IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.10.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.35815 of 2016 &
W.M.P.No.30762 of 2016

Tvl.Salem Hotel Sri Saravana Bhavan (P) Ltd.,
rep. by its Managing Director
Mr.V.C.Shivaraman .. Petitioner

Vs

The Assistant Commissioner (CT)
Arisipalayam Assessment Circle
Pichards Road, Hasthampatty
Salem 636 007.
.. Respondent

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari to call for the records on the files of the respondent in TIN No.33452844660/2014-15 dated 14.09.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principle laid down by this Court in the Judgment reported in (2007) 295 ITR 303 (Mad) (V.SELLADURAI v. CHIEF COMMISSIONER OF INCOME-TAX (OSD) and another) and 1995 (8) M.T.C.R.55 M/s RAJAM OFFSET PRINTERS, MADRAS-1, vs. THE COMMERCIAL TAX OFFICER, MANNADY EAST ASSESSMENT CIRCULE, MADRAS).

For petitioner .. Mr.R.Senniappan

For Respondent .. Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate Counsel appearing for respondent. With the consent of the learned counsel appearing on either side, the Writ Petition is disposed of for final disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] and running Hotels in Salem District with five branches. In this Writ Petition, the order which is impugned is an assessment order for the year 2014-15, under the provisions of the TNVAT Act.

3.The learned counsel for the petitioner has not advanced any arguments as regards the merits of the assessment, but would contend that the impugned order is in violation of the principles of natural justice, as it has been passed without affording an opportunity of personal hearing to the petitioner.

4.To support the said contention, reliance has been placed on the decision of this Court in the case of M/s RAJAM OFFSET PRINTERS, MADRAS-1 [1995 (8) M.T.C.R.55]; the decisions of the Hon'ble Division Bench in the case of and in the case of V.SELLADURAI v. CHIEF COMMISSIONER OF INCOME-TAX (OSD) & ANR [(2007) 295 ITR 303 (Mad)] and SRC PROJECTS (P) LTD, v. COMMISSIONER OF COMMERCIAL TAXES, CHANNAI AND ANOTHER [(2010) 33 VST 333].

5.In the light of the said stand taken by the petitioner, the learned Government Advocate was directed to get instructions from the respondent as to whether the order was passed in full compliance of principles of natural justice and as to whether the opportunity of personal hearing was granted.

6.The respondent has given a written instructions to the learned Government Advocate, which has been produced before this Court. From which it is seen that after receipt of the notice from the petitioner on 01.09.2016, no opportunity of personal hearing was granted.

7.On receipt of the pre-revision notice dated 29.07.2016, the petitioner submitted their reply on 24.08.2016. In the penultimate paragraph of the said reply, the petitioner has specifically stated that in case the Assessing Officer is not convinced with the explanation given by the petitioner, a personal opportunity of being heard may be granted to them. In the impugned order, the respondent has extracted the entire explanation given by the petitioner, but has omitted to extract or quote the last paragraph, where the petitioner has sought for personal hearing.

8.The Hon'ble Division Bench has stressed the need for affording an opportunity of personal hearing, especially when it is sought for, with a view to ensure that all the clarifications which are required by the Assessing Officer can be readily clarified by the dealer. However, this opportunity has been denied to the petitioner inspite of specific request, which is contrary to law laid down by this Hon'ble Court and in particular in the decision in the case of the SRC PROJECTS (P) LTD.

9.In the impugned assessment order, the respondent has stated that the reply given by the dealer is routine and general in nature and does not reflect the branch-wise and day-wise details and that the sales reported can be verified with the Bill Tallying System to ascertain the correctness. If such was the opinion of the respondent, then it is all the more a valid reason for the respondent to have called upon the petitioner for personal appearance and directed them to produce all the details, more particularly the Bill Tallying System. However, this has not been done. Therefore, the impugned order has to be held to be in violation of principles of natural justice.

10.Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner, produce all records and if necessary call for records, including Bill Tallying System and after making a thorough verification, consider the objections raised by the petitioner and thereafter redo the assessment in accordance with law. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Arisipalayam Assessment Circle
Pichards Road, Hasthampatty
Salem 636 007.

+1cc to Mr.R.SENNIAPPAN,Advocate, S.R.No.60870
+1 cc to Government pleader sr.60550

W.P. No.35815 of 2016

CO
CP 12/11/2016