IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHNDRABAABU

Writ Petition Nos.10660 & 10661 of 2017
and
WMP.Nos.11607 & 11608 of 2017

Lebara Hotels Private Limited
Formerly known as LBR Hotels and Hospitality Services Private Limited
Having registered office at 302, Anna Salai,
Teynampet, Chennai-600 006
Having its unit and running operations at
The Gateway Hotel IT Expressway
309, Rajiv Gandhi Salai (OMR)
Sholinganallur, Chennai-600 119. ... Petitioner
(in WP Nos.10660 & 10661 of 2017)

Vs.

Assistant Commissioner (CT)
Kelambakkam Assessment Circle
Plot No.141, Burma Colony
3rd Floor, First Main Road,
Perungudi, Chennai-600 096. ... Respondent
(in WP Nos.10660 & 10661 of 2017)

Prayer:

Writ petition No.10660 filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarifi, to call for the records of the Order dated 10.04.2017 in File No.TNLH No.7550/2015-16 issued by the Respondent under the Tamil Nadu Tax on Luxuries Act, 1981 and quash the same.

Writ petition No.10661 filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarifi, to call for the records of the Order dated 10.04.2017 in File No.TNLH No.7550/2016-17 issued by the Respondent under the Tamil Nadu Tax on Luxuries Act, 1981 and quash the same.

For Petitioner : Mr.S.Aravindan for
M/S. For Mandal & Associates

For Respondent : Mr.K.Venkatesh
Government Advocate

C O M M O N   O R D E R

The petitioner is aggrieved by the orders of assessment dated 10.04.2017 in respect of assessment years 2015-2016 and 2017-2016 made by the respondent under the Tamil Nadu Tax on Luxuries Act, 1981.

2. Mr.K.Venkatesh, learned Government Advocate takes notice for the respondent. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

3. The learned counsel appearing for the petitioner submitted that the respondent has passed the impugned orders, without considering the merits of the objections raised by the petitioner, especially the details available in Form-1. He also wanted to sustain his submission based on a circular issued by the department on that aspect.

4. On the other hand, the learned Government Advocate appearing for the respondent submitted that as against the impugned orders of assessment, a statutory appellate remedy is available under Section 10 of the said Act and therefore, the petitioner can approach the Appellate Authority and raise all their objections.

5. Heard both sides.

6. It is seen that the orders of assessment were passed by considering the issue relating to payment of luxury tax in respect of different categories of rooms with different categories of tariff. It is not in dispute that before passing the orders of assessment, a notice was issued to the petitioner and in response to such notice, the petitioner has also given their objections. Perusal of the impugned orders would show that the objections so raised by the petitioner were considered by the Assessing Officer and thereafter, he has arrived at the quantum of tax payable by the petitioner. It is also observed by the Assessing Officer that the petitioner did not appear for the personal hearing, which was already provided in the notice dated 16.03.2017. Therefore, I do not find any violation of principles of natural justice. Needless to say, that the correctness or otherwise of the findings rendered by the Assessing Officer, after considering the objections raised by the petitioner, has to be gone into and decided only by the next fact finding authority viz., the Appellate Authority and therefore, this Court, at this stage cannot go into the disputed question of fact, that too, by exercising this discretionary jurisdiction under Article 226 of the Constitution of India. The petitioner can very well raise all these points before the

next fact finding authority viz., the Appellate Authority, by filing an appeal under Section 10 of the said Act. Perusal of the said appeal provision would show that the petitioner has three months time to file the said appeal from the date of receipt of the impugned order. Therefore, it is evident that the appeal time has also not expired.

7. Accordingly, these writ petitions are disposed of, without going into the merits and the contentions raised by the parties, only with a liberty to the petitioner to file an appeal before the Appellate Authority, within the time prescribed under Section 10 of the said Act. Since the appeal time is not yet over, the respondent is directed not to take any coercive steps against the petitioner till such time. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

mk

To

The Assistant Commissioner (CT)
Kelambakkam Assessment Circle
Plot No.141, Burma Colony
3rd Floor, First Main Road,
Perungudi, Chennai-600 096.

+2cc to M/S. Fox Mandal & Associates, Advocate Sr. 25549 & 25550

+1cc to the Special Government Pleader (Taxes)
High court, Madras-104 Sr. 25459

Writ Petition Nos.10660
& 10661 of 2017

EV(CO)
VR(28/4/2017)