IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 17.02.2020

Pronounced on : 19.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.26721 to 26723 and 27126 to 27128 of 2016
and connected miscellaneous petitions
WMP.Nos.23305 of 2016,23306/16,23307/16
22941/16,22942/16,22943/16

M/s.Ramanuja Hotels (P) Ltd.,
rep. By its Managing Director K.Natarajan,
No.115, Palaghat Road,
Pollachi – 642 001,
Coimbatore District. ... Petitioner in all W.Ps.

Versus

The Commercial Tax Officer,
Pollachi (West), Assessment Circle,
Pollachi. ... Respondent in all W.Ps.

Prayer in all W.Ps.: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records relating to the order dated 27.06.2016 on the file of the respondent made in respect of TIN No.33482242419 for assessment years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 & 2014-2015 and to quash the same.

For Petitioner : Mr.Hari Radha Krishnan for M/s.R.Nandhakumar (in all W.Ps.)

For Respondent : Mr. A.N.R.Jayaprathap, Standing Counsel (in all W.Ps.)

COMMON O R D E R

I have heard the learned counsel for the petitioner and the respondent at length. I have perused affidavit, counter affidavit and also the impugned orders and the connected documents filed along with these writ petitions and the additional typed set of documents and case-laws filed by the petitioner.

2. By this common order, all the 6 writ petitions are being disposed. The petitioner has impugned 6 different assessment orders all dated 27/06/2016 passed by the respondent for the following assessment years:-

i. 2009-10;

ii. 2010-11;

iii. 2011-12;

iv. 2012-13;

v. 2013-14; and

vi. 2014-15.

3. By the impugned orders, the respondent has confirmed demand of tax on the petitioner at 12.5% for the assessment years 2009-2010 to 2011-2012 and at 14.5% for the assessment years 2012-2013 to 2014- 2015 under Section 7(1)(a) of the Act.

4. Earlier separate re-assessment orders dated 02.07.2014 were passed for assessment years 2009-2010 to 2011-2012 wherein the tax paid under Section 7(1)(b) was accepted.

5. However, even before the communication of the aforesaid assessment orders dated 02.07.2014 to the petitioner, recovery notice dated 10.09.2014 was served on the petitioner.

6. Under these circumstances, the recovery notice dated 10.09.2014 was challenged before this court in W.P.No.26298 of 2014. By an order dated 31.10.2014, the recovery proceedings initiated vide a notice dated 10.09.2014 was quashed as the respective assessment orders dated 02.07.2014 were dispatched only on 17.09.2014 after the issue of the recovery notice dated 10.09.2014.

7. While quashing the aforesaid recovery notice dated 10.09.2014, liberty was given to the petitioner to challenge the assessment orders in the manner known to law.

8. Pursuant to the aforesaid order of this court in W.P.No.26298 of 2014, fresh notices were issued for all the 6 assessment years which have culminated in the impugned order. The impugned orders are confined to the petitioner's registration in TIN No.3382242419.

9. It is the case of the petitioner that the petitioner started a hotel business and had obtained a registration in TIN No.3382242419 from the respondent on 19.05.2008 for sale of food in the restaurant to cater to the demand of the transit passengers as the hotel was centrally located in the busy area right opposite the Pollachi Muffusil Bus Stand in a cluster location having several shops, private concerns and government offices in the vicinity.

10. It is submitted that the petitioner later also obtained a separate registration in TIN No.3321224280 for the bar attached to the Hotel for lodging with 34 rooms on 13.06.2011.

11. For running the aforesaid hotel with 34 rooms, the petitioner also obtained a separate Star Classification Order on 12.11.2009 which was to be in force for a period of 5 years subject to the condition that the management of the hotel should at all times comply with all the statutory regulations and conditions for classification of the hotels and other terms and conditions to be introduced by the Department of Tourism, India Tourism (Chennai), Southern Regional Office, Chennai 600002.

12.The petitioner also obtained a certificate of registration under the provisions of the Tamil Nadu Tax on Luxuries in Hotel and Lodging Houses Act, 1981 from the respondent for running the aforesaid hotel for lodging purposes. This registration was obtained on 30.10.2008 and that the petitioner has been filing separate returns.

13. The petitioner submits that it was filing separate VAT returns under TIN No.3382242419 for the sale of food/non-alcoholic beverages in the restaurants and a separate VAT return in TIN No. 33212242810 for sale of food and beverages in its One Star hotel service for the guest staying in its 34 rooms and for the services offered in its bar attached to the said One star hotel.

14. It is submitted that both the businesses are separate verticals and there is no scope for intermingling of the turnovers. It is further submitted there is also no scope for levying tax at higher rate under Section 7(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 on the sale of food/non-alcoholic beverages in the restaurants for which the petitioner had obtained TIN No.3382242419. It is submitted that the petitioner had correctly determined tax at 2% and later at 4% under Section 7(1)(b) of the Tamil Nadu Value Added Tax Act, 2006.

15. It is further submitted that notices 26.03.2012 were issued for the assessment years 2009-2010 to 2011-2012. These

notices sought to treat the sale of food /beverages from the premises registered with TIN No.3382242419 under Section 7(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 as sale by One Star hotel and therefore, demanded a differential tax from the petitioner at 12.5%.

16. The petitioner also replied to the same by its replies dated ..05.2012. Meanwhile, separate assessment orders 23.05.2012 came to be passed for these three assessment years in TIN No. 3382242419 in Form L. These assessment orders accepted the returns filed by the petitioner.

17. However, the respondent thereafter proceeded to issue a demand notice dated 10.09.2014 which was challenged in W.P.No.26298 of 2014 which culminated in the issue of order dated 31.10.2014 of this court as mentioned above.

18. The learned counsel for the petitioner submits that the hotel business which was started during May 2008 was different from the One Star category services provided by the petitioner with a bar.

19. It is therefore submitted that it was not open for the respondent to infer that the petitioner was vending food as One Star Hotel from the premises for which it had obtained a separate registration in TIN No. 3382242419 in May, 2008.

20. The learned counsel for the petitioner relied on the following decisions of this court:-

i. Hotel Shakthi (Restaurants) versus CTO, order dated 8.6.2016 in W.P.Nos.26512-14 of 2014;

ii. JK M Graphics Solutions Private Limited versus CTO, order dated 01.03.2017 in W.P.No.105 of 2016;

iii. Cadbury India Limited versus Asst Commissioner (CT) Fast-Track Assessment Circle, (2012)1 VST 130 (Mad).

21.The learned counsel for the respondent submits that the question of change of opinion under Tamil Nadu Value Added Tax Act, 2006 is in existence. He submits that under Section 22 of the Tamil Nadu Value Added Tax Act, 2006, during the relevant period and thereafter with effect from 19.06.2012 there is a merely deemed assessment as the Assessing Officer accepts the returns filed and passes an assessment order. Thereafter, an assessing officer can re-open the assessment under Section 22 of the Tamil Nadu Value Added Tax Act, 2006.

22. He submits that in case of escaped turnover and/or wrong availment of input tax credit, the Act does not allow a dealer to invoke the defence doctrine of change of opinion and therefore cites the decision of this Court in the case of Cadbury India Ltd Vs. Assistant Commissioner (CT), Fast Track Assessment Circle IV, Chennai.

23.It was further submitted that the enforcement officials visited the petitioner's place of businesses on 07.04.2014 and 12.12.2014 and based on the inspection carried out, a report dated 12.03.2015 of the Commercial Tax Officer, Group II, Pollachi was generated.

24. It was submitted that pursuant to the aforesaid report, the petitioner was issued with notices dated 14.01.2016 which called upon the petitioner to file its objection.

25. It is submitted that the notices were received by the petitioner on 21.01.2016. Though petitioner asked for time for filing objection, the petitioner did not file any reply and therefore the respondent waited till 07.06.2016 and thereafter, the respondent proceeded to pass the impugned orders.

26. It is submitted that the impugned orders were received by the petitioner on 29.06.2016. It is further submitted that instead of preferring appeals, the petitioner had filed applications before the authority under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 and on 28.07.2016, these applications were rejected by the assessing officer and thereafter the petitioner has been issued with the demand notice dated 27.07.2016. It is submitted that there is no merits in these writ petitions and are liable to be dismissed.

27. Apart from placing reliance on the 3 decisions, a copy of letter dated 24.03.2003 of the Government of India Department of Tourism; (H&R Division) has been filed by the learned Counsel for the Petitioner. The said letter contains a detailed Guidelines for certifying a hotel under the Star Category.

28. The real question in these writ petitions is whether the restaurant of the petitioner was part of its One Star service and whether separate registration in 2011 for the running a Bar will have any bearing on the assessment made in the impugned orders?

29. It is noticed that the petitioner originally obtained registration on 19.05.2008 for running a restaurant. Thereafter, the petitioner obtained a separate registration on 13.10.2008 for lodging rooms and connected services under the provisions of the Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981.

30. Thereafter, the petitioner proceeded to obtain a One Star Classification vide order dated 12.11.2009. The petitioner thereafter obtained a separate registration for running bar on 13.06.2011 in the first floor of the same building. According to the petitioner, there is no connection between the restaurant and the bar/room services provided by the petitioner.

31. As per the guidelines of the Government of India Department of Tourism dated 24.03.2003 for One Star classification/certificate, the petitioner was required to comply with the following requirements:-

CHECKLIST FOR FACILITIES & SERVICES	1*	2 *	3*	4*	5*/5 *D	Comments
Public Areas						
A lounge or seating in the lobby area	N	N	N	N	N	Size would depend on check in pattern. There should be at least one telephone no higher than 24'' from floor level in 5/5D*
....						
....						
Food & Beverage Early morning beverage service	N	N	N	N	N	This may be room service or a self-making

Dining Room serving Breakfast & Dinner	N	N	N	N	N	Meal times to be displayed. Service to start by 7 am and finish no earlier than 10 pm. Minimum one hour per meal service. Break Continental. 1* hotel without dining room must offer service in rooms.
Multi cuisine restaurant on premises	D	D	N	N	N	
Speciality restaurant			D	N	N	
24 hours coffee shop			D	N	N	
Full service of all 3 meals in Dining room			N	N	N	
A cooked breakfast be available		N	N	N	N	
Room service of full meals				N	N	In 1* & 2* this is necessary if no Dining room 3* must offer light (pre-plated) meals
Room Service of alcoholic beverages				N	N	If permitted by local law
Crockery & Glassware unchipped	N	N	N	N	N	Plastic ware accepted in pool area
Cutlery to be at least stainless steel	N	N	N	N	N	Plastic ware accepted in pool area
Silverware					N	
Bar				N	N	If permitted by local laws

Kitchens						
Refrigerator with deep freeze	N	N	N	N	N	Capacity based on size of F&B service
Segregated storage of meat, fish and vegetables	N	N	N	N	N	Meats & fish in freezers, vegetables must be separate.
Tiled walls, non-slip floors	N	N	N	N	N	
Head covering for production staff	N	N	N	N	N	
Daily germicidal cleaning of floors	N	N	N	N	N	
Clean utensils	N	N	N	N	N	
Six monthly medical checks for production staff	N	N	N	N	N	
All food grade equipment, containers	N	N	N	N	N	
Ventilation system	N	N	N	N	N	
First-aid training for all kitchen staff	N	N	N	N	N	
Drinking water	N	N	N	N	N	Water treated with UV + filtration is accepted.
Garbage to be segregated - wet and dry	N	N	N	N	N	To encourage recycling wet garbage area to be airconditioned for 3* & 5*D
Receiving and stores to be clean and distinct from garbage area	N	N	N	N	N	

32. Alphabet "N" indicates "Necessary" while alphabet "D"

“Desirable”. To qualify as “One Star Hotel” the petitioner was required to have a minimum of 1 Dining room for serving all meals though it was not mandatory for the petitioner to provide room service.

33.The registration granted to the petitioner by the Ministry of Tourism, Department of Tourism on 12.11.2009 was subject to rhw petitioner complying with all the regulatory conditions for classification/to classification of hotels and other terms and conditions to be introduced by the Department from time to time.

34. There is no clarity as to whether separate kitchen and dining area existed for provision of One Star Hotel Service by the petitioner independent of the restaurant with the kitchen for which the petitioner had obtained registration earlier on 19.05.2008 vide TIN No.3382242419. Further, the petitioner obtained a bar licence only in the year 2011.

35. The finding of the respondent in the impugned orders that the services in the restaurant and the bar were interlinked with each other remains unsubstantiated.

36. As per Rule 5 (a) of the Tamil Nadu Value Added Tax Rules, 2007, a registered dealer who intends to open a new branch has to file an application before the registering authority to amend the registration along with proof of payment of fees as a specified in Sub-Section (1) of Section 39 within 30 days from the date of opening of the branch and get his registration amended accordingly.

37. The fact that two separate registrations were granted to the petitioner by the respondent Commercial Tax Department under the provisions of the Tamil Nadu Value Added Tax Act, 2006, gives an indication that the Commercial Tax Department has also tacitly accepted the fact that the petitioner was providing two services ie after June, 2011 though the petitioner is required to possess only one registration under Tamil Nadu Value Added Tax Act, 2006.

38. There are indications to the effect that after 2011, the Commercial Tax Department wanted to treat the service

provided by the petitioner to its guest staying in its hotel rooms and visiting the bar under One Star service and the food served in the restaurant differently from 2011. However, in absence of proper discussion on facts in the impugned order and adequate materials before me, I am unable to give a categorical findings on the same.

39.Therefore, I am inclined to set aside the impugned orders and remit the case back to the respondent to pass afresh order.

40. The respondent may obtain necessary information from the Department of Tourism, India Tourism, Anna Salai as to whether One Star classification obtained by the petitioner vide order dated 12.11.2009 was on the strength of the aforesaid restaurant and kitchen or whether a separate kitchen and a separate dinning area existed for serving food to the guest who stay temporarily in the rooms. A copy of any information which may be obtained by the respondent from Department of Tourism, India Tourism, Anna Salai shall be served on the petitioner before passing final orders. The petitioner may also produce such documents and evidence to establish its defence.

41. In the light of the above discussion, I pass the following order:-

i. impugned orders are set aside and the cases are remitted back to the respondent to pass fresh orders for the respective assessment years within a period of six months from date of receipt of a copy of this order;

ii. before passing fresh such orders, the respondent may obtain necessary information from the Department of Tourism, Anna Salai and furnish a copy of the same to the petitioner regarding the basis on which the One Star Classification/certification dated 12.11.2009 was issued to the petitioner;

iii. petitioner may also independently furnish such informations that may be required to substantiate its defence;

iv. before passing fresh orders in the remand proceedings, petitioner shall also be heard, through video conferencing, if the situations so warrant on account of continuance of Covid19 pandemic.

42. These writ petitions stand disposed of with the above observations. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

arul/jen

To
The Commercial Tax Officer,
Pollachi (West), Assessment Circle,
Pollachi.

W.P.Nos.26721 to 26723 and 27126 to 27128 of 2016

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