IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.06.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.9595 of 2019
&
W.M.P.No.10202 of 2019

M/s.Udayam Theater Canteen,
Represented by its Proprietrix Ms.Dhevi Ramesh
No.2, Ashok Pillar Main Road,
Ashok Nagar, Chennai – 600 083. ...Petitioner

Vs.

The Assistant Commissioner (ST),
KK Nagar Assessment Circle,
5th Floor, Annexe Building,
Greams Road, Chennai – 600 006. ...Respondent

Prayer:Writ 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:33781424835/2016-17 dated 21.03.2018 and the consequential order rejecting the rectification application under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 in TIN No.33781424835/2016-17 dated 18.03.2019 quash the same and further direct the respondent to re-do the assessment in accordance with the provisions of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

O R D E R

Read this order in conjunction and continuation of earlier proceedings dated 09.06.2022 which is extracted below:-

> "After a somewhat detailed hearing the position that obtains is that
>
> (i)The petitioner has filed monthly returns for the period 2016-17, though without enclosing Form-WW

as statutorily required.

(ii)A notice was issued on 15.02.2018 putting it to notice that Form-WW has not been received and thus the authority proposes to proceed with the matter as though turnover had escaped income from assessment.

(iii)The petitioner claims that it did respond to the notice on account of a bereavement in the family.

(iv)An order of revision/reassessment in terms of Section 27 of the Tamil Nadu Value Added Tax Act (in short 'Act'), came to be passed on 21.03.2018 wherein the Assessing Authority adopted the exact turnover as reported in the returns and brought to tax the same at 14.5% in the absence of Form-WW. He also imposes penalty under Section 27(3) of the Act.

(v)As against the aforesaid order, the petitioner filed an application for rectification under Section 84 of the Act enclosing Form-WW.

(vi)The said application came to be rejected on 18.03.2019 on the ground that there is no error apparent on the face of the re-assessment sought to be rectified.

2.The passing of the original order on the ground that there has been escapement of tax is patently incorrect, insofar as the ingredients of Section 27 have not satisfied in this case.

3.Section 27 requires turnover to have escaped assessment, which factually has not been occasioned in this case, seeing as the turnover adopted by the assessing authority is identical to the turnover reported by the petitioner. All that has been done is to apply the enhanced rate of tax and in my view, resort to Section 27 is patently misconceived.

4.When the aforesaid opinion is expressed, respondent counsel would fairly agree that the Section 84 application would be re-considered and Form-WW filed by the petitioner be taken into account, if in order. This matter is thus adjourned by two weeks to enable the respondent/ Assessing Authority to do so.

5.The petitioner counsel states that the petitioner will appear before the Assessing Authority on 13.06.2022 and orders will be passed on the Section 84 application on or before 23.06.2022. If the petitioner's Forms are found to be in order, resultant position will be that the impugned order dated 18.03.2019 will stand substituted by the order to be passed.

6.List on 24.06.2022 'for production of orders'.

2. Learned counsel for the petitioner would submit that the petitioner has appeared on the said date and accepting his contentions, order dated 22.06.2022 has been passed.

3. In light of the aforesaid, impugned order dated 18.03.2019 stands subsumed into order dated 22.06.2022.

4. This writ petition stands disposed as above. Connected writ miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

nst

To

The Assistant Commissioner (ST),
KK Nagar Assessment Circle,
5th Floor, Annexe Building,
Greams Road, Chennai – 600 006.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.39167

+1cc to the Special Government Pleader, S.R.No.40469

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&
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SSI(CO)
UMA(13/07/2022)