IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2017

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.43296 of 2016

and WMP No.37134 of 2016

Vivanta by Taj Surya,
Unit of Oriental Hotels Limited,
represented by Rajneesh Jain,
Associate Vice President-Finance,
108, Race Course Road,
Coimbatore. .. Petitioner

vs.

The Assistant Commissioner (CT),
Trichy Road Assessment Circle,
Coimbatore. .. Respondent

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari or any other appropriate writ order or direction under, to call for the records on the files of the respondent herein in LT No.785439/2012-13, dated 05.10.2016, and quash the same.

For Petitioner : Mr.N.Inbarajan
For Respondents : Mr.K.Venkatesh,
Government Advocate for R1

ORDER

1. Notice in the captioned writ petition was issued on 15.12.2016, when, the issue arising in the writ petition had been, broadly, crystallised in paragraph 2 of the said order.

1.1. For the sake of convenience, the said observations are recorded hereafter :

> "2. By way of the present writ petition, challenge is made to the reassessment order dated 05.10.2016 passed by the respondent. The challenge is, broadly, confined to two aspects: First, that the impugned orders was unsustainable as the revision in

room rents was intimated to the respondent as required under Section 4-A of the Tamil Nadu Tax on Luxuries Act, 1981 (in short " the 1981 Act"). It is submitted that even though this aspect was brought out in the objections filed by the petitioner, the respondent, in the impugned order, has not dealt with this specific issue. Second, the penalty imposed via the impugned order is (sic - in) violation of the provisions of Section 7 of the 1981 Act, in as much as, the notice issued by the respondent prior to the impugned order dated 05.10.2016, did not propose imposition of penalty. In other words, the contention, is that, no reasonable opportunity, as required under Section 7 of the 1981 Act was given vis-a-vis imposition of penalty."

2. No counter affidavit has been filed in the matter. Mr.K.Venkatesh, learned Government Advocate, who appears for the respondent says he is willing to argue the matter on the basis of the record, presently, available, with the Court, as the defence taken by the respondent as per the instructions received by him, is based on the interpretation of the provisions of Section 4-A of the Tamil Nadu Tax on Luxurious Act, 1981 (in short the 1981 Act).

2.1. Mr.K.Venkatesh, however, concedes that in so far as the second issue is concerned, no proposal for penalty was made in the notice dated 09.09.2015, an aspect which recorded in the proceedings held on 15.12.2016.

2.2. Learned counsel submitted that in so far as the aspect of revision in rates is concerned, in respect of which, intimations were sent by the petitioner, on various dates, spanning between 08.02.2013 and 11.03.2013, the said intimations do not come within the ambit of the provisions of Section 4-A of the Act.

2.3. Learned counsel contended that Section 4-A of the Act envisages a revision in tariff, which is permanent in nature, which is not person or group specific. It is, therefore, the submission of the learned counsel for the respondent that, concededly, the petitioner had given concessions to groups of persons, who had availed of the services extended by the petitioning hotel.

2.4. Therefore, learned counsel submits that, what, in effect, the petitioning hotel did was to grant a discount or concession in the original tariff, which is not permissible.

2.5. It is, in this behalf, learned counsel seeks to rely upon Section 5(3) of the Act.

2.6. In sum, the submission of Mr.K.Venkatesh, is that, because of the concession in tariff granted by the petitioner to various groups, the tax collected fell short and therefore, the proceedings were commenced against the petitioner, which lead to the passing of the impugned order.

3. Learned counsel, when queried, does concede, though, that once intimation was sent of revision in tariff, the respondent ought to have sent out its objections to the intimation sent from time to time.

4. I may only note that, once, an intimation is issued under Section 4-A of the Act by an assessee regarding revision of rates, the Department is required to convey its objections to the revision in rate within a period of seven (7) days and, if, the needful is not done, the revised rate kicks in.

4.1. Therefore, for whatever it was worth, the respondent ought to have indicated within the defined period as to why the revision in rate was not being accepted.

4.2. Since, the respondent chose not to act qua the intimation given to him, in my view, the order was impregnated with a legal flaw.

4.3. This apart, the petitioner is clearly right on facts that the notice proposing to levy tax, did not advert to penalty.

4.4. I must also note that the petitioner had also indicated to the respondent, albeit, without prejudice to its rights and contentions, that according to it, the short fall, if any, worked out to Rs.8,84,410/-, and not Rs.24,79,950/-, as suggested by the respondent.

4.5. This aspect of the matter, as is evident, on a perusal of the impugned order, was also not considered by the respondent.

5. Therefore, for the foregoing reasons, I am inclined to set aside the impugned order, giving liberty to the respondent to pass a fresh order, after affording due opportunity to the petitioner.

5.1. It would be open to the respondent to reject the revision in rates, as intimated, after hearing the petitioner, and examining the material placed on record and setting out his reasons as to why the revision in rate is not acceptable.

6. Needless to say the respondent will do the needful with due expedition, though, not later than eight (8) weeks from today.

7. The captioned writ petition is disposed of in terms of the aforesaid direction. Resultantly, pending application shall stand closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Trichy Road Assessment Circle,
Coimbatore.

+1cc to Mr.N. Inbarajan, Advocate, S.R.No.4149
+1cc to the Government Pleader, S.R.No.4548

ks(CO)
md(16/02/2017)

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