

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.12606 of 2016
and WMP No.10882 of 2016

Tvl.Blue Star Bar,
rep by its Manager,
Taluk Office Road,
Kothagiri - 643 217
The Nilgiris

.. Petitioner

v.

1. The Government of Tamil Nadu,
rep by 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,
Kothagiri Assessment Circle,
Kothagiri, The Nilgiris

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the impugned notice issued by the third respondent in TIN No.33862561340/2014-15, dated 21.03.2016 and quash the same.

For Petitioner : Mr.Lakshmi Sriram
For Respondent : Mr.S. Kanmani Annamalai
AGP

ORDER

The petitioner has filed the above writ petition to issue a writ of Certiorari to call for the records pertaining to the impugned notice, issued by the third respondent in TIN No.33862561340/2014-15, dated 21.03.2016 and quash the same.

2. According to the petitioner, it is a registered dealer on the file of the respondent and the petitioner is a hotel establishment having an F-3 licence, issued by the Government of Tamil Nadu, under the Tamil Nadu Liquor and License Permit Rules, 1981 to serve liquor in its premises. The Government had issued an Order in G.O (MS)No.47, Commercial Taxes and Registration (B-1) Department dated 27.03.2012 amended the Second Schedule, to introduce a levy of tax at 14.5% on the petitioner at the third point of sale to its customers for IMFL, manufactured within the State and at the second point of sale of IMFL, manufactured outside the State.

3. Aggrieved over the said amendment, a writ petition was filed by the Association in WP No.22072 of 2012 before this Court. Thereafter, several writ petitions were filed by F2 (membership clubs) and other F-3 licensees, including the petitioner herein, challenging the aforesaid Notification. All the writ petitions were dismissed by this Court on 31.03.2015. Aggrieved over the same, the petitioner and others have filed an appeal before the Hon'ble Supreme Court of India and the matter is pending.

4. The learned counsel appearing on either side submitted that no interim order was granted by the Apex Court in the appeal, filed by the petitioner and others. While so, on 21.03.2016, the third respondent had issued the impugned notice. According to the petitioner, it has not collected taxes from its customers and has to pay the taxes out of its own pockets.

5. The learned counsel appearing for the petitioner submitted that the petitioner had paid a sum of Rs.3,00,000/- (Rupees three lakhs only) to the third respondent. Further, the learned counsel submitted that a liberty may be given to the petitioner to approach the first respondent for waiver of the tax and in such an event, the first respondent may be directed to consider the same.

6. Mr.S. Kanmani Annamalai, learned Additional Government Pleader, taking notice for the respondent, submitted that in the event of the petitioner, giving a representation to the first respondent, for waiver of the tax, the same may be directed to consider by the respondent, on merits and in accordance with law, within a stipulated time

7. Having regard to the submissions made by the learned counsel on either side and taking into consideration that the petitioner wants to give a representation to the first respondent for waiver, liberty is given to the petitioner to give an application for waiver before the first respondent within a period of two weeks from the date of receipt of a copy

of this order and on receipt of the application for waiver, the first respondent is directed to consider the same on merits and in accordance with law within a period of four weeks thereafter. The impugned order dated 21.03.2016 shall be kept in abeyance till the passing of the order by the first respondent in the waiving application, to be presented by the petitioner. With this observation, the writ petition is disposed of. No costs. Consequently, connected Mp is closed,.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Secretary to the 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,
Kothagiri Assessment Circle,
Kothagiri, The Nilgiris

+1cc to M/s. Lakshmi Sriram, Advocate, S.R.No.21141

+1cc to the Government Pleader, S.R.No.21112

AK(CO)
EU(20/04/2016)

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