IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.4.2021

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Appeal No.1001 of 2021 & CMP.No.6272 of 2021

M/s.Sri Ramanuja Hotels Pvt. Ltd., rep.by its Managing Director ...Appellant/Petitioner

Vs

1.The Government of Tamil Nadu, rep.by its Additional Chief Secretary (FAC), Commercial Tax Department, Fort.St.George, Chennai-9.

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

APPEAL under Clause 15 of the Letters Patent against the order dated 06.10.2020 in W.P.No.28472 of 2016.

W.P.No.28472/2016: 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 Appellant : Mrs.Hema Muralikrishnan
For Respondents: Mrs.G.Dhanamadhri, AGP

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mrs.Hema Muralikrishnan, learned counsel appearing for the appellant and Mrs.G.Dhanamadhri, learned Additional Government Pleader accepting notice for the respondents.

2. This writ appeal, filed by the writ petitioner, is directed against the order dated 06.10.2020 in W.P.No.28472 of 2016.

3. In the said writ petition, the appellant challenged the order dated 27.6.2016 passed by the Government rejecting the application dated 25.3.2016 submitted for waiver under Section 31 of the Tamil Nadu Value Added Tax Act, 2006 (for short, the Act) read with Rule 16(4) of the Tamil Nadu Value Added Tax Rules, 2007 (for brevity, the Rules).

4. According to the appellant, they did not collect tax from trade customers on account of the fact that they had filed a writ petition before this Court challenging the vires of the amendment to the Second Schedule of the Act by filing W.P.No.18992 of 2014 and when it was entertained, an order of interim stay of the amendment to the Second Schedule was granted on 18.7.2014 and consequently, no tax was collected. However, W.P.No.18992 of 2014 along with connected writ petitions [W.P.No.22072 of 2013 etc. cases] (Hotel & Bar (FL.3) Association of Tamil Nadu (HOBAT) rep,by its President Vs. Secretary to Government) were dismissed by the Hon'ble First Bench of this Court by a common order dated 31.3.2015 and the validity of the amendment was upheld. The said common order was affirmed by the Hon'ble Supreme Court. Pursuant to that, the Assessing Officer issued the notice dated 22.1.2016 directing the appellant to pay the total tax of Rs.19,42,655/- for the assessment years 2014-15 and 2015-16 (upto December 2015).

5. On receipt of the demand, the appellant approached the Government and submitted a representation dated 25.3.2016 seeking remission of the the sales tax demanded by the Assessing Officer. In the said representation, the appellant stated that in view of the interim order granted earlier on 18.7.2014, the appellant did not collect tax from customers on the sale of alcoholic liquors and that with effect from 01.10.2015, after the decision of the High Court, the appellant had been collecting and paying tax on the sale of alcoholic liquors effected by it. The appellant also referred to G.O.Ms.No.973 dated 27.5.1967 for grant of waiver. However, the Government rejected the said representation by the order dated 27.6.2016 solely on the ground that the validity of the amendment to the Schedule had been upheld by the High Court. This was put to challenge in the present writ petition, which was dismissed by the impugned order.

6. The first issue, which we have to take note of is as to whether the order dated 27.6.2016 was passed after due consideration of the provisions of Section 31 of the Act read

with Rule 16(4) of the Rules . It is an admitted fact that the validity of the amendment has been upheld. The appellant, in unequivocal terms, accepted the position and mentioned the same in the said representation for remission. The case of the appellant is that in the light of the order of interim stay granted in the earlier writ petition, they did not collect tax. Therefore, the Government is required to consider as to whether such a plea is justifiable and as to whether the appellant can seek for remission of such amount.

7. To be noted, it is the appellant, who challenged the validity of the said amendment by approaching this Court and obtained an order of interim stay. Therefore, the issue would be as to whether the appellant can plead circumstances beyond control for having not collected the tax. In any event, we do not want to express any opinion on this issue and it is best left to the Government to take a decision. Since the decision taken is not on the above lines, we are inclined to interfere with the order dated 27.6.2016, which is impugned in the present writ petition.

8. Accordingly, the writ appeal is allowed, the order passed by the Government dated 27.6.2016, which is impugned in W.P.No.28472 of 2016 is set aside and the matter is remanded to the Government to take a fresh decision after taking note of the observations contained in this judgment. A decision shall be taken by the Government within a reasonable time preferably within a period of three months from the date of receipt of a copy of this judgment. In order to facilitate the Government to pass orders, the appellant is directed to submit a fresh representation along with a copy of the earlier representation and other documents, which they seek to rely upon and a copy of this judgment for the Appropriate Authority to take a proper decision in accordance with law. No costs. Consequently, the connected CMP is closed.

s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To
1.The Additional Chief Secretary (FAC), Government of Tamil Nadu, Commercial Tax Department, Fort.St.George, Chennai-9.

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

+1 CC to Mrs. Hema Muralikrishnan, Advocate sr 21480.
+1 CC to The Special Government Pleader sr 22013.

WA.No.1001 of 2021&
CMP.No.6272 of 2021

SR(CO)
SP(01/07/2021)