BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2024

CORAM

**THE HON'BLE MR.JUSTICE C.SARAVANAN**

**W.P.(MD) Nos.11080 to 11084 & 11096 of 2024**
and
**W.M.P.(MD)Nos.9874 to 9878, 9893, 13379, 13380, 13408, 13411, 13414, 13425, 13486, 13487, 13488 & 13495 of 2024**

W.P.(MD) No.11080 of 2024

M/s.Hotel Ramnath,
Rep. by its Proprietor R.K.Ramanathan,
No.1335, South Rampart,
Old Bus Stand,
Thanjavur-613 001. ... Petitioner

Vs.

Assistant Commissioner (ST),
Thanjavur II Floor Commercial Taxes Building,
Sachithananda Moopanar Road,
Thanjavur. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings TIN:33433823692/2010-2011 dated 14.03.2024 for the Assessment Year 2010-2011 and consequential demand and penalty dated 14.03.2024 and quash the same and to direct the respondent to dispose of the petition as per Section 84 of the TNVAT

Act, 2006 filed by the petitioner dated 21.08.2020 seeking to rectify the Revision Order of the respondent dated 18.03.2020 for the Assessment Year 2010-2011, on merits and in accordance with law.

For Petitioner : Mr.K.K.Senthilvelan
Senior Counsel
for Mr.V.S.Kumara Guru

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

*****

**COMMON ORDER**

By this common order, all these six (6) Writ Petitions are being disposed of.

2. This is the third round of litigation before this Court. In these Writ Petitions, the petitioner has challenged the Revision Assessment Orders dated 14.03.2024 passed by the respondent for the Assessment Years 2010-2011 to 2015-2016 and the consequential demand notices dated 14.03.2024.

3. It appears that the petitioner claims that the petitioner had allowed the third parties to do Hotel and Restaurant business using the

petitioner's VAT Registration. A surprise inspection was conducted by the Enforcement Wing in the premises of the petitioner on 24.03.2016. Based on the same, Revision Notices dated 07.03.2018 were issued to the petitioner which have culminated in the Revision Assessment Orders dated 18.03.2020.

4. Thereafter, the petitioner filed Petitions under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 on 21.08.2020, to rectify the error in the above Assessment Orders dated 18.03.2020.

5. Since no order has been passed in the above-mentioned Petitions, the petitioner has filed W.P.(MD) Nos.15880, 15882, 15883, 15885, 15886 & 15888 of 2020 before this Court challenging the Revision Assessment Orders dated 18.03.2020 (first round of litigation).

6. This Court *vide* order dated 10.11.2020 has disposed of the said Writ Petitions with direction to the respondent to pass final orders on merits and in accordance with law in the Petitions filed by the petitioner under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, within a period of 12 weeks from the date of receipt of a copy of the said order,

after affording sufficient opportunity to the petitioner to raise all contentions.

7. Pursuant to the aforesaid order dated 10.11.2020 passed by this Court in W.P.(MD) Nos.15880, 15882, 15883, 15885, 15886 & 15888 of 2020, the personal hearing notices were issued to the petitioner on 20.04.2021 & 05.07.2021 which have culminated in the Revision Assessment Orders dated 20.01.2022.

8. Challenging the said Revision Assessment Orders dated 20.01.2022, the petitioner has filed W.P.(MD) Nos.9014, 9049, 9061, 9071, 9093 & 9109 of 2022 before this Court (second round of litigation). Taking note of the extraordinary situation arising out of the out break of Covid-19 Pandemic and hardships faced by the petitioner's family as a result thereof, the aforesaid Revision Assessment Orders dated 20.01.2022 were set aside and the case was remitted back to the respondent to pass speaking orders *vide* order dated 29.04.2022. The petitioner was also directed to appear before the respondent for a personal hearing on 06.06.2022.

9. Pursuant to the aforesaid order dated 29.04.2022 in W.P.(MD) Nos.9014, 9049, 9061, 9071, 9093 & 9109 of 2022, the personal hearing notices dated 31.05.2022, 25.11.2022 & 11.01.2024 were issued to the petitioner. The petitioner also appeared on 06.06.2022 & 18.01.2024 which have culminated in the impugned Revision Assessment Orders dated 14.03.2024, against which, the present Writ Petitions have been filed (third round of litigation).

10. At the time of admission of these Writ Petitions, by an order dated 04.06.2024, the petitioner was directed to deposit a sum of Rs. 50,00,000/-. Pursuant to the same, the petitioner has also deposited the same. A memo to that effect has also been filed by the petitioner enclosing the copy of the Demand Draft dated 11.07.2024 drawn in favour of the Assistant Commissioner (ST), Thanjavur-II. The aforesaid amount has also been received by the Assistant Commissioner (ST), Thanjavur-II, the respondent herein.

11. The learned Senior Counsel for the petitioner would submit that the respondent has passed the Revision Assessment Orders without issuing summons to the three persons namely, Tvl.R.Suresh Kumar,

Tvl.S.Saravanan and Tvl.Kaleeswari Agencies. It is submitted that if these persons were made available, the petitioner would have cross-examined them to establish that the petitioner was not indeed liable to pay the tax for these Assessment Years.

12. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Additional Government Pleader for the respondent.

13. The impugned Revision Assessment Orders indicate that the Department has issued summons to the three persons namely, Tvl.R.Suresh Kumar, Tvl.S.Saravanan and Tvl.Kaleeswari Agencies through RPAD on 04.07.2022, 08.08.2022 & 29.08.2022. Two of these persons have acknowledged having received the summons. Summons issued to one of them was returned with the remarks '*no such addressee at the address*'.

14. The petitioner itself requested a voluntary arrangement for the cross-examination of these persons but failed to take any steps to bring them before the respondent. In my view, the petitioner's witnesses cannot

be summoned by the Department. It is for the petitioner to bring them as witnesses. In any event, if the said witnesses are produced by the petitioner, it is for the Department to cross-examine them.

15. That apart, the petitioner has allowed its VAT Registration to be used by the so-called persons named above and therefore, it is for the petitioner to recover the tax liability, if any, from the said three named persons.

16. Be that as it may, since the petitioner had deposited a sum of Rs.50,00,000/- as per direction of this Court, I am inclined to grant partial relief by quashing the impugned Revision Assessment Orders and remitting the case back to the respondent to pass fresh orders on merits subject to the petitioner producing the so-called persons as the petitioner's witnesses for cross-examination by the Department.

17. Since the petitioner had already deposited a sum of Rs. 50,00,000/-, there shall be a further direction to the petitioner to deposit another sum of Rs.25,00,000/- in three installments (Rs.10,00,000/-, Rs. 10,00,000/- & Rs.5,00,000/- respectively), within a period of three months

from today.

18. Meanwhile, it is for the petitioner to bring the so-called persons as its witnesses. Incase, the petitioner is unable to establish its case in these proceedings, it is open for the petitioner to proceed against the so-called persons before the Civil Court for recovery of tax liability that may be fixed by the respondent.

19. There are 21 properties of the petitioner which have been attached pursuant to the impugned Revision Assessment Orders dated 14.03.2024. The respondent is directed to raise the order of attachment by restricting the order of attachment to cover the balance amount of tax due from the petitioner. The application shall be disposed of on merits within a period of 6 months thereafter.

20. In the result, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

15.07.2024

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

Copy To:

The Assistant Commissioner (ST),
Thanjavur II Floor Commercial Taxes Building,
Sachithananda Moopanar Road,
Thanjavur.

**C.SARAVANAN, J.**

JEN

Common order in

W.P.(MD) Nos.11080 to 11084 & 11096 of 2024

15.07.2024