IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.32086 of 2015 and
M.P.No.1 of 2015

Speciality Restaurants Ltd. [Petitioner]
(Rep. by its Business Manager -
Mr.Swapan Kumar Dutta)
144-145 sterling Road
Nungambakkam, Chennai -34.

Vs

The Assistant Commissioner (CT)
Valluvarkottam Assessment Circle
621 Mount Road Chennai-6 [Respondent]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the respondent in TIN No.33371502030/2006-07 to 2008-09 (Rc. No.AC/VAT/2006-07) dated 21.9.2015 and quash the same.

For Petitioner : Mr.Mahesh for
Mr.N.Inbarajan

For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorari, to call for the records on the file of the respondent in TIN No.33371502030/2006-07 to 2008-09 dated 21.9.2015 and to quash the same.

2. It is the case of the petitioner that when the respondent was required to issue notice in Form-O, consequent to the orders of the Sales Tax Appellate Tribunal under Rule 14(22) of the Tamil Nadu Value Added Tax Rules 2007, no recovery action can be initiated without issuance of notice in Form-O. Further, the petitioner contended that the respondent had issued the notice before the expiry of 90 days for filing Tax Case (Revision) before this Court under Section 60 of the VAT Act.

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent submitted that since the respondent had issued the impugned notice prematurely before the expiry of 90 days for filing the Tax Case before this Court, the impugned notice is liable to be set aside.

4. Heard the submissions made by the learned counsel on either side and perused the materials available on record

5. Under Section 60 of the TNVAT Act, the petitioner has got 90 days' time for filing tax case before this Court. The impugned notice was issued even on 21.09.2015 itself, when the order in the appeal preferred before the Appellate Tribunal was passed on 28.08.2015, which was made ready only on 07.09.2015. In these circumstances, as rightly contended by the learned counsel for the petitioner, the impugned notice is liable to be set aside.

6. Accordingly, the impugned notice dated 21.09.2015 is set aside. The writ petition is allowed. It is open to the respondent to issue fresh notice in Form O, after the expiry of the period of limitation prescribed under the Act. No costs. Connected miscellaneous petition is closed.
rg

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Valluvarkottam Assessment Circle
621 Mount Road Chennai-6

+ 1 cc to Mr.N.Inbarajan, Advocate, SR 15951

+ 1 cc to Spl.Govt.Pleader(Taxes)High Court, Madras SR 15977

vgi(co)
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