BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.13242 & 13243 of 2018

and

W.M.P.(MD)Nos.12077 & 12078 of 2018

Tvl.Astoria Hotels,
Represented by its Partner P.Ramakrishnan,
65/70, Feet Road,
Ellis Nagar, Madurai. ... Petitioner in both W.Ps.

-Vs-

The Assistant Commissioner (ST),
West Veli Street Circle,
Madurai. ... Respondent in both W.Ps.

Prayer in W.P.(MD)No.13242 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in TNLH 9670/2013-14, dated 06.04.2018 and quash the same as illegal and against the principles of natural justice.

Prayer in W.P.(MD)No.13243 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in TNLH 9670/2014-15, dated 06.04.2018 and quash the same as illegal and against the principles of natural justice.

For Petitioner	:	Mr.N.Sudalaimuthu for Mr.S.Karunakar
For Respondent (in both W.Ps.)	:	Mr.G.Arjunan Government Advocate

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner Tvl.Astoria Hotels has filed these two writ petitions for the assessment years 2013-14 and 2014-15. The petitioner had registered themselves with the respondent as an assessee. Their assessment for the said years got concluded under deemed assessment basis. The petitioner's lodging house was inspected by the Enforcement Wing Officials on 31.08.2015. Certain discrepancies were noticed. Based on the same, the respondent issued pre-revision notices dated 16.03.2018. The petitioner offered their objections vide order dated 29.03.2018. Thereafter, the impugned orders dated 06.04.2018 came to be passed by applying the Circular No.28/15, dated 04.08.2015 issued by the Principal Commissioner /Commissioner of Commercial Taxes as regards the estimated number of occupancy for one year. The said orders are assailed in this writ petitions.

3.The respondent has filed counter affidavit seeking to sustain the impugned orders. The learned Government Advocate took me through the averments set out therein and wanted me to dismiss the writ petitions on the ground of non availing of alternative remedy of appeal.

4.I carefully considered the rival contentions and went through the materials on record.

5.The primary contention of the petitioner's counsel is that when the petitioner had produced all the relevant account books, without arriving at a specific finding as regards the suppression, the respondent could not have mechanically invoked the aforesaid circular dated 04.08.2015 to determine the occupancy of the lodging houses for one year. He would also point out that after the objections were submitted by the petitioner, no separate personal hearing notice was given to the petitioner.

6.Though I find both the contentions to be persuasive, I find particular merit in the second contention. It is not the case of the respondent that the impugned orders were passed after granting an opportunity of personal hearing to the petitioner. Mere offer to the assessee to avail personal hearing in the pre-revision notice is clearly not sufficient. The question of issuing personal hearing notice will arise after the time for lodging the objections have elapsed and whether the petitioner has given his objections or not, the authority is obliged to issue personal hearing notice.

7.The Hon'ble Division Bench of Madras High Court in the decision reported in [2019] 60 GSTR 418(Mad) ***(G.V.Cotton Mills (P) Ltd., V. The Assistant Commissioner(CT)***, Avarayampalayam Assessment Circle, Coimbatore) held as follows:-

> "Denial of personal hearing:
>
> 10. The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee. In case the assessee fail to appear, it is open to the assessment authority to pass orders on merits. We make the position clear that the failure to submit objection to the pre assessment notice would not give a right to the assessment officer to deny opportunity of personal hearing to the assessee.
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> 11. The Supreme Court in Swami Devi Dayal Hospital and Dental College v. Union of India MANU/SC/0873/2013 : [2013] 10 Scale 608 observed that even in the absence of a specific provision of giving hearing, the hearing is required in such cases, unless specifically excluded by a statutory provision.

8.On this ground, the orders impugned in the writ petitions are quashed. The Writ Petitions are allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// 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 (ST),
West Veli Street Circle,
Madurai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-10451[F] dated 11/03/2021)

W.P.(MD)Nos.13242 & 13243 of 2018
and
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SGS(CO)
KB(27.04.2021) 3P 3C