IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 33346 of 2006
and
M.P. No.1 of 2006

M/s.V.G.P.Golden Beach Resort (P) Ltd.,
V.G.P. Square,
Saidapet, Chennai - 600 015. ... Petitioner

Vs

1. The Special Commissioner of Commercial Taxes (FAC),
   Ezilagam, Chepauk,
   Chennai - 600 005.

2. The Deputy Commissioner,
   Chennai (South) Division,
   Chennai - 600 006.

3. The State of Tamilnadu,
   Represented by its Secretary,
   Commercial Tax Department,
   Fort St.George,
   Chennai - 600 009.

4. The Commercial Tax Officer,
   Thiruvanmiuir Assessment Circle,
   No.100, Chamiers Road,
   Teynampet, Chennai - 600 018. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Letter No.Drafting Cell 2/16817/96 quash the impugned proceedings dated 04.08.2006 and further direct the third respondent to pass an order of waiver of tax and consequential levies as prayed for since the petitioner had not collected the sales tax as recommended by the fourth respondent to the second respondent relating to the said period of waiver.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Ms.G.Dhanamadhri
Government Advocate

ORDER

The petitioner has challenged the impugned communication dated 04.08.2006 bearing Letter.No.Drafting Cell 2/16817/96 rejecting the request of the petitioner for waiver of tax from payment of sales tax under the provisions of the Tamil Nadu General Sales Tax Act, 1959 as it stood during 1980 to 1989.

2. The petitioner is engaged in sale of food and drinks and during the relevant period in entry 150 of the 1st Schedule of the TNGST Act, the sales tax was payable on sale of articles like food and drinks sold to customers in 3 Star, 4 Star and 5 Star hotels as recognized by(Classified or approved by) the Tourism Department.

3. The issue regarding levy of sales tax was decided in favour of the assessees, Hotels in Sangu Chakra Hotels Private Ltd., Vs State of Tamil Nadu, (1985) 60 STC 125. The issue, however, was reversed by the Hon'ble Supreme Court by its order dated 08.02.1996 in the case of Hotel River View and others in C.A.Nos.101 & 102 of 1995.

4. During the interregnum, the 46th amendment of the Constitution was brought in by the Parliament, pursuant to which, the definition of “sale” in Section 2(n) of the TNGST Act, 1959 was also amended. Clause Nos.1 to 5 became effective from 29.05.1984 onwards, whereas, Clause No.6 became effective from 02.02.1983 in terms of Amended Act 28 Act of 1984. In the meanwhile, the petitioner filed an application for waiver of tax on 22.08.1990 by placing reliance on G.O.Ms.No.973 dated 27.05.1967.

5. The issues relating to waiver of tax were also part of G.O.P.No.1001, CT & RE Department, dated 06.10.1980 and G.O.Ms.No.157/1996 dated 22.04.1996. The Government directed the Joint Commissioner (Revision Petition) to go through the various records of the Hoteliers and give his finding on facts to the Government by separately considering the following aspects:-

> “a. Was the hotelier billing the tax separately or as all inclusive price? If billed separately did they step so billing between the High Court order and Supreme Court order and to this extent, the tax was not collected and the consumer benefitted? If it was an all inclusive price, was there any commensurate reduction after the High Court order for tax not collection?
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> b. What was the position, the hoteliers took in their balance sheet and in income tax returns? Did

they seek any subtraction for tax liability or not?

c. Was there any direct collection of tax in any way, or not?”

6. The Joint Commissioner (Revision Petition) was also directed to submit his findings on facts to the Government within a period of three months, so that the Government can pass appropriate orders on each case on merits as per the decision of the Hon'ble Supreme Court in the case of Hotel River View and Others.

7. It is noticed that the impugned order has been passed holding that the petitioner was not entitled to waiver inasmuch as the petitioner failed to satisfy the requirements of G.O.Ms.No.140/CT dated 11.06.1999 and G.O.Ms.No.157/CT dated 22.04.1996. The only other reason given for rejecting waiver in the impugned order is that the petitioner made the provision in the balance sheet for the tax liability which implied that the petitioner had deducted the amount in his Income Tax Returns and therefore the petitioner is not entitled to waiver.

8. The issue as to whether the petitioner had indeed collected tax from the guests visiting the petitioner's hotels or not has to be decided on merits on production of relevant documents including the manner in which the amounts had been shown in the returns filed before the Income Tax Department. Since this exercise has not been carried out by the Special Commissioner and Commissioner of Commercial Taxes/1st respondent herein, I am of the view that the impugned order passed is liable to be interfered on the ground of violation of Principles of Natural Justice.

9. The 1st respondent/Special Commissioner and Commissioner of Commercial Taxes ought to have heard the petitioner before passing the aforesaid order. Therefore without expressing any opinion on the merits of the case as to whether the petitioner was entitled to waiver, I remit the case back to the 1st respondent/Special Commissioner and Commissioner of Commercial Taxes or any officer competent to consider the petitioner's request for waiver after considering the applicability of the above Government Orders. This exercise shall be carried out by the respondents/Commercial Tax Department within a period of three months from the date of receipt of a copy of this order. The petitioner is given liberty to file additional representation, if any, within a period of one month from the date of receipt of a copy of this order.

10. The respondents/Commercial Tax Department shall intimate to the petitioner, the officer to whom the additional representation may be sent by the petitioner for a fair disposal of the application filed by the petitioner for waiver of tax for the period between 1980-1981 to 1988-1989. The request of the petitioner for waiver of penalty also may be considered and disposed of in accordance with law.

11. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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To
1. The Special Commissioner of Commercial Taxes (FAC),
   Ezilagam, Chepauk,
   Chennai - 600 005.
2. The Deputy Commissioner,
   Chennai (South) Division,
   Chennai - 600 006.
3. The Secretary,
   Government of Tamilnadu,
   Commercial Tax Department,
   Fort St.George,
   Chennai - 600 009.
4. The Commercial Tax Officer,
   Thiruvanmiuir Assessment Circle,
   No.100, Chamiers Road,
   Teynampet, Chennai - 600 018.

+1CC TO MR.V.SUNDARESWARAN, ADVOCATE, SR.NO. 18887
+1CC TO M/S.SPECIAL GOVERNMENT PLEADER, SR.NO. 19235

W.P. No. 33346 of 2006
and
M.P. No.1 of 2006

JPL(CO)
KKN 30.04.2021