IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.28094 to 28096 of 2016
& WMP Nos.24239 to 24241 of 2016

M/s. Ramanuja Hotel (P) Ltd.,
Rep. By its Managing Director, K.Natarajan,
No.115 Palaghat Road,
Pollachi – 642 001
Coimbatore District .. Petitioner in all W.P.s

Vs.

The Commercial Tax Officer
Pollachi (West), Assessment Circle,
Pollachi .. Respondent in all W.Ps.

Prayer: Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records relating to the order, dated 27.06.2016, on the file of the respondent made in respect of TIN No.33212242810 for the assessment years 2012-13, 2013-14 and 2014-15, respectively, and to quash the same.

For Petitioner in all W.Ps.: Mr. R.Nandhakumar
For Respondent in all W.Ps.:Ms. Vasudha Thiagarajan, A.G.P.,

O R D E R

Heard Mr.R.Nandhakumar, learned counsel for the petitioner and Ms. Vasudha Thiagarajan, learned Additional Government Pleader for the respondent, in all the writ petitions. By consent of the learned counsel for both sides, the Writ Petitions are taken up for final disposal, at the admission stage itself.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter will be referred to as “the Act”). In these writ petitions, the petitioner has challenged the revised assessment orders, dated 27.06.2016, passed under the said Act, for the years 2012-13, 2013-14 and 2014-15. The impugned orders are vitiated on the ground of violation of

principles of natural justice. Apart from that, on the merits of the assessment, the petitioner has raised various contentions.

3. On a perusal of the impugned orders, it is seen that the place of business of the petitioner was inspected by the Enforcement Officials, on 07.04.2014 and 12.12.2014 and during the course of inspection, certain defects were noticed. Based on the report submitted by the Enforcement Wing, the respondent issued pre-revision notices, dated 14.01.2016, pointing out the defects noticed by the Officials of the Enforcement Wing and proposed to reject the petitioner's returns for the relevant years and revise the assessment under Section 27(1)(a) of the Act, apart from proposing to levy penalty under Section 27(3)(a) of the Act.

4. The petitioner, in all the writ petitions, has received pre-revision notices. Yet, the petitioner did not care to submit their objections. Therefore, it is not a case where there is violation of principles of natural justice, but a case where the petitioner failed to utilize the opportunity granted to them. Therefore, this Court is not inclined to accept the said submission of the petitioner that the impugned orders are in violation of principles of natural justice.

5. With regard to the merits of the assessment, the learned counsel for the petitioner, in all the writ petitions, vehemently contended that for the purchase and sale of liquors in the bar, the petitioner was in possession of bills, records, vouchers and it is also maintaining FL3 register and the menu list for the sale of foods in the bar and based on these records, the petitioner has also remitted tax, by filing returns for the assessment years 2012-13, 2013-14 and 2014-15, and the same were also accepted by the respondent. Therefore, it is their contention that there is no suppression or omission on the part of the petitioner. Further, it is stated that it is unreasonable to levy penalty and addition of 14.5% on difference in turnover for alleged probable omission. Further, the petitioner contended that when they filed an application under Section 84 of the said Act, the respondent has also rejected the same. Thus, the learned counsel for the petitioner prays that the petitioner may be granted one more opportunity, so as to enable them to go before the Assessing Officer and file their objections and explain the nature of transactions done by them.

6. Considering the said submissions and after hearing the learned Additional Government Pleader on the same, this Court is of the view that one more opportunity can be granted to the petitioner, subject to conditions. Accordingly, the petitioner is directed to pay 15% of the disputed tax, for each of the three assessment years, within a period of three weeks from the

date of receipt of a copy of this order. If the payment is made within the time permitted, the petitioner will be entitled to treat the impugned assessment orders, as show cause notices, and submit their objections, within a period of two weeks, thereafter. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner, peruse the books of accounts, ledgers, records, etc., (that the petitioner may produce) and thereafter, re-do the assessment in accordance with law. If the petitioner defaults in the payment of the aforesaid amount of tax within the time permitted, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed, without any reference to this Court, leaving it open to the petitioner, in all the writ petitions, to workout their remedy in the manner known to law.

7. These writ petitions stand disposed of accordingly. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Commercial Tax Officer
Pollachi (West), Assessment Circle,
Pollachi.

+1cc to Mr.K.P.Jotheeswaran, Advocate Sr.10764
+2cc to Mr.K.P.Jotheeswaran, Advocate Sr.10764[15/09/2016]
+1cc to Special Government Pleader Sr.46114

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