

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 22.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.2006 of 2009

M/s.Hotel Oriental Towers,
A Partnership Firm,
Rep. by its Power of Attorney
A.Abdul Jaleel,
2889, Srinivasam Pillai Road,
Thanjavur - 613001.Petitioner

Vs

State of Tamil Nadu,
Rep. by the Commissioner of
Prohibition & Excise,
Chepauk, Chennai - 600005.Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records relating to the order bearing No.P&E 2 (4)/4987/2008, dated 22.12.2008 on the file of the respondent and quash the same.

For Petitioner : Mr.T.M.Naveen
for Mr.K.P.Jotheeswaran

For Respondent : Mr.A.Zakir Hussain, GA

O R D E R

The limited scope of this writ petition is that the order of the Commissioner of Prohibition and Excise, directing the petitioner to remit the difference of privilege amount, cannot be maintained, since the petitioner was never a hotel with star category.

2. The only ground on which the present impugned order seems to have been made is that the petitioner hotel was earlier qualified as a star hotel and later on, they had not renewed the star category. In support of such a contention in the impugned order, the learned Government Advocate would submit that the

petitioner, at the time of applying for FL.3 License, had declared himself to be a star hotel and had also paid the privilege fee for the years 1994-95 and 1995-96. In view of the non-renewal of the star category, they cannot claim immunity from paying the privilege fee.

3. The learned counsel for the petitioner, on the other hand, would rely upon a certificate issued by the Tourism Department, Government of India, dated 09.06.2008, which states that the petitioner hotel was not issued with any star classification by their office till 09.06.2008. It is also the further submission of the learned counsel for the petitioner that their employees by mistake had paid the privilege fee for the years 1994-95 and 1995-96 and that such a mistake should not be put against them.

4. This Court has taken into consideration the certificate issued by the Tourism Department, Government of India, dated 09.06.2008, which is said to be the appropriate authority for certifying star category to hotels. The said certificate undoubtedly states that the petitioner was never granted with a star category, atleast till 09.06.2008. While that being so, the statement of the learned counsel for the petitioner that they had mistakenly paid the privilege fee, gains significance. The present impugned order has also been passed only on the ground that in view of the declaration made by the petitioner at the time of obtaining FL.3 License and his conduct in paying the privilege fee for the years 1994-95 and 1995-96, the respondent had presumed that the star category status was not renewed, after 1996 onwards.

5. In my view, the certificate, which has not been considered by the authorities, if taken up for consideration, will have a bearing on the decision to be taken in this issue. As such, it would be appropriate to call upon the respondent to consider the matter afresh, in the light of the observations made in the present order.

6. In this background, the impugned order dated 22.12.2008 is set aside and the matter is remanded back to the respondent herein for fresh consideration. The respondent shall forthwith conduct a fresh enquiry, by issuing summons to the petitioner calling for his objections and also permitting him to submit documents, which he relies upon, as expeditiously as possible. On receipt of such a notice, the petitioner is at liberty to submit his objections, as well as any other documents, which he relies upon in connection with this issue. Thereafter, the respondent herein shall pass appropriate orders in accordance with law, after giving due opportunity of personal hearing to the petitioner. The entire process of concluding the proceedings

shall be done, atleast within a period of 3 months from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition stands disposed of. No costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

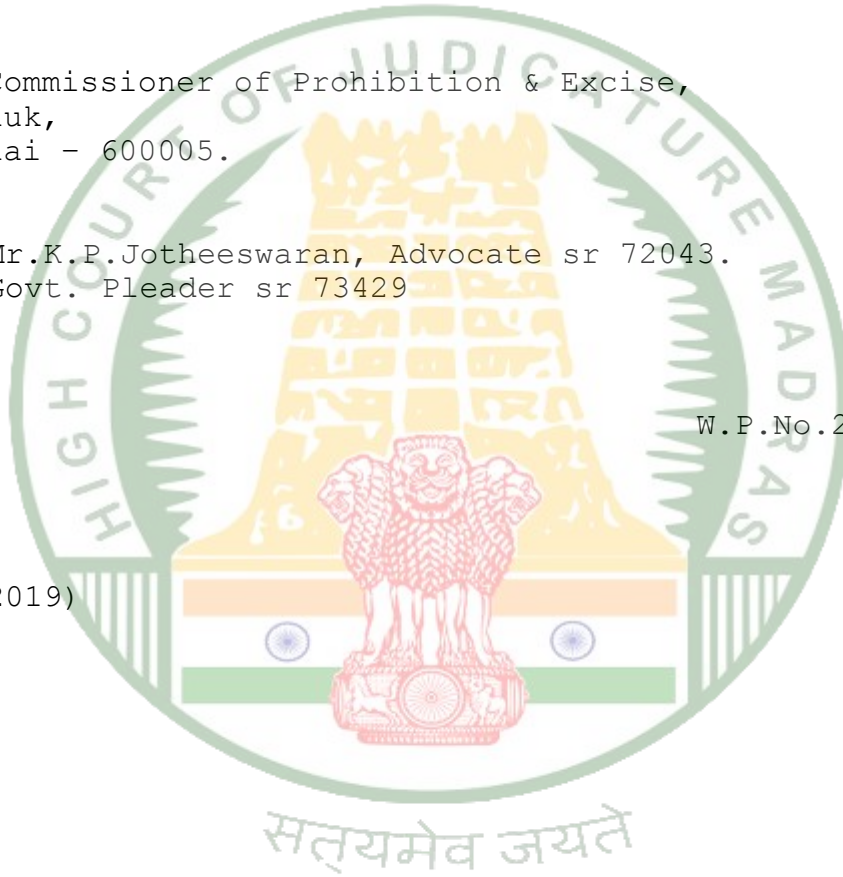
hvk
To

The Commissioner of Prohibition & Excise,
Chepauk,
Chennai - 600005.

+1 CC to Mr.K.P.Jotheeswaran, Advocate sr 72043.
+1 CC to Govt. Pleader sr 73429

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AD(CO)
SP(03/10/2019)



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