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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.33258 of 2024
and
W.M.P. Nos.36061, 36064 & 36065 of 2024

Hotel Southern Comfort,
Represented By its Partner,
Mr. Ebrahimsha
No.5 387/13A GLRS Station Road,
Meenambakkam, Kancheepuram
Tamil Nadu-600027. ... Petitioner

Vs.

State Tax Officer (ST),
Nandambakkam Assessment Circle,
Integrated Commercial and Registration Building,
Room No.307, III Floor, Nandanam,
Chennai 600 035. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent in Order in Reference No.:ZD330824267864X passed under section 73 of the TNGST Act 2017 for the period 2019-2020 dated 29.08.2024 and quash the same as illegal and not in accordance with law and consequently direct the Respondent to conduct fresh assessment proceedings

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after providing a reasonable opportunity of hearing to the petitioner in accordance with law.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.Harsha Raj
Additional Government Pleader

ORDER

By consent of both sides, this writ petition is taken up for final disposal at the stage of admission itself.

2. The present Writ Petition is filed challenging the impugned order dated 29.08.2024 relating to the assessment year 2019-2020.

3. The petitioner is a partnership concern engaged in the business of hotels, boarding and lodging and registered under the GST Act. During the relevant period of 2019-20, the petitioner has filed the returns and paid appropriate taxes. While so, on examination of the information furnished under various heads and also the information furnished in GSTR1, GSTR2A, GSTR3B, EWB and other records, it was found that the petitioner have not declared the correct tax liability while filing the annual return of GSTR9, the following five defects were noticed.

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(i) Net tax under declared due to non-reconciliation of turnovers in other returns and E-way bill information.

(ii) Excess claim of ITC

(iii) Invalid ITC under Sec.16(4)

(iv) ITC claimed from cancelled dealers, return defaulters and tax non-payers.

(v) Interest on Late Payment of GSTR-3B

4. Subsequently, notice was issued in DRC-01 to the petitioner on 27.05.2024, followed by three reminder notices dated 26.06.2024, 11.07.2024 and 22.07.2024 and final reminder notice along with copy of DRC-01 on 13.08.2024, wherein an opportunity of personal hearing was also afforded to the petitioner. However, the petitioner had neither filed its reply nor appeared for personal hearing. Hence, the impugned order came to be passed confirming the proposal. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to explain the aforesaid defects before the respondent.

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5. The impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal under the head "Additional Notices and Orders" tab, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings.

6. The learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this Court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed tax demand.

7. It was further submitted that the petitioner is ready and willing to pay 10% of the disputed tax and that he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Additional Government Pleader appearing for the respondent does not have any serious objection.

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8. In view thereof, the impugned order dated 29.08.2024 is set aside and the petitioner shall deposit 10% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order. On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored. It was submitted that pursuant to the impugned order of assessment, recovery proceedings were initiated and petitioner's bank account has been attached. In view of the order passed herein, the bank attachment shall be lifted forthwith on complying with the above condition i.e., payment of 10% of disputed taxes within a period of four weeks from the date of receipt of a copy of this order.

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9. Accordingly, this Writ Petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

18.11.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To:
State Tax Officer (ST),
Nandambakkam Assessment Circle,
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MOHAMMED SHAFFIQ, J.

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