IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.16669 of 2016
and WMP No.14405 of 2016

M/s Tvl.Sri Krishnan Residency,
rep by its Managing Partner,
No.120, Raja Mill Road,
Pollachi-642 001
Coimbatore District ... Petitioner

Vs.

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

2. The Commercial Tax Officer,
Pollachi (West) Circle,
Pollachi .... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified Mandamus to call for the records of the second respondent in proceedings in TIN No.33472242958/2014-15 and 15-16 and quash the proceedings dated 22.01.2016 issued therein and further direct the first respondent to consider the waiver petition dated 01.02.2016 filed by the petitioner and grant waiver to the petitioner herein for the assessment year 2014-15.

For Petitioner : Mr.T. Balaji

For Respondents : Mr.S.Manoharan Sundaram,
A.G.P (Tax)

## O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified Mandamus to call for the records of the second respondent in proceedings in TIN No.33472242958/2014-15 and 15-16 dated 22.01.2016 and to quash the same and further direct the first respondent to consider the waiver petition dated 01.02.2016 filed by the petitioner and grant waiver to the petitioner herein for the assessment year 2014-15..

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.Mr.T. Balaji, learned counsel appearing for the petitioner submitted that it would be suffice to direct the 1st respondent to consider the petitioner's representation dated 01.02.2016.

4.Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Tax) taking notice for the respondents submitted that the 1st respondent may be directed to consider the petitioner's representation dated 01.02.2016 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 now sought for by the learned counsel for the petitioner, I direct the first respondent to consider the petitioner's representation dated 01.02.2016 and 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. Further, till the disposal of the petitioner's representation, the respondents are directed to maintain status-quo. With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

sr

To

1.The Secretary,
Government of Tamil Nadu
CT & RE Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2. The Commercial Tax Officer,
Pollachi (West) Circle,
Pollachi

1 cc to Spl.Government Pleader, Sr. 28058
+ 2 ccs to Mr.A. Thiyagarajan, Advocate Sr.27473 (06.05.2016)



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PVS (CO)
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