BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2019**

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.10236 & 10237 of 2019

and

W.M.P.(MD) Nos.7901 to 7904 of 2019

S.K.N.Boarding & Lodging (P) Ltd.,
New Relax A/c Bar,
Rep., by its Authorized Signatory M.Thangam,
S/o Marimuthu,
No.45, Dindigul Road, New Canara Bank,
Palani – 624 601,
Dindigul District. ... Petitioner in both Writ Petitions

-vs-

The Assistant Commissioner (CT)-1(FAC),
Palani Assessment Circle,
Palani. ... Respondent in both Writ Petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records, pertaining to the impugned Assessment order passed by the respondent in TIN:33255281895/13-14 and 14-15 respectively, dated 14.07.2015 and quash the same.

In Both Writ Petitions:

For Petitioner : Mr.S.Prasanth
For Respondent : Mr. N.Shanmugaselvam, Additional Government Pleader

COMMON ORDER

Since the issue involved in both the writ petitions are one and the same, both the writ petitions are disposed of by this common order.

2. The instant writ petitions have been filed challenging the order dated 14.07.2015 passed by the respondent in TIN:33255281895 for the Assessment years 2013-14 and 2014-15 respectively.

3. It is the case of the petitioner that the Tamil Nadu Government brought an amendment to Entries 1 and 2 of the second schedule to the Tamil Nadu Value Added Tax Act (hereinafter referred as "TN VAT Act") vide C.T.R.E.G.O.Ms.No.47/ 27.03.2012 with effect from 01.04.2012. Subsequent to the said notification, the entries 1 and 2 have been amended. By an order dated

31.03.2008, this Court dismissed a batch of writ petitions, challenging the above referred amendment and upheld the validity of the TN VAT Act, 2006. Thereafter, it was taken up by way of writ appeals and the Hon'ble Division Bench of this Court dismissed the writ appeals. As against the dismissal of the writ appeals, Special Leave Petitions were filed by the aggrieved parties, including the petitioner herein.

4. In view of the pendency of the Special Leave Petitions, the petitioner sent a reply to the pre-revision notice dated 22.04.2015 issued under Section 27 of TN VAT Act, 2006 proposing to revise the assessment, stating that the validity of the amendment is the subject matter of challenge before the Hon'ble Supreme Court. But in the said reply they did not submit any explanation on the merits of the case.

5. The respondent by the impugned assessment order for the assessment years 2013-14 and 2014-15 respectively, has assessed the tax due from the petitioner at Rs.6,50,324/- and Rs.21,29,960/- respectively. Aggrieved by the impugned order, the present writ petitions have been filed.

6. Heard Mr.S.Prasanth, learned counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader for the respondent.

7. According to the learned counsel for the petitioner, no personal hearing was afforded to the petitioner before passing the impugned assessment order. Further, it is his case that in view of the pendency of the Special Leave Petitions challenging the validity of the amendment made by the Government of Tamil Nadu, the respondent should not proceed with the revision of assessment proceedings. Therefore, according to the learned counsel for the petitioner, the respondent has violated the principles of natural justice by not affording adequate opportunity to the petitioner available to him under law.

8. Per contra, the learned Additional Government Pleader appearing for the respondent would submit that there is an alternate efficacious remedy available to the petitioner under Section 51 of TN VAT Act and without exercising the same, the petitioner has directly approached this Court , which is not maintainable.

9. As seen from the impugned assessment order, the petitioner has not been afforded the right of personal hearing by the respondent. Further, he has simply stated that in view of the pendency of Special Leave Petitions before the Supreme Court challenging the amendment made by the Government of Tamil Nadu, based on which the proposal for revision of assessment has been made, he has not given any explanation on merits. Therefore, as rightly contended by the learned counsel for the petitioner, the

respondent has violated the principles of natural justice by not affording adequate opportunity to the petitioner and by not granting him the right of personal hearing as well as permitting him to raise all his objections available to him under law for the proposed revision of assessment.

10. Further under the revision of assessment order, the petitioner has been assessed to pay Rs.6,50,324/- and Rs.21,29,960/- without affording sufficient opportunity to the petitioner to raise all objections available to them under law.

11. Considering all the above mentioned factors, this Court is of the considered view that that the impugned order dated 14.07.2015 passed by the respondent has to be quashed.

12. In the result, the impugned assessment order dated 14.07.2015 passed by the respondent against the petitioner is hereby quashed and matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders in accordance with law after giving adequate opportunity to the petitioner to raise all objections available to him under law and the respondent shall pass final orders within a period of eight (08) weeks from the date of receipt of a copy of this order.

13. With the aforesaid directions, the **Writ Petitions are disposed of.** No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Assistant Commissioner (CT)-1(FAC),
Palani Assessment Circle,
Palani.

+2CC TO MR.S.PRASANTH, Advocate Sr. No.62806 & 62805
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 63377 & 63322

Order made in
W.P.(MD).No.10236 &
10237 of 2019

MR(CO)
TR (07.05.2019) 4P 5C