IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24997 of 2017
&
WMP.Nos.26375 & 26376 of 2017

Lebara Hotels Private Limited, formerly known as LBR Hotels and Hospitality Services Private Limited having regd. office at No.302, Anna Salai, Teynampet, Chennai-6, having its unit and running operations at The Gateway Hotel IT Expressway, 309, Rajiv Gandhi Salai, Old Mahabalipuram Road, Sholinganallur, Chennai-119 rep.by its Authorized Signatory ...Petitioner

Vs

1.The Assistant Commissioner (CT), Kelambakkam Assessment Circle, Plot No.141, Burma Colony, III Floor, I Main Road, Perungudi, Chennai-96.

2.The Appellate Deputy Commissioner of CT, Chennai (East), Greams Road, Chennai-6. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the order dated 28.6.2017 in file No.LTH/7550/2015-16 issued by respondent No.1 under the Tamil Nadu Tax on Luxuries Act, 1981 (TN Luxury Tax Act), quash the same and forbear respondent No.1 from collecting any luxury tax for the assessment year 2015-16 under the TN Luxury Tax Act.

For Petitioner : Mr.Karthik Sundaram for M/s.Fox Mandal & Associates

For Respondents : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the assessment order passed under the provisions of the Tamil Nadu Tax on Luxuries Act, 1981 (hereinafter called the Act), for the year 2015-16. The petitioner is a four star rated hotel and has been filing returns and remitting tax under the provisions of the Act. For the assessment year 2015-16, the first respondent passed an order dated 10.4.2017. This order was pursuant to a surprise inspection conducted on 14.10.2016 by the officials of the Enforcement Wing of the Commercial Taxes Department.

3. Based on the report of the officials of the Enforcement Wing, the Assessing Officer issued a revision notice dated 16.3.2017 pointing out certain defects. The petitioner filed their objections, which were received by the Assessing Officer on 30.3.2017 and the assessment was completed and the total tax due was quantified at Rs.3,59,47,000/-. After giving credit to the tax already paid to the tune of Rs.2,90,47,489/-, the balance amount of Rs.68,99,511/- was demanded.

4. The orders of assessment dated 10.4.2017 for two years namely 2015-16 and 2016-17 were challenged by the petitioner in W.P.Nos.10660 and 10661 of 2017. However, this Court was not inclined to entertain the writ petitions, but disposed of the same by a common order dated 26.4.2017 directing the petitioner to file an appeal before the Appellate Authority concerned. This has been complied with by the petitioner and the appeal has been filed before the Appellate Authority on 13.7.2017.

5. Just before filing of the appeal and after disposal of the earlier two writ petitions, on 09.6.2017, the first respondent passed another assessment order for the year 2015-16 showing that there is no further liability to pay tax after giving credit to the amount of tax already paid by the petitioner being a sum of Rs.3,97,61,677/-. It is not known as to under what circumstances, the first respondent passed the assessment order dated 09.6.2017, as he had no power to revise his own order for the very same assessment year dated 10.4.2017. Probably, realizing the mistake, a third order was passed by the first respondent on 28.6.2017, which is impugned in this writ petition. By the impugned order, the first respondent would state that the order dated 09.6.2017 is incorrect and the order dated 10.4.2017 is the correct assessment order and the balance

tax as demanded therein has been once again demanded in the impugned order.

6. As already pointed out, the first respondent has no power to revise his own assessment order and such power is conferred only on the Joint Commissioner. Be that as it may, the petitioner preferred an appeal against the order dated 10.4.2017. Therefore, all the issues have to be adjudicated before the Appellate Authority.

7. The petitioner submits that in terms of Section 4A of the Act, where a proprietor intends to revise any rate or charge for any luxury provided in a hotel, he shall intimate in writing to the Assessing Authority seven days prior to the date of giving effect to such revised rates and the proprietor shall be liable to pay tax at revised rate after the expiry of seven days from the date of receipt of such intimation by the Assessing Authority.

8. It is submitted by the learned counsel that such intimations under Section 4A of the Act were given by the petitioner in Form I for the period from 1.4.2015 to 31.3.2016 seven days prior to the said period by intimations dated 19.3.2015 and 24.3.2015, which were shown to have been received by the office of the first respondent respectively on 20.3.2015 and 27.3.2015 as per the endorsement in the letter delivery book.

9. Therefore, it is submitted that when the provisions under Section 4A of the Act have been complied with by the petitioner, there is no question of revision of tax and in this regard, reliance was placed on the circular issued by the Commissioner in Circular No.26.12.1996 as well as the decision of this Court in the case of Vivanta by Taj Surya, Unit of Oriental Hotels Limited Vs. AC (CT), Trichy Road Assessment Circle [reported in MANU/TN/0951/2017].

10. In my considered view, the petitioner, having preferred an appeal before the Appellate Authority pursuant to the directions issued in the earlier writ petitions, it is but appropriate for the petitioner to canvass all the points in the pending appeal. If this Court were to adjudicate the correctness of the contentions raised by the petitioner in this writ petition, it would amount to sitting in judgment over the earlier order passed by this Court in W.P.Nos. 10660 and 10661 of 2017 dated 26.4.2017. However, the impediment, which the petitioner now faces on account of the impugned assessment order, should necessarily be interfered with, since, already the order dated 10.4.2017 is the subject matter of challenge before the Appellate Authority.

11. Accordingly, the writ petition is allowed and the impugned order dated 28.6.2017 is set aside as superfluous and without jurisdiction, by simultaneously observing that setting aside the impugned assessment order dated 28.6.2017 will have no impact on the earlier order dated 10.4.2017 and the petitioner is at liberty to canvass the correctness of the order dated 10.4.2017 in the pending appeal before the second respondent. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS -IV)

//True Copy//

Sub Assistant Registrar

RS
To

1.The Assistant Commissioner (CT),
Kelambakkam Assessment Circle,
Plot No.141, Burma Colony,
III Floor, I Main Road, Perungudi,
Chennai-96.

2.The Appellate Deputy Commissioner of CT,
Chennai (East), Greams Road,
Chennai-6.

+ 1 cc to M/s. Fox Mandal & Associates, SR.68530

WP.No.24997 of 2017 &
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of 2017

MR(CO)
EU(21/09/2017)