BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)Nos.12414 to 12419 of 2024
and
W.M.P.(MD)Nos.10997, 10999, 11004, 10996, 11033 and 11039 of 2024

M/s. Hotel Sun World,
Represented by its Proprietor,
N.Kumar, S/o. Nainar,
No.6/81-B, Kovalam Road,
Kanyakumari. ... Petitioner in all the W.Ps.

Vs.

1.The State Tax Officer,
Nagercoil (Rural) Assessment Circle,
Nagercoil, Kanyakumari District.

2.The District Manager,
TASMAC Limited,
Chenbagaramanpudur,
Nagercoil, Kanyakumari District. ... Respondents in all the W.Ps.

Prayer in W.P.(MD)No.12414 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order issued by the first respondent vide his Proceedings in TIN : 33276443975/2017-18, dated 03.05.2024 and quash the same as illegal.

Prayer in W.P.(MD)No.12415 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order issued by the first respondent vide his Proceedings in TIN : 33276443975/2018-19, dated 03.05.2024 and quash the same as illegal.

Prayer in W.P.(MD)No.12416 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order issued by the first respondent vide his Proceedings in TIN : 33276443975/2019-20, dated 03.05.2024 and quash the same as illegal.

Prayer in W.P.(MD)No.12417 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order issued by the first respondent vide his Proceedings in TIN : 33276443975/2020-21, dated 03.05.2024 and quash the same as illegal.

Prayer in W.P.(MD)No.12418 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order issued by the first respondent vide his Proceedings in TIN : 33276443975/2021-22, dated 03.05.2024 and quash the same as illegal.

Prayer in W.P.(MD)No.12419 of 2024:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order issued by the first respondent vide his Proceedings in TIN : 33276443975/2022-23, dated 03.05.2024 and quash the same as illegal.

For Petitioner in all the W.Ps.	: Dr.A.Thiyagarajan Senior Counsel for Mr.C.Mayilvahana Rajendran
For R1 in all the W.Ps.	: Mr.J.K.Jayaselan Government Advocate
For R2 in all the W.Ps.	: Mr.S.Sivanesan Standing Counsel

COMMON ORDER

By this common order, all the six Writ Petitions have been disposed of.

2. In these Writ Petitions, the petitioner has challenged the respective assessment orders passed by the first respondent for the Assessment Years 2017-2018 to 2022-2023.

3. It is the case of the petitioner that he is running both a Hotel and a Bar and having a separate VAT and GST Registrations. As far the VAT Registration for the sales at the Bar is concerned, there was an inspection held between 08.12.2022 and 10.12.2022, which culminated in show cause notices to the petitioner for the respective Assessment Years and personal hearing notices dated 04.01.2024 and 16.02.2024.

4. It is the specific case of the petitioner that in response to the earlier notice for personal hearing, dated 04.01.2024, the petitioner had sent a request on 12.01.2024 asking the first respondent to furnish the report received from the Manager, TASMAC, for purchase of liquor. However, it has not been furnished. It is submitted that subsequently also, in response to the personal hearing fixed on 23.02.2024, vide notice dated 16.02.2024, the petitioner had requested for the documents. However, without furnishing the documents, the impugned orders have been passed.

5. It is submitted that a sum of Rs.2,62,284/- was also collected from the petitioner during the course of inspection between 08.12.2022 and 10.12.2022. It is submitted that the impugned orders suffer from violation of principles of natural justices and therefore, the same are liable to be interfered with by directing the first respondent to furnish the records, based on which, the impugned orders were passed.

6. On the other hand, it is the contention of the learned Government Advocate for the first respondent that even during the inspection, the petitioner did not co-operate with the Inspection Team and therefore, notices were issued, which were followed by two personal hearing notices, dated 04.01.2024 and 16.02.2024, fixing the date of hearing as 12.01.2024 and 23.02.2024, respectively. It is submitted that the petitioner did not co-operate with the Department and therefore, the impugned orders have been passed, confirming the demand pursuant to the notices issued to the petitioner.

7. I have heard the learned Senior Counsel for the petitioner, the learned Government Advocate for the first respondent and the learned Standing Counsel for the second respondent.

8. Although, the petitioner has been evading tax as it evident from the fact that no proper returns were filed by him for the respective Assessment Years in respect of the Bar run by him, the fact remains that the impugned orders have been passed without furnishing the materials, based on which, the demand has been confirmed by the impugned orders. Therefore, this Court is inclined to partly come to the rescue of the petitioner, by setting aside the impugned orders and remitting the case back to the first respondent to pass fresh orders on merits and in accordance with law, subject to the petitioner depositing a sum of Rs.30,00,000/- to the credit of the Department within a period of 30 days from the date of receipt of a copy of this order, as in the absence of proper records, the first respondent is entitled to confirm the demand by applying the best judgment method.

9. Therefore, to balance the interest of the parties, the petitioner shall deposit Rs.30,00,000/- as mentioned above within the above said period. The impugned orders, which stand quashed shall be treated as addendum to the show cause notices that preceded the impugned orders. The first respondent shall furnish the documents, which were relied upon for confirming the demand, to the petitioner within a period of 30 days. The petitioner shall file his reply within a period of 60 days thereafter.

10. The first respondent shall endeavour to pass fresh orders on merits and in accordance with law within a period of six months thereafter. Needless to state that the petitioner shall be heard. There shall be a direction to the petitioner to co-operate with the first respondent.

11. With the above directions, these Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.06.2024

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

1.The State Tax Officer,
Nagercoil (Rural) Assessment Circle,
Nagercoil, Kanyakumari District.

2.The District Manager,
TASMAC Limited,
Chenbagaramanpudur,
Nagercoil, Kanyakumari District.

C.SARAVANAN, J.

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Common order in
W.P.(MD) Nos.12414 to 12419 of 2024

19.06.2024