IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.26492 and 26493 of 2016
and
WMP.Nos.22704 and 22705 of 2016

M/s.R.R.Hospitality Pvt. Ltd.,
rep. by its Director S.Sudhakara Reddy,
138, Nungambakkam High Road,
Nungambakkam,
Chennai-34. ...Petitioner in both the petitions

Vs

The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
10, Palaniappa Maligai,
IV Floor, Greams Road,
Chennai-6. ...Respondent in both the petitions

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN 33961503306/2008-09, TIN 33961503306/2009-10 respectively dated 09.06.2016 and to quash the same as illegal.

For Petitioner in both WPs : Mr.S.Ramanathan
For Respondent in both WPs : Mr.Cibhivishnu Addl. Government Pleader

C O M M O N O R D E R

Heard Mr.S.Ramanathan, learned counsel appearing for the petitioner and Mr.Cibhi Vishnu, learned Additional Government Pleader accepting notice for the respondent and with consent on either side the Writ Petitions are taken up for final disposal at the admission stage itself.

2. The petitioner is a manufacturer and dealer in bakery products and they are registered on the file of the respondent, as a dealer under provisions of the Tamilnadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act) and the Central Sales Tax Act, 1956 (hereinafter referred to as CST Act).

3. In these Writ Petitions, the petitioner has challenged the order of revised assessment passed under TNVAT Act for the years 2008-2009 and 2009-2010. The following two grounds have been raised by the petitioner in challenging the order:-

(i) Firstly, it is submitted that higher rate of tax was levied on the petitioner on the ground that they have sold branded bakery products. The assessing officer came to such conclusion solely for the reason that the petitioner did not produce proof to show that they have withdrawn their application filed before the Registry of Trade Marks.

(ii) The second contention raised by the petitioner is that the impugned assessment is an order of revised assessment done under Section 27(1)(b) of the TNVAT Act and no penalty can be levied under Section 27(3) also. In other words it is contended that the question of levying penalty under Section 27(4) of the TNVAT would not arise, since the said provision shall stand attracted only when the revision of the assessment is done under Section 27(2) of the Act. However, in the impugned proceedings, the respondent has not specifically stated under which sub-section, the revision of assessment has been made and merely referred to Section 27 of the TNVAT Act.

4. Nevertheless on a reading of the impugned order, it is evidently clear that the revision of assessment is under Section 27(1) (b) of the Act. If that be the case, then, it has to be seen whether penalty could be levied.

5. So far as the first issue is concerned, the learned counsel for the petitioner submitted that though the petitioner in their reply to the show cause notice and during the personal hearing stated that the application filed before the Registry of Trade Marks was withdrawn but they were unable to produce the proof of the same because the learned counsel, who appeared before the Trade Marks Registry did not give the communication within time and only after the impugned order has been passed, the petitioner had received a communication from the Lawyer intimating about the withdrawal of their application by letter dated 29.06.2016.

6. It is submitted by the learned counsel for the petitioner that though the letter given by the petitioner's counsel appearing before Trade Marks Registry is dated 29.06.2016, now, they are able to produce the proof from the Trade Marks Registry that their application has been withdrawn as early as on 03.10.2013, much prior to the pre-revision notice dated 27.01.2015, 18.09.2015 and 11.01.2016. Therefore, it is submitted that the petitioner may be granted an opportunity to

produce the letter before the respondent with regard to avoid levy of penalty. It is submitted that since the revision of assessment is made under Section 27(1)(b) of the TNVAT Act, no penalty could be levied.

7. After hearing the learned counsel on either side and perusing the material placed before this Court, as pointed out, the levy of penalty is not sustainable.

8. As noticed above, on a reading of the impugned assessment order, it is clear that these revision of assessment under Section 27(1)(b) of the TNVAT has been done by the respondent to increase the rate of tax on the ground that the petitioner has been selling branded bakery products. Therefore, the levy of penalty is set aside.

9. With regard to the other aspect, namely, that the petitioner has withdrawn the application filed before the Trade Marks Registry and has got sufficient proof to show that the same has been withdrawn as early as on 03.10.2013, this Court is inclined to give one more opportunity to the petitioner.

10. In view of the above, the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration, only with regard to whether the petitioner had been selling branded or unbranded products, and that the petitioner is directed to produce proof to show that they have withdrawn the application filed before the Trade Marks Registry.

11. Insofar as the penalty is concerned, the question of re-opening the same, does not arise, as same stands set aside. However, the respondent is directed to issue a fresh notice and after affording a personal hearing to the petitioner, shall re-do the assessment, only with regard to increased rate of tax.

12. Accordingly, the Writ Petitions are allowed. Consequently connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd

To

The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
10, Palaniappa Maligai,
IV Floor, Greams Road,
Chennai-6

+1 cc to Mr.S.Ramanathan Advocate sr 43019
+1 cc to Special Government pleader taxes sr 43235

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