IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 28472 of 2016
and
W.M.P. No. 24585 of 2016

M/s.Sri Ramanuja Hotels Private Limited
Rep. by its Managing Director
No.115, Palakkad Road
Pollachi - 642 001
Coimbatore District. ...Petitioner

-vs-

1.The Government of Tamilnadu
Rep. by its Additional Chief Secretary (FAC),
Commercial Tax Department,
Fort St. George, Secretariat,
Chennai - 600 009.

2.The Commercial Tax Officer,
Pollachi (West) Circle,
Pollachi. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records of the First Respondent in proceedings Letter No.5214/B2/2016 and quash the order dated 27.06.2016 passed therein and further direct the First Respondent to pass a speaking order and the Second Respondent not to take any consequential recovery proceedings against the Petitioner herein.

For Petitioner : Mr. T.Balaji
for M/s.Hemamuralikrishnan

For Respondents : Mrs. G.Dhana Madri
Government Advocate (Taxes)

O R D E R
(through video conference)

Heard Mr. T.Balaji, Learned Counsel for the Petitioner and Mrs. G.Dhana Madri, Government Advocate (Taxes) appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is having F-3 license issued by the Government of Tamil Nadu under the Tamil Nadu Liquor and License Permit Rules, 1981. The Government of Tamil Nadu by G.O. (Ms.) No. 47, Commercial Taxes and Registration (B-1) dated 27.03.2012 amended Entry 2 of the Second Schedule to the Tamil Nadu Value Added Tax Act, 2006 (herein after referred to as the 'TNVAT Act' for short) by fixing the rate of tax for all alcoholic liquor of all kinds for human consumption other than liquor falling under Entries 1 and 3 in the Second Schedule to TNVAT Act at 14.5% under third point of sale, which was unsuccessfully challenged by the Petitioner in W.P. No. 18992 of 2014 before this Court. It is the claim of the Petitioner that during the pendency of the aforesaid Writ Petition, there was an order of interim stay of the aforesaid amendment and relying on the same, the Petitioner had not collected the differential amount of tax from the persons to whom liquor was sold during that period. On that premise, the Petitioner claimed to have made a representation dated 25.03.2016 to the First Respondent to grant remission of the sales tax of Rs. 19,42,655/- demanded by the Second Respondent on sale of alcoholic liquors for the assessment year 2014-15, which was directed to be disposed by order dated 29.04.2016 in W.P. No. 16835 of 2016 passed by this Court. In that backdrop, the First Respondent by Order No. 5214/B2/2016 dated 27.06.2016, has rejected that claim, and has held as follows:-

> "4. Considering the fact that the levy made at the third point of sale of alcoholic liquors of all kinds for human consumption has been upheld by the Hon'ble High Court of Madras, there is no legal ambiguity with regard to the legal validity of the demands raised against the dealers. Hence, I am to inform that your request for remission of the tax amount payable at the third point of sales of alcoholic liquors of all kinds for human consumption for the assessment years 2014-15 and 2015-16 is not feasible of compliance."

Aggrieved thereby, the Petitioner has preferred this Writ Petition challenging the said order.

3. It is beyond cavil that any interim order is subject to the result of ultimate decision in that legal proceeding. The proposition of law also does not need any explication that a party who has received benefit under any interim order of the Court must restore to the other party of what has been deprived as a result of such interim order when the matter is finally decided against him. In the present case, as would be evident from the facts borne out of the record, the Government of Tamil Nadu was certainly entitled to require the Petitioner to pay the differential amount of tax that had not been collected due to the interim order earlier granted and had been vacated at the time of dismissal of the Writ Petition. Viewed from that perspective, the Government of Tamil Nadu could not be expected to lose its revenue due to the litigation at the behest of the Petitioner, which has ended in its favour.

4. That apart, on a bare perusal of the said representation made by the Petitioner, which has been rejected by the impugned order, it is noticed that there is no reference to any particulars explaining the amount at which liquor was actually sold by the Petitioner viz-a-viz the amount that should have been collected from the purchasers concerned. In the absence of any acceptable proof in that regard, there is hardly any justification to consider the claim made by the Petitioner for remission. That apart, it is not the case of the Petitioner that it had been restrained to collect the tax amount due from the purchasers concerned during the relevant period. In any event, the Petitioner, as a commercial undertaking, has to absorb the expenses incurred for taxes from its profits and has to blame itself for any failure to suitably organize its financial affairs in that regard. In that view of the matter, there does not appear to be any infirmity in the impugned order requiring interference by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution.

In the result, Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

Maya/dm

To

1. The Additional Chief Secretary (FAC),
   Government of Tamil Nadu
   Commercial Tax Department,
   Fort St. George, Secretariat,
   Chennai - 600 009.

2. The Commercial Tax Officer,
   Pollachi (West) Circle, Pollachi

+1cc to M/s.Hema MuraliKrishnan, Advocate, SR.No.32997.
+1cc to Special Government Pleader, SR.No.33119

W.P. No. 28472 of 2016

RLD(CO)
KKV/03/12/2020