

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14099 of 2014

and

M.P.No.1 of 2014

T.M.Hotels Private Limited,
Rep. By its Managing Director
Mr.T.Murugesan,
No.48A, Mettur Street,
Kancheepuram – 631 501.

.. Petitioner

-vs-

The Additional Commissioner of Central Excise,
Office of the Commissioner of Central Excise,
Chennai III Commissionerate,
26/1, Mahatma Gandhi Road,
Chennai – 600 034.

.. Respondent

Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records of the respondent in C.No.V/15/BSS/2013-ADC-STA-III in Order in Original No.11/2014 (ST) dated 10.04.2014 passed by the respondent and to quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : M/s.R.Hemalatha
Senior Standing Counsel

ORDER

The Order in Original passed by the respondent in proceedings dated 10.04.2014 is under challenge in the present writ petition.

2.The issue raised in nutshell is that the impugned order was passed without providing personal hearing to the learned counsel who represented the case of the petitioner.

3.The learned counsel for the petitioner made a submission that he entered appearance in the proceedings by filing vakalat nama on 04.03.2014. After filing of vakalat nama, the summons ought to have been sent to the counsel who was representing the case of the petitioner. Contrarily, the respondent sent summons to the petitioner directly and the petitioner was under the bonafide impression that the learned counsel will take care of the matter by appearing and defending their case. However, the learned counsel for the petitioner was not aware of the summons as well as

the date of personal hearing and not appeared which resulted in passing of the final order without providing opportunity to the petitioner.

4.The learned Senior Standing Counsel appearing on behalf of the respondent refer to Section 37C of the Central Excise Act, 1944 which stipulates Service of decisions, orders, summons, etc. Sub-clause (1)(a) enumerates that “by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due, or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 to the person for whom it is intended or his authorised agent, if any ”. Relying on the above provisions of the Central Excise Act, the learned Senior Standing Counsel reiterated that summons are to be issued either to the person intended or his authorized agent. In the present case, the summon admittedly was issued to the petitioner and it is his duty to inform the date of personal hearing to his counsel who is appearing in the matter and therefore, the respondent cannot be faulted for the lapses committed by the petitioner.

5.The learned Senior Standing Counsel is of the opinion that the matter was adjourned thrice and the impugned order itself would reveal that personal hearing was provided on three occasions on 09.02.2014, 04.03.2014 and 25.03.2014 and the assessee did not turn up and therefore, the competent authority passed the assessment order. Thus, there is no infirmity as such in respect of the order passed and if at all, the petitioner is aggrieved, he has to prefer an appeal.

6.The learned counsel for the petitioner, in reply, submitted that the issues are covered under the judgment of this Court and if an opportunity is provided, the learned counsel for the petitioner would have represented the case and submitted all the judgments as well as the grounds raised on behalf of the petitioner. In view of the fact that no opportunity was provided, the issues are decided against the petitioner and thus, an opportunity is to be provided by remanding the matter back.

7.This Court is of the considered opinion that in all circumstances,

the parties aggrieved are bound to prefer an appeal before the appellate authority. However, in certain circumstances, the Courts are bound to consider whether the denial of opportunity caused certain prejudice to the interest of the person aggrieved. In the present case, admittedly, the summons were issued to the petitioner. However, the learned counsel for the petitioner entered appearance in the proceedings before the respondent on 04.03.2014 itself. Thus, there is a possibility that the petitioner would not have informed about the summons to their counsel regarding the personal hearing. Under those circumstances, the counsel was not aware of the date of personal hearing and the same resulted in passing of the final order without hearing the learned counsel who entered appearance on behalf of the writ petitioner.

8. In paragraphs 5 and 6 of the affidavit filed in support of the writ petition, the petitioner has stated as follows:

“5. In the meanwhile, the petitioner decided to engage the services of a legal counsel to appear before the respondent and make submissions on behalf of the

petitioner. Accordingly, the petitioner engaged the services of Mr. Joseph Prabakar, Advocate, No.51A, Dr.Ranga Road, Mylapore, Chennai – 600 004. In order to enable Mr. Joseph Prabakar, Advocate to appear before the respondent for the personal hearing, vakalatnama in favour of Mr. Joseph Prabakar, Advocate was given. This Vakalatnama was filed by the petitioner and the same was received and duly acknowledged by the respondent. The petitioner received notice of personal hearing on March 4, 2014 and the petitioner informed the legal counsel about the same. The legal counsel of the petitioner then approached the respondent office and submitted a letter seeking adjournment.

6. Thereafter, the respondent sent a notice of personal hearing to the petitioner fixing the date of personal hearing as March 25, 2014. The petitioner was under the impression that the legal counsel would have received the notice and would therefore attend the

personal hearing on March 25, 2014 and make submissions on their behalf. However the notice calling for personal hearing on March 25, 2014 was not sent to the legal counsel for the petitioner. Therefore, the legal counsel could not attend the personal hearing on March 25, 2014.”

9. In view of the said submission, this Court is of an opinion that the petitioner has to be provided with an opportunity of personal hearing for the purpose of submitting the judgments, documents and the grounds raised to defend their case. Accordingly, the impugned order passed by the respondent in proceedings No. C.No.V/15/BSS/2013-ADC-STA-III in Order in Original No.11/2014 (ST) dated 10.04.2014 is quashed and the matter is remanded back to the respondent for fresh consideration after providing an opportunity to the learned counsel who entered appearance on behalf of the petitioner and thereafter pass final orders on merits and in accordance with law as expeditiously as possible. Such exercise is directed to be done within a period of four months from the date of receipt of a copy

of this Order. The learned counsel for the petitioner is directed to co-operate for the early disposal of the proceedings by the respondent without seeking for unnecessary adjournments.

10. With these observations, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

06.07.2021

Index : Yes/No
Speaking/Non-Speaking Order
cse

To

The Additional Commissioner of Central Excise,
Office of the Commissioner of Central Excise,
Chennai III Commissionerate,
26/1, Mahatma Gandhi Road,
Chennai – 600 034.

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S.M.SUBRAMANIAM, J.

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