IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2021

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.19107 of 2021
and
W.M.P.No.20387 of 2021

M/s.Oriental Hotels Ltd.,
represented by its Managing Director,
No.37 Nungambakkam High Road,
Nungambakkam, Chennai 600 034. ... Petitioner

-Vs.-

1. The Assistant Commissioner (State Tax),
   Valluvarkottam Assessment Circle,
   Chennai-600 006.

2. The Appellate Deputy Commissioner(ST),
   Chennai (Central)
   Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the first Respondent in his proceedings in TIN No.3381502467/2008-09 - 2009-10, quash the recovery notice dated 03.08.2021 issued therein.

For Petitioner : Mr.P.V.Sudakar

For Respondents : Ms.Amirta Dinakaran, Government Advocate

O R D E R

Captioned main writ petition arises under the 'the Tamil Nadu Value Added Tax Act, 2006, (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT' for the sake of brevity, convenience and clarity].

2. Captioned main writ petition and 'writ miscellaneous petition' ['WMP'] thereat have been listed in the Admission Board before me.

3. Owing to the trajectory the matter has taken in the

Admission hearing, short facts shorn of elaboration will suffice.

4. Short facts are that the writ petitioner has assailed a 'recovery notice dated 03.08.2021 bearing reference No.3381502467/2008-09 and 2009-10' [hereinafter 'impugned notice' for the sake of convenience and clarity]. The impugned notice is a recovery notice which talks about realization of arrears of 'Value Added Tax' ['VAT'] for two assessment years namely, 2008-2009 and 2009-2010. The recovery notice does not mention the provision of law under which it has been issued, but there is no disputation or disagreement before me that the first respondent does have power to issue such a recovery notice.

5. Be that as it may, I am constrained to observe that it is desirable and imperative for the fiscal law authorities to mention the provision of law/Statute and Rules under which notices are issued/assessment orders are made. I am constrained to make this observation as I find that most of the notices and orders issued/made by the fiscal law authorities do not mention the provision of law/Statute under which it has been made/issued. I proceed with this matter (as there is no disputation or disagreement in this case) in the hope that this does not recur in the days to come.

6. Be that as it may, reverting to the case on hand, impugned notice has been issued owing to non-compliance of two separate stay orders both dated 10.03.2020 made by the second respondent-Appellate Authority, being orders made in S.P.No.4/2020 in AP VAT 5/2020 and S.P.No.5/2020 in AP VAT 6/2020.

7. Continuing with the facts there is no disputation that the above are stay orders made in Statutory appeals under Section 51(1) of TNVAT Act and they are in consonance with second proviso to Section 51(1) of TNVAT Act. There is also no disputation or disagreement that the mandatory 25% differential amount as per second proviso to Section 51(1) of TNVAT Act has already been paid and that is the reason why the aforementioned appeals have been assigned numbers and taken on file. Therefore, the amounts i.e., 25% further differential amounts directed to be paid vide aforementioned stay orders are further sums of money qua second proviso to Section 51(1) of TNVAT Act. There is no disputation or disagreement regarding powers and discretion of the second respondent-Appellate authority to make such stay orders, but the submission of learned counsel is that the writ petitioner could not make payment and also furnish Bank guarantee within the time stipulated in the stay orders owing to Covid-19 situation i.e., Corona Virus pandemic and consequent lock down which the writ petitioner could not portend or presage

and slump in the business/turn over owing to Covid-19 situation. More importantly, learned counsel submits that the writ petitioner is now ready to comply with the interim orders. Therefore, in effect the writ petitioner is asking for extension of time to comply with the interim orders pursuant to which the impugned notice (Recovery Notice) has been issued.

8. Ms.Amirta Dinakaran, learned Revenue counsel, accepts notice on behalf of both the respondents, owing to the short and narrow compass on which captioned main writ petition turns, the main writ petition itself is taken up with the consent of both sides and the same is disposed of by making the following order:

> (a) Writ petitioner shall comply with the conditions qua two orders both dated 10.03.2020 in S.P.No.4/2020 in AP VAT 5/2020 and S.P.No.5/2020 in AP VAT 6/2020, within one week from today, i.e., on or before 20.09.2021;
>
> (b) If the writ petitioner does not comply with the aforesaid limb, the recovery notice which shall be kept in abeyance for a week, shall kick in and the same shall be taken to its logical end without reference to this Court;
>
> (c) If the writ petitioner complies with the aforementioned condition (a), impugned notice i.e., recovery notice dated 03.08.2021 bearing reference TIN.No.3381502467/2008-09 & 2009-10 will be set aside;
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> (d) As a sequitur to the above is the two appeals namely, AP VAT 5/2020 and AP VAT 6/2020, will be taken up, heard out by the second respondent-Appellate authority on its own merits and in accordance with law within six weeks therefrom i.e., on or before 01.11.2021.

9. Captioned Writ Petition and WMP are disposed of with the above directives. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mk/nsa

To

1. The Assistant Commissioner (State Tax),
   Valluvarkottam Assessment Circle,
   Chennai-600 006.

2. The Appellate Deputy Commissioner(ST),
   Chennai (Central)
   Chennai.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.46556
+1cc to the Government Pleader, S.R.No.46966

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AJS(CO)
CT(29/09/2021)