IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.9332 & 9333 of 2017
and
WMP.Nos.10308, 10309, 10310 & 10311 of 2017

M/s.Chandra Royal Inn Pvt. Ltd.,
Rep. By its Managing Director - Joseph Selvakumar
No.52, Main Road,
Velankanni - 611 111,
Nagapattinam District. ...Petitioner
(in WP.Nos.9332 & 9333 of 2017)

Vs.

The Commercial Tax Officer
Nagapattinam Assessment Circle
Nagapattinam, Nagapattinam District. ...Respondent
(in WP.Nos.9332 & 9333 of 2017)

Prayer:

Writ Petition No. 9332 of 2017 filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records on the file of the respondent in his impugned proceedings made in TNLH:8728/2014-15 dated 29.08.2016 and the consequential proceedings made in TNLH:8728/2014-15 dated 18.11.2016 quash the same as illegal and contrary to the scheme of the act.

Writ Petition No. 9333 of 2017 filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records on the file of the respondent in his impugned proceedings made in TNLH:8728/2015-16 dated 29.08.2016 and the consequential proceedings made in TNLH:8728/2015-16 dated 18.11.2016 quash the same as illegal and contrary to the scheme of the act.

For Petitioner : Mr.S.Rajasekar
For Respondent : Mr.K.Venkatesh
Government Advocate

C O M M O N O R D E R

These two writ petitions are filed challenging the orders of assessment and the revised orders passed in respect of assessment years 2014-2015 and 2015-2016 dated 29.08.2016 and 18.11.2016 respectively.

2. The case of the department in respect of assessment year 2014-2015 is that the petitioner had not filed any returns along with the luxury tax collected in respect of the above assessment order and such fact was noticed only when a surprise inspection was conducted by the Enforcement Wing Officials. Therefore a notice of proposal dated 18.07.2016 was issued to the petitioner and however, they have not chosen to file any objections inspite of the receipt of the same. It is also an admitted fact that the petitioner paid a sum of Rs.4 Lakhs on 31.12.2015 at the time of inspection made by the Enforcement Wing Officials.

3. Insofar as the assessment year 2015-2016 is concerned, the case of the department is that there is a short payment of actual tariff and rent, consequently resulted in non-payment of the tax to the tune of Rs.4,32,131/- and the penalty at 150%. Here also the department issued a notice of proposal on 18.07.2016 and the petitioner did not file any objections.

4. The learned counsel appearing for the petitioner submitted that non-filing of objections before the respondent i.e. Assessing Officer was neither willful nor wanton and only due to some internal fight between the Directors of the petitioner's company. He further submitted that apart from making payment of Rs.4 Lakhs on 31.12.2015, the petitioner paid a further sum of Rs.3,17,790/- by way of demand draft dated 24.02.2017. Therefore he submitted that the total sum of Rs.7,17,790/- is paid by the petitioner out of total demand of Rs.11,02,082/- in respect of both assessment years. By saying so, the learned counsel submitted that the petitioner must be given an opportunity, to file their objections before the Assessing Officer for consideration of the same and re-doing the assessment, based on such objections.

5. The learned Government Advocate appearing for the respondent is not disputing the above payment made by the petitioner. Further he submitted that the petitioner has not chosen to file their objections in spite of receipt of the notice of proposal.

6. Considering the above stated facts and circumstances and considering the reasons stated for not filing the objections before the respondent and also considering the bonafide of the petitioner in making payment of Rs.7,17,790/- out of the total demand of Rs.11,02,082/-, I am of the view that the petitioner can be given one more opportunity to contest the matter before the Assessing Officer by filing their objections, so that the Assessing Officer will be in a position to pass orders on merits, after considering those objections.

7. Accordingly, these writ petitions are allowed and the impugned orders are set aside. Consequently, the matters are remitted back to the Assessing Officer for re-doing the assessment, after receiving the objections from the petitioner and considering the same on its own merits and in accordance with law. Such objections shall be filed by the petitioner within a period of two weeks from the date of receipt of a copy of this order. The Assessing Officer shall provide an opportunity of personal hearing also to the petitioner. The Assessing Officer shall pass fresh orders of assessment as stated supra, within a period of four weeks from the date of receipt of such objections from the petitioner. No costs. Consequently connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To
The Commercial Tax Officer
Nagapattinam Assessment Circle
Nagapattinam, Nagapattinam District.
+1 Cc to Ms. R. Hemalatham Advocate sr 23911
+1 Cc to The Spl.Govt. Pleader sr 23767

W.P.Nos.9332 & 9333 of 2017

GJII(CO)
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