BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.03.2019**

CORAM
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.22429 of 2016
and
WMP(MD) No.16062 of 2016

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 33035182203/14-15, dated 09.11.2016 and quash the same.

For Petitioner : Mr.T.Bashyam

For Respondents : Mr. A.Thiyagarajan
Government Advocate

O R D E R

The instant writ petition has been filed challenging the order dated 09.11.2016 passed by the respondent in TIN 33035182203/14-15.

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. 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 proposing to revise the assessment, stating that the validity of the amendment is the subject matter of challenge before the Honourable Supreme Court. But in the said reply they did not submit any explanation on the merits of the case.

4. The respondent by the impugned assessment order for the assessment year 2014-15 assessed the tax due from the petitioner at Rs.14,47,431/- and penalty at Rs.21,71,147/-. Aggrieved by the impugned order the present writ petition has been filed.

5. Heard Mr. T.Bashyam, learned counsel for the petitioner and Mr.A.Thiyagarajan, 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 no adequate explanation was submitted by the petitioner in his reply dated 06.5.2015 to the pre revision notice dated 22.04.2015 on merits, but he just informed the respondent 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.

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, on merits no explanation was given by the petitioner in his reply dated 06.05.2015 to the pre revision notice dated 22.04.2015, but 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 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.14,47,431/- with huge penalty of Rs.21,71,147/-.

10. Considering all the above mentioned factors, this court is of the considered view that that the impugned order dated 09.11.2015 passed by the respondent has to be quashed.

11. In the result, the impugned assessment order dated.09.11.2016 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 him 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

TRUE COPY

SUB ASSISTANT REGISTRAR

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To:

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

1CC TO MR. T.BASHYAM,ADVOCATE SR 56727

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