

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.35559 to 35562 of 2015
and
M.P.Nos.1 of 2015

T.Raja
Proprietor Tvl. Hotel Anandha & Bar
Old No.710 New No.71/1
Junction Road
Vriddhachalam
Cuddalore District-606001. [Petitioner in W.P.No.35559/15]

M.Ravichandran
Proprietor Hotel P.P.S.
No.5/3A, Parthasarathy Street
Vriddhachalam
Cuddalore District-606001. [Petitioner in W.P.No.35560/15 &
35561/15]

Tvl. Cuddalore and Villupuram
District Recreation Club
Rep.by its President
M.Ravichandran
No.0/9 Bypass Road
Periyar Nagar Ponneri Village
Vriddhachalam
Cuddalore Dt. [Petitioner in W.P.No.35562/15]

Vs

- 1 The Assistant Commissioner of
Commercial Taxes
Office of the Assistant Commissioner
Vriddhachalam Cuddalore District.

2 The Branch Manager
Tamil Nadu Mercantile Bank Vriddhachalam
Cuddalore District.

[Respondents]

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the 1st Respondent herein viz. the proceedings under Ref.No. RC.A3/1493/2015, Ref.No. RC.A3/1491/2015, Ref.No. RC.A3/1492/2015 and Ref.No. RC.A3/1492/2015 dated 23.10.2015 and quash the same

For petitioners : Mr.AR.L.Sundaresan, Senior Counsel
for M/s A.L.Ganthimathi

For respondents : Mr.S.Manoharan Sundaram,
AGP (T) (R1)

C O M M O N O R D E R

Heard the learned Senior counsel for the petitioners and the learned Additional Government Pleader (Taxes) for the respondents and with their consent, the main writ petitions are taken up for hearing.

2. These writ petitions have been filed challenging the impugned orders dated 23.10.2015.

3. The petitioners are licencees under the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, having been granted licence in Form FL 3 which permits the petitioners to sell liquor in the Bar attached to its Hotel. In the State of Tamil Nadu, the only source for purchase of Indian Made Foreign Liquor (IMFL) is through TASMAL Limited. Initially, tax was levied for Alcoholic liquor of all kinds for home consumption other than requirements purchased outside the State and the system of Tax under II Schedule read with Section 3(5) of the TNVAT Act. As such, when TASMAL Limited purchases liquor from the manufacturers within the State, tax at the point of first sale in the State at the rate of 58% was levied and when TASMAL in turn sells the said liquor to the licensees like the petitioners, tax was levied at 38% by TASMAL Ltd., being the 2nd point of sale within the State. With effect from 01.04.2012, the II Schedule was amended vide G.O.Ms.No.47, Commercial and Registration Taxes Department dated 27.03.2012, the Government of Tamilnadu had amended Entry No.2 of II Schedule of TNVAT Act,

2006, and an explanation was also included. By the said amendment, a third point of tax was imposed at the third point of sale in the State at 14.5%. The explanation provided is that for the purpose of levy of tax at the second point of time in the State, the turnover of the goods liable to tax shall be arrived at by deducting the turnover of such goods on which the tax has been levied at the first point of sale, while for the purpose of levy of tax at the third point of sale, it shall be on the total turnover of that item. As such, at the third point of sale, tax at 14.5% was sought to be levied on the total turnover. Against the said imposition of demand of tax on the total turnover, writ petitions came to be filed before this Court seeking declaration declaring that amended Entry No.2 of the II Schedule and the Explanation to the said Entry of TNVAT Act, 2006 as amended and published in G.O.Ms.No.47 of Commercial Taxes and Registration (B1) dated 27.03.2012 as the levy of Sales Tax at the third stage of sales and also giving preferential treatment to another dealer, TASMAC Ltd., of the same trade was arbitrary, illegal, unconstitutional and unenforceable in law. The petitioners have also filed writ petitions wherein an interim protection was granted to the extent of future levy, pending disposal of writ petitions. However, by order dated 31.03.2015, the said batch of writ petitions came to be dismissed by the Division Bench of this Court. Aggrieved over the same, the petitioners preferred SLP before the Hon'ble Supreme Court and the matters are pending. In the meanwhile, the 1st respondents herein issued demand notices dated 21.09.2015 to the petitioners together with interest at the rate of 2% p.a. within 3 days from the date of receipt of notice, failing which, it was indicated that recovery proceedings would be initiated. Subsequent to the said notices, the 1st respondent issued notices dated 23.10.2015 to the 2nd respondent herein and 9 other banks with a copy marked to the petitioners stating they are in arrears of the respective amounts quoted therein and notices in Form U were issued under Section 45 of the Act, calling upon the 2nd respondent and other banks to whom the said notices were addressed to deposit with the 1st respondent the monies of the petitioners, if any, which was held by them. Challenging the same, these writ petitions are filed.

4. The learned Senior counsel for the petitioners would submit that the notices issued under Section 45 of the Act issued by the 1st respondent demanding the entire arrears of tax by bank attachment is arbitrary, illegal, unjust and

unsustainable in law. Further, according to the learned Senior Counsel, the Division Bench of this Court has not attained finality and the matter is pending before the Hon'ble Supreme Court and hence demanding the entire amount and seeking to recover through bank attachment is arbitrary. He would further add that without prejudice to the contentions on the merits of the liability, the petitioners should be granted reasonable time to pay the said tax amount and the 1st respondent ought not to have resorted to coercive steps by attaching the bank account of the petitioners without giving such reasonable time.

5. At this juncture, the learned Senior counsel for the petitioners would submit that the petitioners may be permitted to operate their respective bank accounts and time limit may be fixed for paying the entire arrears.

6. The learned Additional Government Pleader (Taxes) has made his submissions supporting the impugned orders.

7. Considering the facts and circumstances of the case and on considering the submissions made by the learned counsel on either side, this Court is of the view that the petitioners may be permitted to operate the respective bank accounts and their entire arrears as demanded by the impugned orders may be directed to be paid in eight equated monthly instalments commencing from 16.11.2015.

8. In view of the above, without prejudice to the petitioners to challenge any of the orders, the following direction is issued to them.

"The entire arrears as demanded in the impugned orders are directed to be paid by the petitioners in eight equated monthly instalments commencing from 16.11.2015 and on payment of the 1st instalment on 16.11.2015, the attachment of respective petitioners bank account made in the impugned orders dated 23.10.2015 shall be withdrawn forthwith and the petitioners be permitted to operate their respective bank accounts. Further, the petitioners shall continue to pay the balance amount on the 16th of every successive month. Any violation in this regard will entitle the Assessing Authority, to proceed for recovery of the entire arrears.".

The writ petitions are disposed of with the above directions.
No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Assistant Commissioner of
Commercial Taxes
Office of the Assistant Commissioner
Vriddhachalam Cuddalore District.
- 2 The Branch Manager
Tamil Nadu Mercantile Bank Vriddhachalam
Cuddalore District.

- 1 CC to the Spl.Government Pleader (Taxes), SR.No. 60909
- 1 CC to M/s. A.L. Ganthimathi, Advocate SR.No. 60777
- 1 CC to M/s. A.L. Ganthimathi, Advocate SR.No. 60729
- 1 CC to M/s. A.L. Ganthimathi, Advocate SR.No. 60778
- 1 CC to M/s. A.L. Ganthimathi, Advocate SR.No. 60780

W.P.Nos.35559 to 35562 of 2015

SKV (CO)
PSI (06.11.2015)

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