

In the High Court of Judicature at Madras

Dated : 06.10.2016

Coram :

The Honourable Mr. Justice T.S. SIVAGNANAM

Writ Petition No. 35502 to 35505 of 2016

& WMP.Nos. 30534 to 30537 of 2016

Benze Vaccations Club rep.
by its Manager - Accounts

...Petitioner

Vs

1. The Government of Tamil Nadu,
rep. by its Secretary, Commercial
Tax Department, Fort. St. George,
Chennai-9.

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

3. The Assistant Commissioner (CT),
Chepauk Assessment Circle,
PAPJM Annex Building, First Floor,
No. 1, Greaves Road,
Chennai-6.

...Respondents

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus (WP.35502/2016) (i) to call for the records relating to the order passed by the third respondent in TIN 33441424537/2012-13 dated 29.2.2016, quash the same and consequently direct the respondents to grant liberty to the petitioner to make a representation to the first respondent for waiver of tax of a sum of Rs.5,37,097/- at the rate of 14.5% on the deemed sale value of Rs.37,04,108/- that is proposed to be levied on the deemed sale arrived at by the third respondent on the basis of the purchases detained from the District Manager, TASMAL Ltd., IMFS Depot Ambattur Chennai-58 (WP.No. 35503 of 2016); (ii) to call for the records relating to the order passed by the third respondent in TIN 33441424537/2013-14 dated 29.2.2016, quash the same and consequently direct the respondents to grant liberty to the petitioner to make a representation to the first respondent for waiver of tax of a sum of Rs.7,68,458/- at the rate of 14.5% on the deemed sale value of Rs.52,99,711/- that is proposed to

be levied on the deemed Sale arrived at by the third respondent on the basis of the purchases detained from the District Manager, TASMAL Ltd., IMFS Depot Ambattur Chennai-58 (WP.No. 35504 of 2016); (iii) to call for the records relating to the order passed by the 3rd respondent in TIN 33441424537/2014-15 dated 29.2.2016, quash the same and consequently direct the respondents to grant liberty to the petitioner to make a representation to the 1st respondent for waiver of tax of a sum of Rs.7,70,213/- at the rate of 14.5% on the deemed sale value of Rs.53,11,814/- that is proposed to be levied on the deemed sale arrived at by the third respondent on the basis of the purchases detained from the District Manager, TASMAL Ltd., IMFS Depot Ambattur Chennai-58 and (WP.No. 35505 of 2016) (iv) to call for the records relating to the order passed by the 3rd respondent in TIN 33441424537/2015-16 dated 29.2.2016, quash the same and consequently direct the respondents to grant liberty to the petitioner to make a representation to the 1st respondent for waiver of tax of a sum of Rs.39,26,162/- at the rate of 14.5% on the deemed sale value of Rs.2,70,76,977/- that is proposed to be levied on the deemed sale arrived at by the third respondent on the basis of the purchases detained from the District Manager, TASMAL Ltd., IMFS Depot, Ambattur, Chennai-58.

For Petitioner : Mr.K.Venkatesan
For Respondents : Mr.K.Venkatesh, GA

COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a registered dealer on the file of the third respondent and it is a recreation club registered under the provisions of the Tamil Nadu Societies Registration Act.

3. The petitioner was granted a FL2 licence by the Government of Tamil Nadu, which permits the petitioner to serve liquor in the premises. In these writ petitions, the petitioner has challenged the revision of assessment for the years 2012-13, 2013-14 and 2014-15 and 2015-16 under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

4. The learned counsel for the petitioner does not dispute the fact that an identical issue was considered in a batch of cases and the writ petitions were dismissed. It is stated that some of the dealers approached the Hon'ble Supreme Court and special leave petitions have been filed. However, the Hon'ble Supreme Court has not granted any interim orders.

5. In one another writ petition filed by a dealer, which is similarly placed as that of the petitioner herein, in W.P.No.12606 of 2016, somewhat an identical relief was sought for. However, this Court did not quash the notice of demand, but granted liberty to the petitioner to approach the Government seeking waiver and the application was directed to be disposed of within a time frame and that the demand has been directed to be kept in abeyance till then.

6. In the light of the above fact, since the earlier writ petitions were dismissed by the Hon'ble Division Bench of this Court and that there is no stay order granted by the Hon'ble Supreme Court, at this stage, the impugned orders cannot be quashed. Hence, a direction to that extent cannot be granted.

7. However, the petitioner seeks liberty to approach the first respondent and such liberty has been granted in the said writ petition filed by M/s.Blue Star Bar, Kothagiri.

8. Thus, taking note of the above facts, the writ petitions are disposed of by granting liberty to the petitioner to submit a representation to the first respondent for waiver within a period of two weeks from the date of receipt of a copy of this order and the first respondent shall consider the representation on merits and in accordance with law, within a period of four weeks from the date of receipt of the representation for waiver. Till then, the impugned demands shall be kept in abeyance. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government of Tamil Nadu, Commercial Tax Department,
Fort.St.George, Chennai-9

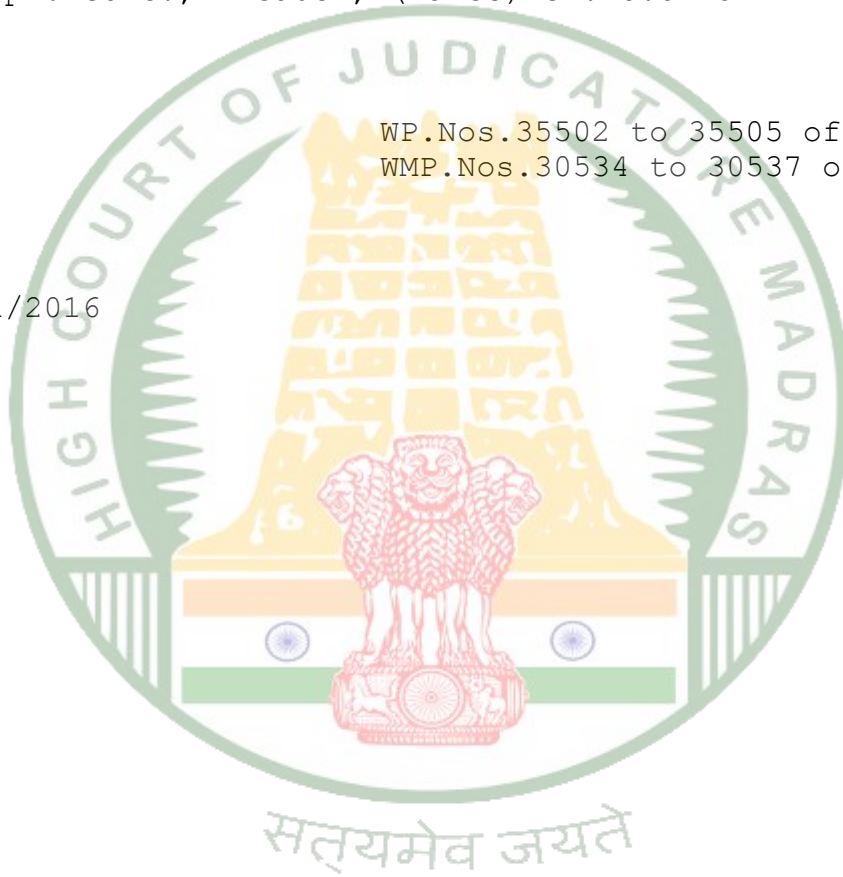
2.The Commissioner of Commercial Taxes, Commercial Tax Department,
Chepauk, Chennai.

3.The Assistant Commissioner (CT),
Chepauk Assessment Circle,
PAPJM Annex Building, First Floor,
No.1, Greams Road,
Chennai-6.

+4 CC to M/s. K. Venkatesan, Advocate Sr.No.57469
+1 CC to Spl. Govt., Pleader, (Taxes) Sr.No.57731

WP.Nos.35502 to 35505 of 2016&
WMP.Nos.30534 to 30537 of 2016

SM (CO)
MD : 01/11/2016



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