IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2017

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.Nos.26198 to 26203 of 2017
and
W.M.P.Nos.27846 to 27851 of 2017

M/s.Hotel Vasan
Rep. by its Proprietor ... Petitioner
in all the Petitions

Vs.

The Commercial Tax Officer
Tiruvarur. ... Respondent
in all the Petitions

Common Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certorari, calling for the records of the respondent in his proceedings in TIN:33453921263/2010-11,2011-12,2012-13, 2013-14, 2014-15, 2015-16 and to quash the assessment order dt.28.08.2017 passed therein.

For Petitioner : Mr. P. V. Sudakar

For Respondent : Mr. K. Venkatesh
Government Advocate

COMMON O R D E R

Heard Mr. P. V.Sudakar, the learned counsel appearing for the petitioner and Mr. K.Venkatesh, the learned Government Advocate, accepting notice on behalf of the respondent. As the learned Government Advocate has got instructions from the respondent, these Writ Petitions are taken up for disposal.

2. The petitioner is a registered dealer on the file of the respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to 'TNVAT Act'). The petitioner, in these Writ Petitions, has challenged the assessment orders/proceedings, which are revision of assessment for the assessment years 2010-2011 to 2015-2016. As the common issues arise in all these Writ Petitions, they were heard

together and disposed of by this common order.

3. The place of business of the petitioner was inspected by the Enforcement Wing Officers of the respondent/Department on 06.10.2016 and 13.10.2016. One of the defects, which was pointed out by the Enforcement Wing Officers was that, verification of purchase details reported in the monthly returns filed with the purchase details filed in the audited profit and loss account, revealed discrepancy, and this led to notices being issued by the respondent on 12.06.2017, proposing to revise the total and taxable turnover of the petitioner for the relevant assessment years.

3.1 The petitioner submitted their objections, dated 12.06.2017. The first of the objections is that, they were under a wrong belief that the purchase of non-taxable goods need not be furnished in the monthly returns, and they have not furnished the correct purchases of taxable goods and non-taxable goods. But, in the audited statement of accounts, correct purchase details of goods from the registered dealers together with the purchase details of goods from unregistered dealers, have been given. Therefore, they stated that, there is a difference between the purchases found in the Auditor statement and the monthly returns.

3.2 It is further stated that, this differential turnover represents purchases of non-taxable goods, for which, the assessment proposed is incorrect, and levy of penalty is against the principles of natural justice. The petitioner also pointed out that the Enforcement Wing Officers have levied tax at 2% and collected the same on the differential value. Further, the petitioner stated that, since they are paying the tax under Section 7(1)(b) of the TNVAT Act 2006, they are not eligible for the Input Tax Credit (ITC).

3.3 Therefore, the petitioner requested for dropping the proposed levy of tax and penalty, and specifically requested for a personal hearing to enable them to produce all the details and the connected records and accounts.

4. As could be seen from the impugned assessment orders, the petitioner has not been afforded an opportunity of personal hearing.

5. The learned Government Advocate, on instructions, from the respondent would submit that, it is a fact that the petitioner is not eligible for ITC, nor availed the same. Therefore, the respondent could have afforded an opportunity to the petitioner and directed them to appear in person and produce necessary details and records to substantiate their stand. However, without doing so, the respondent has completed the

assessments, stating that the petitioner have not produced details on the differential turnover. This is sufficient to hold that there has been violation of principles of natural justice in passing the impugned orders. Hence, this Court is of the considered view that the assessment should be re-done by the respondent after affording an opportunity of personal hearing.

6. For all the above reasons, these Writ Petitions are disposed of, by directing the petitioner to treat the impugned proceedings as show cause notices and submit further objections within 15 days from the date of receipt of a copy of this order, which may duly supported by the records, details and accounts. On receipt of the objections, the respondent shall afford an opportunity of personal hearing, verify the records, details and accounts produced by the petitioner and redo the assessment in accordance with law. Till fresh orders are passed, no coercive action shall be initiated against the petitioner for recovery of tax and penalty, as quantified in the impugned assessment proceedings, becaues, as per this order, the impugned assessment proceedings have been directed to be treated as show cause notices. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

kas/sd

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To.

The Commercial Tax Officer
Tiruvarur

+1 CC to Mr.P.V.SUDAKAR , Advocate Sr.No. 73283
+1 CC to the Special Government Pleader Sr.No. 73583

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GMI (CO)
MLT 15/11/2017