BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.528 and 529 of 2019

and

W.M.P.(MD)Nos.435 & 436 of 2019

M/s.Greens Land Restaurant,
Rep. by its Partner S.Mohammed Musthapa AL Ameen,
No.100, Railway Feeder Road,
Tenkasi,
Tirunelveli District. ... Petitioner in both W.Ps.

-Vs-

The Assistant Commissioner (CT),
Tenkasi. ... Respondent in both W.Ps.

Prayer in W.P.(MD)No.528 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN No.33185684920/2014-15 and quash the order dated 29.08.2017 as it is unlawful and in violation of the principles of natural justice and further direct the respondent to consider the objection in all perspective on its merits and pass appropriate order in accordance with law.

Prayer in W.P.(MD)No.529 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN No.33185684920/2015-16 and quash the order dated 29.08.2017 as it is unlawful and in violation of the principles of natural justice and further direct the respondent to consider the objection in all perspective on its merits and pass appropriate order in accordance with law.

For Petitioner : Mr.A.Sathieesh Murugan
for Mr.R.D.Ganesan

For Respondent : Mr.S.Dhayalan
Government Advocate

(in both W.Ps)

COMMON ORDER

Heard the learned counsel on either side.

2.Though the petitions are two in number, the petitioner in both the petitions is one and the same. The petitioner is a restaurant. The assessment years are 2014-15 and 2015-16. Their assessments were finalised under Section 22(2) of the TNVAT Act. Subsequently, based on the inspection by the Enforcement Wing Officials, pre-revision notices were issued and adverse orders were passed against the petitioner. The said orders were challenged in W.P.(MD)No.17429 of 2016 and the said writ petition was allowed on 27.09.2016 and the respondent was directed to pass orders afresh in accordance with law. Thereafter, the respondent issued personal hearing notices dated 10.01.2017 and 06.06.2017. It is stated that after receiving the notice of personal hearing, the dealer requested 15 days time to produce the accounts and file their reply. But the assessee did not do so. Therefore, the order dated 11.05.2016 was once again confirmed by the impugned orders dated 29.08.2017. Challenging the same, the Writ Petitions have been filed.

3.When the matter was taken up for admission, I had granted interim orders on condition that the petitioner should pay 15% of the tax demand. The said condition appears to have been complied with.

4.Today when the matter was taken up for final hearing, the learned counsel for the petitioner drew my attention to the order dated 13.03.2006 passed by the Hon'ble Division Bench in ***Tax Case (Revision) No.205 of 2006 (The State of Tamil Nadu Vs. Tvl.New Kamaliya Hotel).*** In the said case, the assessing authority chose to arrive at an estimate based on the one day sales of the assessee. Such an approach was faulted by the Hon'ble Division Bench.

5.I am afraid that the said decision may not have any bearing on the case on hand. In the present case, the respondents have taken into account the sales figure for the entire month of November 2015. But then, there are two circumstances in favour of the petitioner. This writ petition has been filed by S.Mohammed Musthapa Al Ameen. It is stated that he was only a silent partner earlier and that, there was a partnership dispute and now only the petitioner has taken over the business. He is now in-charge of the affairs of the business. Only when the respondent took recovery measures, he became aware of the situation. The stand of the petitioner is that the personal hearing notices were received by another partner and due to his inaction, it is the petitioner who has to bear the cross.

6.The other major ground is that the respondent has mechanically confirmed the earlier order dated 11.05.2016. The said order was specifically set aside in W.P.(MD)No.17429 of 2016 on 27.09.2016. Therefore, an order, that was quashed by this Court, cannot be once again given life. When the order dated 11.05.2016 was set aside, it was incumbent on the part of the respondent, to have independently considered the materials and arrived at a finding. A mere look at the impugned order would show that except reproduction of the dealer's earlier reply, there is virtually nothing else to indicate any application of mind. Of-course, I can understand the position of the respondents. When the petitioner has not bothered to file any accounts, the respondents can only take recourse to such a crude method. At this stage, the petitioner's counsel stated that he would pay balance 60 % of the tax demanded and that he may be given one more opportunity to place the records.

7.In view of the fact that an order that was quashed by this Court has been mechanically resurrected and in view of the undertaking of the petitioner to pay the balance 60% of the tax amount, the order impugned in the writ petitions are quashed. The writ petitions are allowed. The petitioner is given four weeks time from the date of receipt of a copy of this order to pay the said balance amount. Even while making the balance payment, the petitioner will also file an additional reply. The respondent will give one more opportunity of personal hearing to the petitioner. The petitioner has to necessarily place all the account books, so as to assist the respondents to arrive at a correct finding. If the petitioner is not co-operating with the enquiry, the respondent is free to make best Judgment assessment.

8.With this direction to the petitioner and liberty to the respondents, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Assistant Commissioner (CT),
Tenkasi.

+2 CC to Mr.R.D.GANESAN, Advocate (SR-6254[F] dated 19/02/2021)

+1 CC to SPL GP (SR-6483[F] dated 22/02/2021)

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KM (15.03.2021) 4P 5C