IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.Nos.2495, 2500, 2505, 2510, 2517, 2518, 2519 & 2522 of 2020
and WMP.Nos.2893, 2902, 2910, 2920, 2930, 2932, 2934 & 2936 of 2020

M/s.Free Flow Trust,
(Trust under Auroville Foundation)
Represented by its Trustee,
Marcos Tormo
No.77/2, Auroshilpam,
Auroville, Vanur Taluk,
Now at La Ferme, Auroville - 605 101.
.. Petitioner in all

Vs.

1.The Appellate Deputy Commissioner (CT),
Cuddalore,
Commercial Tax Building,
Sub-Jail Road, Cuddalore.

2.The Commercial Tax Officer,
Tindivanam Assessment Circle,
Tindivanam. .. Respondents in all

Prayer:- in Wps.2495, 2500, 2505, 2510/2020: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the impugned proceedings of the first respondent in AP No.260/2018 to 263/18 VAT and quash the order dated 29.3.2019 in so far as the direction issued by the first respondent to the second respondent to levy higher rate of tax at 14.5% on the sales turnover of ready to eat food and drinks by the petitioner in its restaurants/Cafes for the assessment year TIN 33024721895 2012-2013, 2013-14, 14-15, 15-16 respectively as the same is issued without authority of law, in violation of the principles of natural justice and also to section 7(1)(b) of the TNVAT Act.

Wps.2517, 2518, 2519 & 2522/2020 Prayer: Writ of Certiorari to call for the impugned proceedings of the Second Respondent in TN.33024721895/2012-13, 2013-14, 2014-15, 2015-16, and quash the notice dated 21/11/2019, 21/11/2019, 30/10/2019 & 30/10/2019 respectively as the same has been issued without authority of law, in Violation of the Principles of natural justice and also contrary to section 7(1) (b) of the TNVAT Act.

(In all WPs)
For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.M.Hariharan
Additional Government Pleader

COMMON ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader for the respondents.

2.The short point agitated by the petitioner in regard to the order of the Appellate Authority passed in respect of the periods 2012-13, 2013-14, 2014-15 and 2015-16, is that no notice was issued by the Appellate Authority prior to enhancement of the rate of tax from 5% to 14.5%. Assessments had been framed in terms of the aforesaid periods in line with the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') that had been challenged by the petitioner by way of first appeal.

3.The provisions of Section 51(3) of the Act set out the powers of the first Appellate Authority in disposing an appeal. No doubt the powers are wide and the Appellate Deputy Commissioner is empowered to (i) confirm, reduce, enhance or annul the assessment or the penalty or both, (ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed or, (iii) pass such other orders as he may think fit.

4.However such powers have to be exercised by the authority only after a reasonable opportunity has been afforded to the petitioner. Though in the course of the proceedings for appeal, the petitioner was duly heard, no notice for enhancement was issued to the petitioner and it was only upon receipt of the impugned order that the petitioner came to know about the enhancement effected to rate of tax. This, in my view, constitutes a violation of the principles of natural justice. The impugned appellate orders dated 29.03.2019 are thus set aside, only in relation to the enhancement effected to rate of tax.

5.The petitioner will appear before the Appellate Authority on Thursday, 27th February, 2020 at 10.30 a.m. without expecting any further notice in this regard. The notice dated 30.10.2019 issued by the Assessing Officer consequent upon the order of the first Appellate Authority will be treated as a notice of enhancement and an appropriate response to the same will be filed before the appellate authority. After considering the same and hearing the petitioner, necessary orders in accordance with law will be passed by the Appellate Authority within a period of four weeks thereafter.

6.These writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Appellate Deputy Commissioner (CT),
Cuddalore,
Commercial Tax Building,
Sub-Jail Road, Cuddalore.

2.The Commercial Tax Officer,
Tindivanam Assessment Circle,
Tindivanam.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No. 12202
+1cc to the Special Government Pleader(T), S.R.No. 12885

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RV(CO)
GN(21/02/2020)