IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2016

CORAM

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

W.P.No.23725 of 2003
and
W.P.M.P.No.29314 of 2003

M/s.Hotel Shrilekha Regency Limited,
represented by Mr.M.N.Janardhan,
Managing Director,
564, Anna Salai,
Chennai-600 018. .. Petitioner

Vs.

1.The Joint Commissioner (Commercial Taxes),
(Revision Petition),
Ezhilagam, Chepauk,
Chennai-600 005.
2.The Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
46, Greenways Road,
Chennai-600 028. .. Respondents

The writ petition is filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records on the file of the first respondent in R.P.No.JJ2/LH87/2001, dated 9.9.2002 and quash the same as being invalid and illegal.

For Petitioner : Mr.C.Venkat Raman

For Respondents : Mr.S.Kanmani Annamalai, AGP

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ORDER

This writ petition has been filed praying for the issuance of writ of certiorari to quash the order passed by the first respondent dated 9.9.2002 in a revision petition filed by the petitioner against the order passed by the Appellate Assistant Commissioner (CT) III, Chennai-108, dated 30.04.2001, confirming the levy of penalty on the petitioner under Section 8 of the Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981 (herein-after referred to as (Lodging Houses Act") by the second respondent, by proceedings dated 9.2.1998. The petitioner filed returns for the year 1996-97 reporting a total taxable turnover of Rs.2,20,31,660/- in the returns under the Lodging Houses Act. The petitioner was assessed total and taxable turnover of Rs.2,21,18,820/- by the second respondent by proceedings, dated 9.2.1998. The second respondent held that there was a delay in payment of tax for the month of October, 1996, December, 1996 and January, 1997 and levied penalty of Rs.3,52,100/- under Section 8 of the Lodging Houses Act. The petitioner filed an appeal before the Appellate Assistant Commissioner, challenging the levy of penalty. This appeal was dismissed by order dated 30.4.2001. Thereagainst, a revision has been preferred before the first respondent and the same was also dismissed by order dated 9.9.2002, which is impugned in this writ petition

2 I have heard Mr.C.Venkat Raman, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondents.

3 It may not be necessary to go into further factual issue in the instant case. All that is required to be seen is whether the second respondent was justified in levying penalty, invoking Section 8 of the Lodging Houses Act and whether the first respondent was right in refusing to interfere with the said order. The penalty is being imposed in exercise of the power conferred under Section 8 of the Lodging Houses Act. The said provision reads as under :

> "8.Imposition of penalty in certain cases.- Where any proprietor liable to pay tax under this Act.-
>
> (a) fails without sufficient cause or neglects to furnish a return as required by a sub-section (1) of section 6, or
>
> (b) while furnishing a return under sub-section (1) of section 6 fails, without sufficient cause or neglects, to pay into Government account the whole amount of tax due from him according to such return as required by sub-section (3) of section 6, or
>
> (c) fails without sufficient cause, to comply with the terms of notice issued to him under clause (a) of sub-section (2) of section 7, or
>
> (d) conceals the particulars of any transaction or deliberately furnishes inaccurate particulars of any transaction liable to tax.
>
> the assessing authority may impose upon such proprietor by way of penalty, in addition to any

tax assessed under section 7, a sum not exceeding one and half times the amount of the tax."

4 In terms of the above provision, there are four circumstances, under which the assessing authority can invoke the said provision and may impose the penalty on the dealer. The first being failure without sufficient cause or neglects to furnish the return, (2) while furnishing the return, fails without sufficient cause or neglects to pay into the Government account the whole amount of tax due, (3) fails without sufficient cause to comply with the terms of notice issued to the petitioner under Section 7(2)(a) of the Lodging Houses Act or (4) conceals the particulars of any transaction or deliberately furnished inaccurate particulars of any transaction liable to tax. It has to be noted that all the four clauses uses the expression "or". Therefore, the assessing authority has to state, under which clause the assessee is liable for being mulcted with penalty.

5 In the instant case, in the order of assessment, the second respondent has merely stated that the penalty under Section 8 of the Lodging Houses Act is Rs.3,52,100/-. The second respondent has not specifically stated as to whether the petitioner has contravened any one of the four clauses or more than one of the four clauses, as stipulated in Section 8(a) to (d) of the Lodging Houses Act. This is an inherent defect in the order of assessment passed by the second respondent. The petitioner challenged the levy of penalty and was unsuccessful upto the stage of revisional authority. However, the revisional authority referred to the decision, arising under the TNGST Act, which relates to payment of interest for the delay in remitting the tax. If the interest is statutorily leviable, then the assessing officer would have no discretion either to waive or to reduce the rate of interest. However, there is little discretion when it comes to levy of penalty. But, we are testing the impugned order, which was emanated under the provisions of the Lodging Houses Act. Therefore, it has to be seen as to (1) whether the petitioner, without sufficient case, failed or neglected to furnish the return; (2) if he had filed the return, whether without sufficient cause failed or neglected to pay the whole amount of tax; (3) without sufficient cause, whether he failed to comply with the terms of notice issued to him under Section 7(2)(a) of the Lodging Houses Act or (4) whether he concealed the particulars of any transaction or deliberately furnished inaccurate particulars.

6 Both the appellate as well as revisional authorities have not alleged that the petitioner had neglected or concealed or deliberately acted in the manner to defeat the interest on revenue. Therefore, unless and until, the respondents specifically record the finding that there was negligence on the

part of the assessee, they cannot proceed to levy penalty. Therefore, the negligence on the part of the assessee should be brought even at the stage when the show cause notice was issued. However this was not done in the instant case. That apart the reasons given by the petitioner for not being able to remit the tax has also not been considered in proper perspective. When the petitioner has clearly stated about their financial conditions, the assessing officer could have very well examined the same to find out the genuineness of the claim. The only reason given for confirming the penalty is that the petitioner has failed to pay the full amount of tax due from them according to the returns, as required under Section 6(3) of the Lodging Houses Act. The mere non payment of tax would not be sufficient to attract Section 8(b) of the Lodging Houses Act for the purpose of levying penalty. The authority should specifically record the finding that the non payment of dues was without sufficient cause and was on account of negligence. Further more, the authority in a single line rejected the reason given by the petitioner for not making payment of tax on time, by stating that cause given by the appellant is not sufficient cause.

7 For all the above reasons, the petitioner is entitled to succeed. Accordingly, the writ petition is allowed. The impugned order is quashed and the penalty levied on the petitioner pursuant to the impugned order stands set aside. No costs. Consequently connected miscellaneous petition is closed.
vvk

-s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1.The Joint Commissioner (Commercial Taxes),
(Revision Petition),
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
46, Greenways Road,
Chennai-600 028.

+ 1 cc to Spl.Govt.Pleder SR 33323

+ 1 cc to Mr.C.Venkataraman, Advocate SR 33252

ksj(co)
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