IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Writ Petition No.6129 of 2015
& M.P.Nos.1 and 2 of 2015

M/s.Greenway Recreation Club
represented by its Secretary,
Mr.P.Ravichandran,
No.10/471, E3, NSK Nagar,
Palladam Road, Thirupur District,
Tamil Nadu.
.. Petitioner

versus

1. The State of Tamil Nadu
rep. by the Secretary to Government,
Department of Commercial Taxes,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam, Chepauk, Chennai - 600 005.

3. The Commercial Tax Officer,
Palladam, Tiruppur District.
.. Respondents

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Declaration declaring the notification in G.O.Ms.No.47, Commercial Taxes and Registration (B1) Department dated 27.03.2012 on the file of the 1st respondent which has amended Entry 1 and 2 of Second Schedule of the Act and explanation 1 of the Second Schedule with effect from 01.04.2012 are void as being inconsistent with Articles 14 and 19(1)(g), besides being violative of Article 301 of the Constitution of India and therefore, inoperative and unenforceable, and recoveries pursuant thereto are without authority of law and infringe Article 265 of the Constitution of India.

For Petitioner : Mr.Raja Senthoorpandian

For Respondents : Mr.A.R.Jayaprathap, AGP (T)

O R D E R

(Made by R.SUDHAKAR,J.)

This Writ Petition is filed for issuance of Writ of Declaration declaring the notification in G.O.Ms.No.47, Commercial Taxes and Registration (B1) Department dated 27.03.2012 on the file of the first respondent which has amended Entry 1 and 2 of Second Schedule of the Act and Explanation 1 of the Second Schedule with effect from 01.04.2012 are void as being inconsistent with Articles 14 and 19(1)(g), besides being violative of Article 301 of the Constitution of India and therefore, inoperative and unenforceable, and recoveries pursuant thereto are without authority of law and infringe Article 265 of the Constitution of India.

2. The issue involved in this Writ Petition has been decided by this Court in a batch of cases in W.P.Nos.22072 of 2013 dated 31.3.2015, wherein this Court, while upholding the notification, thereby dismissing the Writ Petitions filed by the petitioners, held as follows:

"24. Admittedly, the TASMAC is the sole authority for selling Indian made liquor to the petitioners. It is not a club or hotel having FL 2 and FL 3 licence. On the contrary, the petitioners buy the liquor from the TASMAC. Insofar as sale of foreign liquor is concerned, it stands on a different footing in which 58% of tax is levied on sale. The illustration given earlier would show that the petitioners are the beneficiaries of the earlier sale. They cannot expect the said benefit to be extended to the third point as well. TASMAC has involved in only second sale as against the petitioners third sale. The petitioners made considerable profit by the escalation of sale price. The classification of the customers of TASMAC and the petitioners are different. The petitioners are making considerable value additions to their sales in favour of their customers. The authority of the TASMAG to deal with the liquor within the State is not in dispute. Therefore, having purchased liquor from the TASMAC, the petitioners cannot seek party. Admittedly, TASMAC is an instrumentality of the State. The profit earned by the TASMAC goes to the coffers of the State meant to be used for welfare measures. The fact that the petitioners are selling at a higher price is not in dispute.

25. The goods that are specified in the Second Schedule are not vatable. A combined reading of Section 3(5) of the

Act and the Second Schedule would make the said position very clear. Section 3(5) of the Act has not been put into challenge. The impugned Explanation 1 to the amended Entry 2 of the Second Schedule speaks only about the turnover as such. The classification made is perfectly in order. The petitioners, who are clubs and hotels, cannot be compared with the retail outlets of TASMAC. The customers of the TASMAC and the petitioners form two distinct and different categories based upon their respective socio-economic status. The petitioners are not prevented from doing their business. Therefore, there is no violation of Article 19(1)(g) involved. When the petitioners are selling liquor at a higher price than the TASMAC, they cannot seek parity. Having availed a set-off on the second point of sale, the petitioners cannot compel the respondents to extend the benefit at the third point of sale. With no grievance against the point of levy, the petitioners cannot challenge the manner in which it is imposed. The inclusion of certain goods including liquor in Second Schedule has not been put into challenge. Therefore, we are of the view that the petitioners cannot seek protection under Article 19(1)(g) of the Constitution of India.

26. Certain incidental issues have also been raised by the petitioners. We do not find any tax on tax being imposed in view of Section 3(5) read with the amended impugned provision. The petitioners do not have a case, particularly, when dealing with third sale with the value addition. Similarly, we do not find any repugnance between the provisions, as they operate in their own respective fields.

27. In the result, all the writ petitions stand dismissed. However, there is no order as to costs. Consequently, all the connected miscellaneous petitions stand dismissed. "

3. The above-said decision of the Division Bench of this Court squarely applies to the facts of the present case. Hence, following the same, this Writ Petition stands dismissed. No costs. Consequently, M.P.Nos.1 and 2 of 2014 are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
   The State of Tamil Nadu
   Department of Commercial Taxes,
   Fort St. George, Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
   Commercial Taxes Department,
   Ezhilagam, Chepauk, Chennai - 600 005.

3. The Commercial Tax Officer,
   Palladam, Tiruppur District.

1 cc to Mr. Raja Senthoorpandian,Advocate, SR.No.24889

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ssi(co)
pmk.20.5.2015