IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.10464 to 10466 of 2004

M/s.Hotel Srilekha (P) Limited,
Represented by Sri M.N.Meenakshisundaram,
Joint Managing Director,
49, Anna Salai,
Chennai - 600 002. .. Petitioner

..Vs..

1. The Sales Tax Appellate Tribunal,
   (Main Bench),
   New City Civil Court Buildings,
   Chennai - 600 104.

2. The Commercial Tax Officer,
   Triplicane Assessment Circle,
   31, Wallers Road, Chennai - 600 002
   Now at 62, Cathedral Road,
   Chennai - 86. .. Respondents

Prayer in W.P.No.10464/2004: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the first respondent in T.A.No.641/1995 dated 15.07.2002, relating to the year 1980-81 and quash the same as being without authority of law, without jurisdiction, invalid and illegal and contrary to Section 6(2) of the Constitution (46th Amendment) Act, 1983.

Prayer in W.P.No.10465/2004: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the first respondent in T.A.No.642/1995 dated 15.07.2002, relating to the year 1981-82 and quash the same as being without authority of law, without jurisdiction, invalid and illegal and contrary to Section 6(2) of the Constitution (46th Amendment) Act, 1983.

Prayer in W.P.No.10466/2004: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the first respondent in T.A.No.643/1995 dated 15.07.2002, relating to the year 1982-83 and quash the same as being without authority of law, without jurisdiction, invalid and illegal and contrary to Section 6(2) of the Constitution (46th Amendment) Act, 1983.

For Petitioner : Mr.V.Srikanth
For Respondents: Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON ORDER

Heard Mr.V.Srikanth, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

2.The petitioner is aggrieved by an order passed by the first respondent dated 15.07.2002 in T.A.Nos.640 to 643 of 1995.

3.In my considered view, the first respondent need not have laboured much to decide the controversy in issue as the Division Bench of this Court in the case of Oberoi Associated Hotels Limited vs. Commercial Tax Officer and others reported in 199114 Vol.94 STC 594 considered the legal issue and partly allowed the writ petitions filed by the similar dealers and thereby quashing the orders of assessment and remanding the matter for fresh consideration.

4.At this juncture, it is worthwhile to refer to paragraph No.29 of the judgment, which reads as follows:

> "29.For all the reasons stated above, we summarise our conclusions and the nature of relief granted in these batch of writ petitions as hereunder :
>
> (i) The provisions of section 6 of the Constitution (Forty-sixth Amendment) Act, 1982, is constitutionally valid as within the amending powers of the Parliament in exercise of its powers under article 368 of the Constitution of India.
>
> (ii) The provisions of section 6 saved and infused life into the provisions of the Tamil Nadu General Sales Tax Act, 1959, as they existed prior to the Constitution (Forty-sixth Amendment) Act, 1982, with retrospective effect so as to enlarge their scope and ambit and the State Government and the authorities functioning under the Act are entitled to assess, levy and collect tax due under the relevant provisions in force and applicable to the assessee concerned from time to time - general charging provisions as well as entry No. 150 of the First Schedule to the Act, as the case may be, giving full effect and force to the expanded definition as envisaged under sub-clause (f) of

clause (29-A) of article 366 of the Constitution of India and section 6 of the Constitution (Forty-sixth Amendment) Act, 1982.

(iii) For the period between March 23, 1987 and September 19, 1987, entry No. 150 of the First Schedule shall be considered and treated as not in force and available for levy of sales tax and the liability, if any, for that period could be assessed, levied and collected under the general charging provisions and subject to the exemption notifications, if any, in force from time to time.

(iv) For the period from September 20, 1987 onwards, till March 24, 1989, entry No. 150 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, stood revived and was in force and the assessment and levy for the said period shall be in terms of clause (ii) above.

(v) So for as the levy and collection of sales tax on the sales turnover of ice-cream is concerned, it shall be under the charging section and entry No. 24 or entry No. 150 or entry No. 103 of the First Schedule to the Act, at such rates as were in force from time to time and as are applicable to the class or category of ice-cream actually dealt with and sold by the particular assessee concerned and the reduction notification stipulating concessional rates, if any, for any particular period;

(vi) The applicability of entry No. 150 of the First Schedule to the transaction of an assessee would depend upon the place of sale/supply of food and drinks and not upon the proprietor concerned who actually runs or manages the place of catering or supply;

(vii) The eligibility of the assessees concerned for exemption under section 6(2) of the Constitution (Forty-sixth Amendment) Act, 1982, shall be considered and determined while assessing and quantifying the tax liability itself of the assessees, after giving due and sufficient opportunity in accordance with law.

(viii) The orders of assessment, if any, made in respect of the petitioners/assessees concerned before this Court, to the extent of inconsistency with the conclusions and directions contained in this order, shall stand hereby quashed and the respondents or the concerned assessing authorities shall be at liberty to revise the orders already passed by reassessment or by rectification and correction of such orders already passed, as the case may be. Any assessment to be made hereinafter shall be in accordance with the conclusions and directions issued in this order.

(ix) These writ petitions shall stand partly ordered and allowed in the above terms and conditions and there shall be no order as to costs."

5.In terms of the above order, the assessment orders have to be necessarily set aside and the matter has to be remanded to the Assessing Officer, who has to take a decision in terms of the directions issued by the Division Bench of this Court. For the said reason, the writ petitions have to be disposed of in terms of the directions issued by the Hon'ble Division Bench.

6.Accordingly, the writ petitions are allowed, the impugned order as well as the assessment orders are set aside and the matter is remanded to the second respondent to revise the orders of assessment after giving due and sufficient opportunity to the petitioner. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Sales Tax Appellate Tribunal,
   (Main Bench),
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   Chennai - 600 104.

2. The Commercial Tax Officer,
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+1 CC to Mr.C. Venkatraman, Advocate sr 46623
+1 CC to Spl. Govt. Pleader sr 46803

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sp(18/07/2017)