BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2022

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.25654 of 2019
and
W.M.P.(MD).No.22238 of 2019

M/s.Hotel Theni International,
Represented by its partner Vinoth Mathew ... Petitioner

Vs.

The Assistant Commissioner (CT),
Theni II Assessment Circle,
Commercial Tax Buildings,
Theni. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records in TIN 33035182203/2007-08 dated 11.12.2018 issued by the respondent and quash the same as arbitrary, illegal and barred by limitation under section 27 of the TNVAT Act 2006 and direct the respondent to pass assessment order afresh after furnishing records as requested by the petitioner vide letter of objections dated 24.10.2017 including the opportunity of being heard to the petitioner within such time as may be directed by this Court.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.M.Ramesh,
Government Advocate.

ORDER

The Writ Petition is filed challenging the order of assessment dated 11.12.2018 for the assessment year 2007-08, wherein, a notice was issued on the basis of alleged inspection by the Enforcement Wing officers, wherein, it was found that the petitioner was supplied free snacks and complimentary breakfast on bar, banquet hall and restaurant, however, the claim of Input Tax Credit was not supported by relevant documents and that verification of intranet website also reveals certain mismatch.

2. It is submitted by the learned counsel for the petitioner that notices were issued fixing the personal hearing on 31.10.2017. The petitioner vide letter dated 24.10.2017, had in response requested to furnish the details from where the figures were culled out and also details of transactions relating to mismatch. However, without furnishing the details nor dealing with the objections, the impugned order has been passed confirming the proposal.

3. It is submitted by the learned counsel for the petitioner that the impugned order which has been passed without even considering their request or informing the petitioner that their request of furnishing the details is being rejected results in violation of principles of natural justice.

4. To the contrary, it is submitted by the learned Government Advocate for the Respondent that a notice of personal hearing was also granted and reiterated the grounds set out in the orders of assessment.

5. This Court finds that there is merit in the submission of the learned counsel for the petitioner inasmuch as the Respondent without dealing with the request made by the petitioner for furnishing the details has passed the impugned order confirming the proposal after recording the above request. The following portion is relevant and extracted hereunder:

> *"Accordingly a notice was issued to the dealers inviting objections if any against the above proposals for which the dealers have file a letter requesting to furnish the details from where the figures were culled out and to furnish the details of mismatch to verify the purchases made by them.*
>
> *The objections are carefully considered. Instead of furnishing purchase details and claim of Input Tax Credit and also the details of free supplies of foods and snacks, the dealers requested to furnish the figures culled out. The dealers are not denied the free supply of foods etc, at their Banquet Halls and restaurants. Further as per the Internet Website it was advertised that complementary breakfast is supplied between 7.00 AM to 10.00 AM.*
>
> *Further the dealers are supplying free snacks at Bars. At the time of inspection, the dealers have not produced the details for the supply of free snacks and complimentary breakfast. Even after on*

receipt of summons from the Enforcement Wing Officers, the dealers have not produced the documents or furnished the details for the above defects. Even on receipt of Notice from; this office, they are not ready to prove the genuineness of the business transaction. Therefore it is concluded that the dealers tracking the issue further."

This Court finds that the failure of even dealing with the petitioner's request for furnishing of details would constitute violation of principles of natural justice, thereby, vitiating the impugned proceedings for unless the petitioner has put on notice of the material that is sought to be used in framing the assessment, the petitioner may have difficulty in responding to the proposal.

6. In view of the same, the impugned order dated 11.12.2018 is set aside. The respondent shall proceed to complete the assessment in accordance with law, after furnishing the details sought for by the petitioner and after granting the petitioner a reasonable opportunity of hearing. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

14.10.2022

Index : Yes / No
Internet : Yes/ No
Lm

To

The Assistant Commissioner (CT),
Theni II Assessment Circle,
Commercial Tax Buildings,
Theni.

MOHAMMED SHAFFIQ, J.

Lm

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