BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.04.2019**

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.2759 of 2017
and
WMP(MD) No.2288 of 2017

Hotel Theni International
Rep. by its Managing Director
Vinod Mathew,
Madurai Road
Theni- 625 531 ... Petitioner

-vs-

The Assistant Commissioner(CT)
Commercial Tax Department
Theni-II ... Respondent

PRAYER: Writ Petition 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 order passed by the respondent in TIN 33035182203/15-16, dated 09.12.2016 and quash the same.

For Petitioner : Mr.T.Bashyam
For Respondent : Mrs.V.P.M.Vaishnavi
Government Advocate

O R D E R

The instant writ petition has been filed challenging the order dated 09.12.2016 passed by the respondent in TIN 33035182203/15-16.

2. 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. Thereafter, it was taken up by way of writ appeals and the Honourable 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.

3. The respondent proposed to revise the assessment of the petitioner for the assessment year 2015-2016, by sending a pre-revision notice dated 15.11.2016. It is the case of the petitioner that they did not send any reply due to medical reasons.

4. Thereafter, the respondent by the impugned assessment order for the assessment year 2015-2016 assessed the tax due from the petitioner at Rs.14,50,682/- and penalty at Rs.21,76,023/-. Aggrieved by the impugned order the present writ petition has been filed.

5. Heard Mr. T.Bashyam, learned counsel for the petitioner and Mrs.v.P.M.Vaishnavi, learned Government Advocate for the respondent.

6. 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 due to medical reasons, the petitioner could not send any reply to the pre-revision notice dated 15.11.2016. 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.

7. Per contra, the learned Government Advocate 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.

8. As seen from the impugned assessment order, the petitioner has not been afforded the right of personal hearing by the respondent. Further, adequate opportunity was also not granted to the petitioner to submit their explanation/objections for the pre-revision notice dated 15.11.2016. 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 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.

9. Further under the revision of assessment order, the petitioner has been assessed to pay Rs.14,50,682/- with huge penalty of Rs.21,76,023/-.

10. Considering all the above mentioned factors, this court is of the considered view that that the impugned order dated 09.12.2016 passed by the respondent has to be quashed.

11. In the result, the impugned assessment order dated 09.12.2016 passed by 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 them under law and the respondent shall pass final orders within a period of eight weeks from the date of receipt of a copy of this Order.

12. With the aforesaid direction, the writ petition is disposed of. No cost. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

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To:

The Assistant Commissioner(CT)
Commercial Tax Department
Theni-II.

W.P.(MD).No.2759 of 2017
16.04.2019

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