03.

In the result, State appeals stand DISMISSED."

9.It is not in dispute that the above order passed by the Tribunal had become final. Therefore, for the self same reasons, once again the respondent is not entitled to re-open the assessment, especially in the absence of any tangible material for doing so. That apart, there is nothing stated in the impugned order nor in the pre-assessment notice as regards any fresh materials which were available with them to establish that the petitioner should also be treated as part of the Star rated lodging house.

10.As already pointed out, when this Court had entertained the Writ Petitions viz. W.P.Nos.26512 to 26514 of 2014, challenging the assessments for the years 2009-10, 2010-2011 and 2011-2012 and when the order of interim stay was operating, the respondent could not have once again passed the impugned orders. In fact by doing so, the respondent had committed contempt of the interim orders already passed by this Court in the aforesaid three writ petitions viz. W.P.Nos.26512 to 26514 of 2014.

11.Hence, for all the above reasons, the Writ Petitions are allowed and the impugned assessment orders are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Rpa
To

The Commercial Tax Officer (CT)
Pollachi (West)
Coimbatore District.

2 ccs to Mr.A.Thiyagarajan, Advocate, sr.30659 & 30660
1 cc to Mr.S.Mohan, Advocate, sr.31218

W.P.Nos.26512 to
26514 of 2014 &
10257 to 10261 of 2015

jsv co
kra 14.06.2016