IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2016

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THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.11068 of 2016 and
W.M.P.No.9630 of 2016

Tvl.Kongu Lodge & Hotels,
rep by its Proprietor,
Door No.11/186-A1, Calicut Road,
Chembala, Gudalur,
The Nilgiris - 643 212. ... Petitioner

Vs.

1.The Government of Tamil Nadu
rep its Secretary,
Commercial Tax Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
Commercial Tax Department,
Chepauk, Chennai.

3.The Commercial Tax Officer,
Gudalur, The Nilgiris - 643 212. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records pertaining to the impugned distrain order passed by the 3rd respondent in TIN No:33192581739/2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 dated 13.08.2015 and to quash the same.

For Petitioner : Mr.Lakshmi Sriram
For Respondents: Mr.Manoharan Sundaram,
Additional Government Pleader (Tax)

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorari to call for the records pertaining to the impugned distrain order passed by the 3rd respondent in TIN No:33192581739 for the assessment years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 dated 13.08.2015 and to quash the same.

2.According to the petitioner, it is a registered Dealer on the file of the respondent and is running a hotel establishment having an F-3 license issued by the Government of Tamil Nadu under the Tamil Nadu Liquor and License Permit Rules, 1981 to serve liquor in its premises. Further, according to the petitioner, until 01.04.2012, the Act provided that for Indian Made Foreign Liquor, which was manufactured within the State of Tamil Nadu, tax was charged at 58% on the 1st point of sale from the distillers to Tamil Nadu State Marketing Corporation Limited (TASMAC) and at the 2nd point of sale at 38% and as far the Indian Made Foreign Liquor that was manufactured outside the State, at the 1st point of sale by TASMAC to its customers, including the petitioner, tax was levied at 58%. Further according to the petitioner, under Explanation-I to the Second Schedule for items that were manufactured within the State, a deduction at the 2nd point of sale was provided to TASMAC of the tax suffered turnover of the 1st point of sale to arrive at the turnover liable to tax at the 2nd point of sale. The petitioner also submitted that in the light of the stay of G.O.Ms.No.47, Commercial Taxes and Registration (B-1) Department, dated 27.03.2012, granted by this Court, the petitioner had not collected the VAT for sales of liquor from its customers. Aggrieved over the amendment dated 01.04.2012, a Writ Petition was filed in W.P.No.22072 of 2012 before this Court seeking for a declaration that G.O.Ms.No.47 dated 27.03.2012 was arbitrary, illegal and in violation of Articles 14 & 19 (1) (g) of the Constitution of India. Thereafter, several Writ Petitions were filed by F-2 and other F-3 licensees, including the petitioner, challenging the said notification. The Writ Petitions were dismissed by this Court on 31.03.2015, against which the petitioner and others have filed Special Leave Petition before the Hon'ble Supreme Court of India and the matter is pending and the learned counsel on either side submitted that the Apex Court has not granted any interim order in the pending Special Leave Petition.

3.When the matter is taken up for hearing today, the learned counsel appearing for the petitioner submitted that it would be suffice to grant liberty to the petitioner for giving a representation before the 1st respondent for waiver of the tax.

4.Mr.Manoharan Sundaram, learned Additional Government Pleader (Tax) taking notice for the respondents submitted that in the event of the petitioner giving a representation before the 1st respondent, the 1st respondent may be directed to consider the same and pass orders in accordance with law.

5.Having regard to the submissions made by the learned counsel on either side, taking into consideration the limited prayer now sought for by the learned counsel for the petitioner, I give liberty to the petitioner to give a representation for waiver of the tax before the 1st respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the representation, the 1st respondent is directed to consider and pass orders, on merits and in accordance with law, within a period of four weeks, thereafter.

6.It is made clear that the respondents shall not proceed to recover the tax arrears till the disposal of the representation by the 1st respondent.

7.With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

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To
1.The Secretary, Government of Tamil Nadu,
Commercial Tax Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
Commercial Tax Department,
Chepauk, Chennai.

3.The Commercial Tax Officer,
Gudalur, The Nilgiris - 643 212.

+ 1 cc to M/s. Lakshmi Sriram, Advocate Sr.18962

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SR(CO)
Eu 06.04.16