IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2015

CORAM
The Hon'ble Mr.Justice R.Mahadevan

Writ Petition No.12234 of 2004

M/s.Madras Gymkhana Club,
The Island, Anna Salai,
Chennai - 600 002. ... Petitioner

Vs.

The Commercial Tax Officer,
Chepauk Assessment Circle, Chennai. ... Respondent

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the respondent in RC.No.1234/2002/A4, on his files and to quash the notice dated Nil and served on the petitioner on 08.04.2004.

For Petitioner : Mr.B.Raveendran for
M/s.Chandran Karuppiah and Ramani

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Tax)

O R D E R

The challenge in this Writ Petition is to the notice issued by the respondent-Commercial Tax Officer, whereby, the petitioner-Club was asked to register themselves under Section 9 A of Tamil Nadu Tax on Luxuries Act, 1981.

2. At the very outset, the learned counsel appearing for the petitioner has submitted that the issue involved in this Writ Petition is covered by the judgement rendered by this Court, in the case of ( Coonoor Club and others Vs. Commercial Tax Officer, Coonoor Assistant Circle, Coonoor, and others) reported in [(2009) 22 VST 59 Mad]. The learned counsel also produced the said judgement for reference of this Court.

3. Learned Additional Government Pleader for the respondent has submitted that such a straight jacket statement cannot be made, since the petitioner, by the impugned notice, was only asked to register their Club under the provisions of Tamil Nadu Tax on Luxuries Act, 1981, for which, the petitioner is expected to file necessary reply, and without doing so, the petitioner has straightaway approached this Court, challenging the said notice.

4. I am unable to accept the submission of the learned Additional Government Pleader for the respondent, for the reason that, in respect of the earlier notice, dated 17.06.2002, sent by the respondent, wherein, the petitioner was requested to register their Club under the provisions of the Act, the petitioner has already filed a detailed reply, dated 09.07.2002. Despite the same, the respondent has issued the impugned notice, reiterating the same demand. Aggrieved by the same, the petitioner is before this Court, hence, the contention of the learned Additional Government Pleader that the petitioner has to file reply to the impugned notice does not hold the field.

5. Thus, as rightly pointed out by the learned counsel appearing for the petitioner, the issue involved in this Writ Petition has been dealt with by the learned Single Judge of this Court in Coonoor Club case, mentioned supra, wherein, it is held that "the action instituted by the respondents in attempting to cover the clubs, which are the petitioners before this Court within the purview of the Luxuries Act is without jurisdiction and any action taken pursuant to such coverage will become void ab initio". Therefore, in the light of the said judgement, the present Writ Petition is liable to be allowed, as in the present case also, the petitioner is a Club, which does not come within the purview of the Section 9 A of Tamil Nadu Tax on Luxuries Act, 1981.

6. In the result, the Writ Petition is allowed, the impugned notice is set aside. No costs.

Sd/-
Asst.Registrar (CS VII )

/true copy/

Sub Asst. Registrar

sd

To

The Commercial Tax Officer,
Chepauk Assessment Circle,
Chennai.

1 cc to Mr. Chandran Karuppiah, Advocate, Sr. 67973
1cc to Spl.Government Pleader, Sr. 67901

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SCD (COO)
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