IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.5611 of 2023
and
W.M.P.No.5641 of 2023

M/s.Orient Hotels Limited,
Represented by its Chief Financial Officer,
No.47, 3rd Floor, Paramount Plaza,
Mahatma Gandhi Road, Nungambakkam,
Chennai-600 034. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Valluvarkottam Assessment Circle,
Chennai. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in his proceedings in GSTIN:33AAACO0728N1ZH – TNGST No.1502467/2004-2005 and 2005-2006, quash the notice dated 15.02.2023 issued therein.

For Petitioner : Mr.C.Subramanian

For Respondent : Mr.C.Harsharaj
Additional Government Pleader

ORDER

The petitioner has challenged the impugned Recovery Notice in GSTIN:33AAACO0728N1ZH dated 15.02.2023 seeking to recover the arrears of tax for the Assessment Year 2004--2005 and 2005-2006.

2. The assessment was completed in terms of Section 12-C of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 as in force with effect from 20.12.2006 inserted by Act 37/2006 - Gazette dated 18.12.2006 as notified by G.O.(Ms).No.167, Commercial Taxes and Registration (B1) Department, dated 20-12-2006 - Notification No.II(2)/CTR/43(a)/2006 - Gazette dated 20.12.2006.

3. The petitioner had pointed out certain discrepancies to the Assessing Officer pursuant to which, the assessments that were completed on 01.02.2012 for the Assessment Year 2004-2005 and on 10.02.2012 for the Assessment Year 2005-2006, the respondent had passed revised Assessment Orders on 19.03.2012. Pursuant to the aforesaid rectification orders dated 19.03.2012, the amount has been substantially reduced. However, according to the petitioner there were certain discrepancies and therefore, the petitioner

filed second rectification petitions for the second time for the respective Assessment Year on 25.04.2012, which has been acknowledged by the respondent.

4. Despite service of the aforesaid rectification petitions on 24.07.2012, the respondent had failed to act on the same and has now initiated impugned recovery proceedings seeking to demand a sum of Rs.30,75,645/- as detailed below:-

Act	*Year*	*Tax*	*Sc*	*ASC*	*AT*	*Penalty*	*Addl. Penalty*	*Total*
TNGST	2004-2005	44811	9943	877	659585	164896	0	880112
TNGST	2005-2006	661739	8180	0	906786	165435	453393	2195533
							Total	30,75,645/-

5. The learned counsel for the petitioner has drawn to the workings of the tax amount and the taxable turn over including resale. The issue as to whether the amount has been properly re-quantified in the rectification proceedings is a matter, which has to be only determined by the Officers in the hierarchy under the provision of the TNGST Act, 1959. The question of

filing the second rectification application under Section 55(4) of the TNGST Act also cannot be countenanced.

6. The revised Assessment Orders passed on 19.03.2012 are appealable orders under the provisions of the TNGST Act, 1959. Considering the above, pursuant to the direction of this Court dated 24.02.2023, the petitioner has paid a sum of Rs 15,37,823/-.

7. Considering the above, this Court is inclined to dispose this writ petition giving liberty to the petitioner to challenge the revised Assessment Orders dated 19.03.2012 for the respective Assessment Years by filing an appeal, within a period of thirty (30) days from the date of receipt of a copy of this order.

8. The Appellate Authority shall dispose the appeal as expeditiously as possible, preferably as the dispute pertains to the Assessment Years 2004-2005 and 2005-2006. Pending such disposal, the recovery proceedings impugned in this writ petition shall be kept in abeyance.

9. It is made clear that in case the petitioner fails to file an appeal within a period specified above, the order passed today shall stand automatically revoked *sine die* without further reference. In which case, the respondent is at liberty to proceed against the petitioner to recover the amount specified in the impugned Recovery Notice.

10. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

31.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

dpa/arb

To

The Assistant Commissioner (ST),
Valluvarkottam Assessment Circle,
Chennai.

C.SARAVANAN, J.

dpa/arb

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