IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.Nos.30294 & 30295 of 2013
and
M.P.No.1 of 2013 in W.P.No.30295 of 2013

Mehar Hotels (P) Ltd.,
(Hotel Park Plaza),
Rep. by its Managing Director,
K.P.Navaneetha Krishnan,
No.29, Whannels Road,
Egmore, Chennai - 600008. ... Petitioner in both WPs

Vs

The Assistant Commissioner (CT),
Egmore II Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai - 31. ... Respondent in both WPs

PRAYER in W.P.No.30294 of 2013: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records on the files of the respondent herein in TIN:3377054180/2007-08 dated 28.10.2013 and quash the same

PRAYER in W.P.No.30295 of 2013: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records on the files of the respondent herein in TIN:3377054180/2007-08 dated 29.08.2013 and to quash the same directing the respondent herein to levy tax only at 2% instead of 12.5% as provided under Section 7(1)(b) of the TNVAT Act, 2006.

For Petitioner : Mr.N.Inbarajan
(in both WPs)

For Respondents: Mr.V.Haribabu, AGP
(in both WPs)

COMMON ORDER

The orders of assessment for the year 2007-08 are under challenge in the present writ petitions.

2. Among the other grounds raised by the petitioner, one of the main ground raised is that the respondent had observed in the impugned orders that the turnover was taxable at 12.5% under Section 7(1)(a) of the TNVAT Act, since the Hotel was granted "2-Star" category by the Tourism Department. The petitioner herein relies upon the classification order issued by the Regional director, India Toursim, Chennai, dated 13.06.2008, which evidences that the petitioner Hotel was classified as "1-Star" category with effect from 28.05.2005. The assessment order for the year 2007-08 and apparently, the classification, since was effected from 28.05.2008 onwards, cannot be applied to this assessment year for the purpose of taxation. It is further seen that the petitioner had also made a request to rectify the error under Section 84 of the TNVAT Act, which also came to be rejected.

3. If the submission of the petitioner is to be accepted that the classification was effected only from 28.05.2008, the observation of the respondent that they are liable for taxation at 12.5% under Section 7(1)(a) for the year 2007-08 is a error apparent. On this sole ground, the impugned orders are liable to be set aside.

4. In the light of the above observations, the assessment order for the year 2007-08, are set aside and the matter is remanded back to the respondent for fresh consideration. The respondent, at the time of assessment, shall give due opportunity of personal hearing to the petitioner to put forth their objections and shall endeavour to complete the assessment proceedings, as expeditiously as possible, in any event, within a period of 3 months from the date of receipt of copy of this order.

5. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

hvk

To

The Assistant Commissioner (CT),
Egmore II Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai - 31.

+1cc to Mr.N.Inbarajan, Advocate SR.No.60356

+1cc to Special Government Pleader (Taxes)SR.No.60886

W.P.Nos.30294 & 30295 of 2013
and
M.P.No.1 of 2013 in W.P.No.30295 of 2013

LN(CO)
GMY(20/08/2019)