IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.11.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.40448 & 40449/2016 & WMP.Nos.34516 & 34517/2016

M/s.Hotel Palmgrove, rep.by its
Shri K.Jayavarmaraj Ballal
Managing Director, 13, KodambakkamHigh Road,
Chennai-34. ..Petitioner in both the writ petitions

Vs

The Assistant Commissioner
[CT], T.Nagar Assessment Circle
Chennai-28. .. Respondent

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the respondent in TIN No.33821560031/2010-11 ; TIN No.33821560031/2011-12 dated 07.09.2016 received on 17.10.2016 and quash the same as being without jurisdiction, invalid and illegal.

For Petitioner in both the WPs :Mr.V.Srikanth
For Respondent in both the WPs :Mr.S.Kanmani Annamalai, AGP [T]

COMMON ORDER

Heard Mr.V.Srikanth, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader [Taxes] accepting notice on behalf of the respondent and with the consent on either side, the writ petition is taken up for final disposal.

2 The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] and is engaged in the business of supply of food and drinks to the customers and the guests staying in the Hotel. The orders in these writ petitions are the orders of assessment for the years 2010-11 and 2011-12. A common issue arise for consideration in both these writ petitions and therefore, they were heard together and are disposed of by this common order.

3 The petitioner filed their monthly returns for April, May and July 2011 and on perusal of the returns, the then Assessing Officer, issued three separate notices dated 09.03.2012 stating that the petitioner has effected purchases from M/s.Super Flames and M/s.Deepak Agencies, whose registration certificates have been cancelled. The petitioner submitted their reply dated 25.03.2012 stating that the TIN number of M/s.Super Flames as per the Bills issued to the petitioner is 33541500142 and thereafter, the constitution of the said Organization has been changed and they have registered themselves and a new TIN No.33921503425 has been given. But, they were continuing to issue Bills bearing old TIN number to the petitioner. Further, it was stated that M/s.Super Flames have informed them that they have been filing returns on the sales made to the petitioner and they have claimed credit of genuine transaction and the error appears to be in the TIN number printed on the Bill Books. Therefore, the petitioner requested the then Assessing Officer to drop the further proceedings. Similar reply was given in respect of M/s.Deepak Agencies, stating that they have not been filing on-line returns ; but have been filing manual returns and certain letters to establish the same, were produced before the then Assessing Officer. Apart from that, the letter given by M/s.Super Flames dated 02.04.2012, certifying the stand taken by the petitioner was submitted to the then Assessing Officer and it appears that the then Assessing Officer was satisfied with the petitioner's explanation as no further orders were passed pursuant to the notices dated 09.03.2012. However, after the present Assessing Officer took charge, he had issued notices dated 29.02.2016 to the petitioner, stating that the transactions done by the petitioner for the relevant period with M/s.Super Flames, is with an unregistered dealer and not entitled to the Input Tax Credit availed by them and proposed to reverse the same.

4 On receipt of the notice, the petitioner submitted a reply dated 04.04.2016, in fact reiterating what was stated by them earlier and producing the necessary records to substantiate their case. The respondent has now passed the impugned orders by referring to the reply given by the petitioner. But, while considering the reply, the respondent has not rejected the reply given by the petitioner ; but has proceeded on a different line and stated that the petitioner has not filed the Sales Confirmation Statement from the seller with copies of Annexure-II and the return copies of the Seller reveal that the declaration of sales is “Sundry Sales”. Therefore, objections given by the petitioner were overruled. If the respondent is of the view that the documents produced by the petitioner are insufficient, then he should have afforded an opportunity to the petitioner to submit the documents. This opportunity has been

denied to the petitioner. Furthermore, the respondent in the impugned order, has not disbelieved the stand taken by the petitioner that M/s.Super Flames is still a registered dealer, carrying on business in the same premises, with new TIN Number. Therefore, some verification should have been made by the respondent before passing the impugned orders and for which purpose, if the respondent had afforded an opportunity of personal hearing, the matter could have been solved then and there and these writ petitions itself would have been avoided. One more exercise could have been done by the respondent is by calling for necessary particulars from the Assessing Officer of M/s.Super Flames who is also a registered dealer in Valluvarkottam Assessment Circle. This could have very well solved the issues which arose for consideration.

5 That apart, the question would be as to why the then Assessing Officer did not proceed further pursuant to the notices dated 09.03.2012. Since no action was taken pursuant to the notice dated 09.03.2012, it is prima facie clear that the then Assessing Officer was satisfied with the petitioner's explanation dated 25.03.2012 supported by the letter given by M/s.Super Flames dated 02.04.2012. Thus, the respondent should objectively assessed the entire situation and then come to a conclusion. For the above reasons, this Court is of the view that the matter should be send back to the respondent for re-consideration.

6 Accordingly, the writ petitions stand disposed of by directing the petitioner to treat the impugned proceedings as a show cause notice and the petitioner is granted 30 days time to file a detailed objection supported by the records which they may acquire during thirty day period and on receipt of the objections along with the documents produced by the petitioner, the respondent shall afford an opportunity of personal hearing and parallelly verify the authenticity of the stand taken by the petitioner from the Commercial Tax Officer, Valluvarkottam Assessment Circle, in whose jurisdiction M/s.Super Flames is stated to be a registered dealer and after considering all the records and taking note of the submissions made by the petitioner, the respondent shall re-do the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

The Assistant Commissioner,
[CT], T.Nagar Assessment Circle,
Chennai-28.

+1cc to M/S.C.Venkatraman, Advocate Sr.66457
+1cc to the Government Pleader sR.66688

WP.Nos.40448 & 40449/2016

cp[co]
srg 10/12/2016