IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No. 26494 of 2016
and
WMP.No.22706 of 2016

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

Vs

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

Prayer:- Writ Petition 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 33961503306/2010-2011 dated 09.06.2016 and to quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.Cibhivishnu
Addl. Government Pleader

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 Petition is 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 the 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 this Writ Petition, the petitioner has challenged the order of revised assessment passed under TNVAT Act for the year 2010-2011.

(i) 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officer came to such conclusion solely for the reason that the petitioner did not produce proof to show that they have withdrawn their application filed before the Registry of Trade Marks.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. Another ground raised by the learned counsel for the petitioner is that before the Enforcement Wing Officials, the petitioner while giving a statement on 26.12.2011, stated the turnover for the year 2010-2011 at Rs.1,02,00,700/- for the period from September 2010 to November 2011 and that they agreed to pay tax, and cheques were also issued towards the payment of tax. However, while issuing pre-revision notice, though in the preamble portion of the notice, which is dated 11.01.2016, the respondent had stated that the total and taxable turnover is Rs.1,63,24,728/-, in page no.2 of the notice in the tabular column, the amount of Rs.1,02,00,700/- has been separately shown and once again the another turnover Rs.1,63,24,728/- has been shown, which is incorrect, as the said sum of Rs.1,02,00,700/- is included in Rs.1,63,24,728/-. Therefore, the petitioner submitted their reply on 11.02.2016 pointing out the above

defect and also stating that in respect of another turnover of Rs.1,43,71,748/-, the petitioner is unaware as to how the turnover has been determined and therefore requested for details being furnished. The respondent did not furnish the details, but, proceeded to complete the assessment.

13. From the records placed before this Court, and after hearing the learned Additional Government Pleader, it is evidently, clear that assessment has to be made on the turnover of Rs.1,63,24,728/- only and separately Rs.1,02,00,700/- cannot be added to it, as the said figure is inclusive of the total turnover made by the petitioner during the relevant assessment year.

14. With regard to the other turnover of Rs.1,43,71,748/-, the petitioner has to be furnished with full details so that they could be in a position to submit their objections, effectively.

15. In view of the above, the Writ Petition is allowed and the impugned order is set aside and the matter is remanded to the respondent for fresh consideration and the respondent is directed to issue a fresh notice and after affording an opportunity of personal hearing to the petitioner, shall re-do the assessment in accordance with law. Consequently connected miscellaneous petition is 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 43021

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