IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 02.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.4064 to 4066 & 4096 to 4098 of 2013
and
M.P.No.1, 1, 1, 1, 1 & 1 of 2013

1.M/s.Nakshatra Service Apartments,
No.28, Cenataph Road,
Teynampet,
Chennai-600 018.
...Petitioner in W.P.No.4064/2013 to 4066/2013

2. M/s.Nakshatra Service Apartments
No.24, Bhawa Road,
Alwarpet, Chennai – 600 018.
...Petitioner in W.P.No.4096/2013 to 4098/2013

Vs.

The Assistant Commissioner (CT),
Mandaveli Assessment Circle,
Chennai. ...Respondent in all WPs

PRAYER in W.P.No.4064 of 2013: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records of the respondent in his proceedings in RC.1774/2010/2008-2009/(in WP No.4064/2013) RC1774/2010/2009-2010 (in WP No.4065/2013)RC 1774/2010/2010-2011 (in WP 4066/2013)2008-2009 (in WP 4096/2013 RC 1774/2010/2009-2010 (in WP 4097/2013)RC 1774/2010/2010-2011 (in WP 4098/2013) TNVAT and to quash the assessment order dated 31.08.2012 made therein.

For Petitioner : Mr.C.Subramanian
in all WPs.

For Respondent : Mr.Mohamed Shaffiq
Spl. Government Pleader
in all WPs.

COMMON ORDER

Heard Mr.C.Subramanian, learned counsel for the petitioner and Mr.Mohamed Shaffiq, learned Special Government Pleader appearing on behalf of the respondent.

2. The petitioner herein claims to be running Service Apartments in the following addresses viz., Nakshatra I at Flat No.1 & 2, Krishna Vihar, No.4/18, 1st Street, East Abhiramapuram, Mylapore, Chennai-600 004, Nakshatra II at No.28, Cenatoph Road, Teynampet, Chennai-18, Nakshatra III at No.24, Bhawa Road, Alwarpet, Chennai-18, Nakshatra IV at No.17, Chitaranjan Road, Alwarpet, Chennai-18 and Nakshatra V at No.1C Halls Road, Egmore, Chennai-8. The assessment orders that came to be passed insofar as the units in Nakshatra II at No.28, Cenatoph Road, Teynampet, Chennai-18, Nakshatra III at No.24, Bhawa Road, Alwarpet, Chennai-18 by the respondent, are under challenge in the present Writ Petitions, predominantly on the ground that there is no liability cast on the petitioner to pay tax under Section 7(1)(b) of the Tamil Nadu Value Added Tax Act (hereinafter referred to as the 'VAT Act'), as their turnover does not cross Rs.10 lakhs. It is also their case that they are not 'Casual Traders' as defined under the VAT Act.

3. Earlier, when the petitioner had challenged the proceedings of the respondent for their unit in Nakshatra I at Flat No.1 & 2, Krishna Vihar, No.4/18, 1st Street, East Abhiramapuram, Mylapore, Chennai-600 004 before this Court and by an order dated 22.08.2011, passed in W.P.No.11129 of 2011, this Court had held that the total turnover of all the Service Apartments run by the petitioner should be taken into account by the Assessing Officer and since the order came to be passed on the basis of one Service Apartment viz., Mylapore unit, the order was set aside with liberty to the respondent to pass appropriate orders by clubbing the total turnover of all the units of the petitioner.

4. It is the submission of the learned counsel for the petitioner that there is no service of food or food items in their Service Apartments and as such, there is no turnover under this head at all. Hence, there is no liability cast on the petitioner to pay the tax since Section 7(1)(b) of the Act makes it liable for payment of tax only when the turnover crosses Rs.10 lakhs. It is also his further submission that he is not a 'Casual Trader' as defined under Section 2(12) of the VAT Act since they have fixed place of residence and have fixed place of business.

5. The learned Special Government Pleader, by reiterating the grounds raised in the counter affidavit submitted that, the

petitioner is an unregistered dealer and has to be treated as a 'Casual Trader' under Section 3(1)(a) of the VAT Act. According to the learned Special Government Pleader, in view of the fact that the petitioner has been treated as a Casual Trader, he is liable for tax and penalty on the question of upper limit of Rs.10 lakhs.

6. I have given careful consideration to the submissions made by the respective counsels.

7. It is not in dispute that the petitioner herein is running four units of Service apartments in the four addresses referred to above. Though the assessment has been made in accordance with the provisions of Section 7(1)(b) of the VAT Act, it is evident that the consolidated turnover of the petitioner, as referred to the respondent herein, is less than Rs.10 lakhs. Even assuming that if the turn overs of all the units of the Service Apartments are put together, the figure does not cross Rs.10 lakhs and as such, the petitioner may not be liable for payment of the tax.

***8. It is submitted by the learned counsel for the petitioner that the respondents herein had mistakenly stated the taxable turnover for the Assessment Year 2008-09 as Rs.17,44,468/- instead of Rs.1,74,468/-. If such a submission is taken to be correct, then the consolidated taxable turnover for all the three assessment years, would be within 10 lakhs. This aspect requires to be taken into account by the respondents herein, while initiating fresh assessment proceedings.**

9. Insofar as the ground raised by the respondent that the petitioner is a 'Casual Trader' is concerned, Section 2(12) of the VAT Act qualifies a Dealer to be a 'Casual Trader' only when such a person or entity does not have fixed place of business or resides in a specified address. In the instant case, the counter affidavit does not spell out such a reasoning that the petitioner herein does not have a fixed place of business or is not residing in the aforesaid addresses. Thereby, the stand taken by the respondent that the petitioner herein is a 'Casual Trader' is unfounded and baseless.

10. The impugned order makes a reference to certain materials evidencing that the dealers were serving food and drinks to the customers and had thereby arrived at the total turnover. Though the petitioner submits that there is absolutely no sale of food and beverages in their Service Apartments, in my view, such a stand can be established before the Assessing Officer, who in turn, shall reassess the petitioner's total turnover based on the materials already available with them. While exercising the same, the respondent shall also take into account the observations made by this Court in the present order.

11. In the light of the above observations, the impugned orders passed by the respondent in RC.1774/2010/2008-2009/TNVAT, RC.1774/2010/2009-2010/TNVAT and RC.1774/2010/2010-2011/TNVAT dated 31.08.2012 respectively are set aside. However, liberty is granted to the respondent to initiate fresh assessment proceedings by clubbing all the units of the Service Apartments of the petitioner in accordance with law, after providing reasonable opportunity to the petitioner by following the procedure contemplated under the VAT Act.

12. With the above observations and direction, the Writ Petitions are disposed of. Consequently connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-III)
Dated : 16/08/2019

***Incorporated as per order of this Court made in W.P.Nos.4064 to 4066 & 4096 to 4098 of 2013 and M.P.No.1, 1, 1, 1, 1 & 1 of 2013**

//True copy//

Sub Assistant Registrar

DP

To

The Assistant Commissioner (CT),
Mandaveli Assessment Circle,
Chennai.

+2cc to Mr.C.Subramanian, Advocate SR.No.55189 & 55190

+1cc to Special Government Pleader (Taxes), High Court, Madras SR.No.55486

W.P.Nos.4064 to 4066 &
4096 to 4098 of 2013
and
M.P.No.1, 1, 1, 1, 1 & 1 of 2013

EV(CO)
GMY(27/08/2019)