IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26225 of 2016 and

WMP.No.22485 of 2016

M/s.Sakithyan

(A Division of M/s.Vijayakumar Properties Pvt. Ltd.)
Represented by its Managing Director,
No.42, Thanikachalam Road,
T.Nagar, Chennai - 600 017. .. Petitioner

Vs.

The Commercial Tax Officer,
Group IV, Enforcement (North),
No.1, Greams Road, Chennai - 600 006. .. Respondent

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent in the impugned proceedings TIN No.33871581586 dated 30.06.2016, quash the same as it travels beyond the scope of Section 4 and Section 2(21) of the Tamil Nadu Value Added Tax Act, 2006, beyond the powers conferred under Entry No.54 List II Seventh Schedule and contrary to the law laid down by the Supreme Court in the case of Imagic Creative Pvt. Ltd. Vs. Commissioner of Commercial Taxes (2008) 12 VST 371.

For Petitioner : Mr.V.S.Manoj
for Mr.K.Vaitheeswaran
For Respondent : Mr.Manokaran Sundaram
Additional Government Pleader



ORDER

Heard Mr.V.S.Manoj, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader accepts notice on behalf of the respondent. With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2.The case of the petitioner is that M/s.Vijayakumar Properties Private Limited entered into an absolute lease for a period of 99 years with Mr.Nazeer ul Haq and Ms.Suja ul Haq and based on the terms and conditions in the said lease deed, a superstructure was constructed and a holder was in the name and style of 'Hotel Sakithyan'. The said M/s.Vijyakumar Properties Private Limited entered into a lease deed with M/s.NRSA Associates, a Partnership firm for the lease of the superstructure in the name and style of 'Hotel NRS Sakithyan' consisting of 36 fully furnished rooms, BQT restaurant and attached Bar and all the fixtures, fittings and furnishings for a lease rent of Rs.10,00,000/- per month. The petitioner's case is that they have leased out the superstructure measuring 9074 square feet consisting of 36 fully furnished rooms, BQT restaurant and attached Bar etc. and they cannot be treated as goods as defined under Section 2(21) of the TN VAT Act. While so, the impugned intimation was sent by the respondent calling upon the petitioner to file their objections alleging that the petitioner has not reported the turnover relating to the lease rent which is treated as undisclosed turnover liable to VAT.

3.The petitioner has come forward with this writ petition on the ground challenging the intimation which is in other words could be called as a notice stating that the respondent has finally decided and determined the issue and there is nothing more to be stated before the respondent. On a perusal of the impugned notice, it is seen that though there is reference to certain factual details, it cannot be stated that the respondent has already pre-decided the matter probably the language employed in the notice give such an impression. Needless to state that the respondent while issuing a notice cannot pre-decide an issue. Therefore, the respondent should have an open mind and decide the matter after the objections are received from the petitioner.

4.The case of the petitioner in a nutshell is that they have leased commercial building consisting of fully furnished rooms, restaurants and bars which is nothing but an immovable property and they have discharged service tax under the provisions of the Finance Act, 1994 as amended. Therefore, it is submitted that an immovable property cannot be considered as goods for the purpose of Section 2(21) of the TNVAT Act and VAT cannot be levied under Section 4 which provides levy of VAT on the right to use of goods. Further, it is contended that the impugned notice has arbitrarily bifurcated the turnover into two parts and presumed that one portion pertains to right of use of goods other than the building and therefore, liable to VAT under Section 4 of the TNVAT Act. Since the impugned proceedings is only a notice calling upon the petitioner to file an objection and this Court, on perusal of the impugned notice, has found that the respondent has not pre-decided the issue, the petitioner is directed to submit their objection to the notice and at this stage, this Court is not inclined to interfere with the impugned proceedings.

5.Accordingly, the Writ Petition is disposed of and the petitioner is directed to submit their objections to the impugned notice dated 30.06.2016 within a period of 15 days from the date of receipt of a copy of this order, enclosing documents in support of their stand and if the same is submitted, the respondent is directed to consider the objections, afford an opportunity of personal hearing to the petitioner and thereafter, proceed to take a decision on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

sgl

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer,
Group IV, Enforcement (North),
No.1, Greams Road, Chennai - 600 006.

+ 1 cc to Mr.K.Vaitheeswaran, Advocate Sr 42361

+ 1 cc to The Spl.Govt.Pleader (Taxes) Sr 42590

KR/5/8/16

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