IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.33049 of 2018
and
W.M.P.No.38302 of 2018

Tvl.Sarmani Hotels Private Limited
Represented by its Managing Director
Tvl.B.R.Ramakrishna Achar
New No:38, (Old No:106)
General Patters Road,
Chennai - 600 002. ...Petitioner

Vs

The Assistant Commissioner - (ST) (FAC)
{Erstwhile Assistant Commissioner - (CT)}
Anna Salai Assessment Circle
PAPJM Building Annex,
Greams Road, Chennai - 600 006. ...Respondent

PRAYER:-
Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records in TIN/33440600328/2015-16 dated 09.08.2017 on the file of the respondent and quash the same as contrary to law.

For Petitioner : Mr.S.Ramanan

For Respondent : Mr.M.Hariharan
Additional Government Pleader (Tax)

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondent. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 09.08.2017 passed in respect of assessment year 2015-2016 only in respect of imposing penalty.

3. The main grievance of the petitioner is that the Assessing Officer has not given sufficient opportunity, more particularly, personal hearing before concluding the assessment, especially, when he has chosen to impose 100% penalty on the tax levied.

4. It is stated that the reason for not filing reply before the Assessing Officer was due to the fact that the Managing Director of the petitioner's Company namely B.K. Ramachandra Achar was hospitalised during the relevant point of time and was ailing for several months together and unfortunately, passed away on 01.04.2018 due to cardiac arrest. Therefore, it is contended that due to the above said fact, the petitioner could not file the reply. However, it is contended that the petitioner paid a sum of Rs.6,75,080/- before passing the assessment order and again Rs.9,21,280/- on 13.11.2018, in pursuant to the assessment order, towards the tax liability. Thus, it is stated, that the total sum of Rs.15,96,360/- is paid by the petitioner towards the tax liability and however, they are aggrieved against the imposition of penalty alone. Therefore, it is contended that one more opportunity may be given to the petitioner to put forth their case before the Assessing Officer against the imposition of penalty.

5. The learned counsel appearing for the petitioner reiterated the above contentions.

6. The learned Additional Government Pleader appearing for the respondent fairly submitted that the petitioner had paid the tax liability and therefore, the matter may be remitted back to the Assessing Officer to consider the penalty issue, once again after hearing the petitioner.

7. Considering the above stated facts and circumstances and considering the fact that the petitioner has paid the tax liability and not disputing the same and further considering the fact that the reason stated for not filing the reply, appears to be genuine, this Court is of the view that the matter needs to be remitted back to the Assessing Officer for redoing the assessment insofar as the issue regarding penalty is concerned, more particularly, when the Assessing Officer has not given the opportunity of personal hearing to the petitioner.

8. Accordingly, this Writ Petition is allowed and the impugned order of assessment only insofar as imposing penalty is

set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment on the issue of penalty alone, after giving due opportunity of personal hearing to the petitioner. The petitioner is permitted to file their reply within a period of two weeks from the date of receipt of a copy of this order. On receipt of such reply, the Assessing Officer shall pass fresh orders as stated supra, after providing opportunity of personal hearing within a period of four weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sni/mk

To

The Assistant Commissioner - (ST) (FAC)
{Erstwhile Assistant Commissioner - (CT)}
Anna Salai Assessment Circle
PAPJM Building Annex,
Greams Road, Chennai - 600 006.

+1cc to Mr.S.Ramanan, Advocate, S.R.No.87204
+1cc to The Special Government Pleader, in sr.no.88032

W.P.No.33049 of 2018

EV(CO)
CS/23/01/2019