IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.14967 of 2016 &
W.M.P.No.13066 of 2016

Tvl.Boopathy Lodge
Rep by its Partner S.Uthayakumar
S/o.M.Selvara
No.17, West Vadampokki street
Perumal Kovil aest Mada Street
Madurai ... Petitioner

v.

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,
Nethaji Road Circle
Madurai. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the 1st respondent to consider the waiver petition filed by the petitioner dated 11.04.2016.

For Petitioner : Ms.Lakshmi Sriram
For Respondents : Mr.Cibi Vishnu
Additional Government Pleader (Taxes)

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O R D E R

The petitioner has filed the above Writ Petition to issue a writ of mandamus to direct the first respondent to consider the waiver petition dated 11.04.2016 filed by them before the first respondent.

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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. Ms.Lakshmi Sriram, learned counsel appearing for the petitioner submitted that the petitioner has given a waiver petition on 11.04.2016 before the first respondent, however, the first respondent has not considered the same yet.

4. Mr.Cibi Vishnu, learned Additional Government Pleader (Taxes) takes notice for the respondents and submitted that the first respondent may be directed to consider the waiver petition filed by the petitioner on 11.04.2016 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 sought for by the petitioner, I direct the first respondent to consider the waiver petition dated 11.04.2015 and

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pass orders, on merits and in accordance with law, within a period of four weeks, from the date of receipt of a copy of this order and it is made clear that the respondents shall not proceed to recover the tax arrears till the disposal of the waiver petition by the first respondent.

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

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Rj

To

1.The 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,
Nethaji Road Circle
Madurai.

+1 cc to Special Government Pleader sr.25238
+1 cc to M/s.Lakshmi Sriram Advocate sr.24910

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