



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 03.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P (MD) No.13447 of 2016

and

WMP (MD) Nos.10061 & 10062 of 2016

Five Star Recreation Club,
Rep.by its Secretary G.Jeyaprakash
No.261 El, Sengamalanachiarapuram Road,
Thiruthangal,
Sivakasi Taluk,
Virudhunagar District

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Chennai.

2.The Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC) Godown,
Soolakkarai,
Virudhunagar,
Virudhunagar District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order issued by the 2nd Respondent in Na.ka.No.417/2016/B, dated 21.07.2016, quash the same.

For Petitioner : Mr.T.Bashyam
For Respondents : Mr.M.Muniasamy

ORDER

Heard both sides.

2. Counter of Respondent No.2 is filed.

3. According to the Petitioner / Society / Club, it is basically a Recreation Club and having Registration Number Sl.No.14/2012. In the Petitioner / Club, there is an attached Bar. As a matter of fact, the Petitioner / Club purchases the liquor cases from TASMAC Godown, after remitting appropriate



charges. In fact, the Members joined together and consumed liquor and the expenditure involved is shared. Towards this, the Petitioner / Club pays privilege fee to the tune of Rs.6,00,000/-. Further, the Petitioner / Club is running a Bar, for the past four years. For the benefit of the Bar members, F.L.2 License was taken.

4. The stand of the Petitioner / Club is that FL2 License was issued by the Commissioner of Prohibition and Excise and the Commissioner of Prohibition alone has the jurisdiction to issue License. Apart from that, the Petitioner / Club had also obtained a License, after payment of privilege fee. Indeed, the Second Respondent / Manager, Tamil Nadu State Marketing Corporation Ltd., (TASMAC) Godown, Soolakkarai, Virudhunagar, Virudhunagar District, had issued Circular, on 21.07.2016, to all F.L.2 & F.L.3 License holders. Besides that, the Second Respondent, by Circular, dated 21.07.2016, had directed the F.L2 and F.L.3 License holders to produce the copy of TIN (Tax Payers Identification Number) Registration Certificate, within 27.07.2016, failing which, the liquor would not be distributed from the Godown to them.

5. The prime plea taken on behalf of the Petitioner is that, as per Rule 17(B)(II) of the Tamil Nadu Liquor (License and Permit) Rules, 1981, the License for possession of liquor by a non-proprietary Club for supply to members, runs as under:-

17. Kinds of licences:-

17(B)

17(B) II. [Licence for possession of liquor by a non-proprietary club for supply to members]:-

F.L.2 [The privilege and the licence in Form F.L.2 shall be issued by the Commissioner on payment of an annual privilege fee of Rs.10,00,000/- (Rupees Ten lakhs only), for Chennai City and Rs.6,00,000/- Rupee Six lakhs only] for other areas, a licence fee of Rs. [10,000 Rupees ten thousand only] and an application fee of Rs.[3000 Rupees three thousand only] on an application made in Form F.A. 1.2 by the Honorary Secretary of the club concerned]. The licensee shall obtain his supplies of liquor from a whole-sale depot licensee in the State or from such other sources as the Commissioner may appoint or approve, subject to such conditions as he may impose in that behalf. The licensee shall play club fees as laid down in Rule 34(4) and the conditions of the licence. The licensee



shall maintain accounts of transactions in Form F.Ac. 2 and such other registers or accounts that may be prescribed by the licensing authority from time to time:

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[Provided that for the sale of draught beer in the licensed premises of the clubs in the City of Chennai, special additional privilege fee at 10 per cent on the existing privilege fee, subject to a minimum of Rs.10,000 (Rupees Ten thousand only) shall be collected].

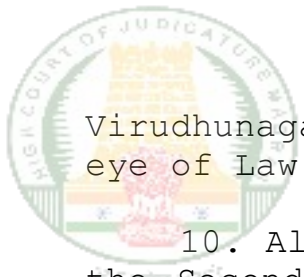
[Provided further that the Anna International Airport at Meenambakkam shall be deemed to have been situated within the limit of Chennai City, as a special case, in so far, as the sale of draught beer is concerned.”

6. The Learned Counsel for the Petitioner represented that in view of the aforesaid Rule, the Commissioner of Prohibition and Excise, Tamil Nadu, alone is the competent Authority to issue Licence and the present Circular. In fact, it is further represented that the Second Respondent / Manager, Tamil Nadu State Marketing Corporation Ltd., (TASMAC) Godown, Soolakkarai, Virudhunagar, Virudhunagar District, has no power to issue the impugned Circular, dated 21.07.2016.

7. The Learned Counsel for the Petitioner / Club refers to Section 3(1)(b) of Tamil Nadu Value Added Tax Act, 2006, and submit that, as per this clause, if a dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover in respect of purchase and sale within the State, for a year, is not less than rupees ten lakhs, shall pay tax under this Act.

8. The Learned Counsel for the Petitioner / Club projects an argument that the Petitioner / Club is not under the net of Sales Tax now and as such, has no necessity for it to take Registration Certificate, under the Sales Tax Act. Also, it is represented on behalf of Petitioner / Club that it is a non-proprietary running club, after obtaining proper F.L. License from the Commissioner of Prohibition and Excise.

9. In fact, it is the case of the Petitioner that the Second Respondent / Manager, Tamil Nadu State Marketing Corporation Ltd., (TASMAC) Godown, Soolakkarai, Virudhunagar, Virudhunagar District, has no Authority to ask TIN (Tax Payers Identification Number) Registration Certificate. Moreover, when the Petitioner / Club is not under Sales Tax net because of the issue pending before the Hon'ble Supreme Court, the impugned Circular, dated 21.07.2016 of the Second Respondent / Manager, Tamil Nadu State Marketing Corporation Ltd., (TASMAC) Godown, Soolakkarai,



Virudhunagar, Virudhunagar District, is an illegal one, in the eye of Law.

10. Also, the Learned Counsel for the Petitioner contends that the Second Respondent had failed to appreciate that the issue of TIN (Tax Payers Identification Number) Registration Certificate, is within the power of Commercial Taxes Department and as such, the Second Respondent has no jurisdiction / competency to issue the impugned Circular.

11. Per contra, it is the submission of the Learned Standing Counsel for Respondents that there is no Rule / Provision to issue show-cause notice to the Petitioner, prior to the issuance of impugned Circular, dated 21.07.2016 of the Second Respondent. The Learned Standing Counsel for the Respondents submits that, as per Tamil Nadu Value Added Tax Act, 2006, "A Society including a Co-operative Society club or firm or an Association, which, whether or not in the course of business buys, sells, supplies or distributes goods from or to its members for cash or for deferred payment or for commission, remuneration or valuable consideration shall be deemed to be a dealer for the purpose of this Act."

12. The Learned Standing Counsel for the Respondents emphatically takes a prime stand that the First Respondent in R.C.No.9942/N2/2016, dated 19.07.2016, addressed to all the District Managers, all Depot Managers TASMAL Limited, had issued the following instructions:-

"The Government vide G.O.(Ms)No.18, Commercial Taxes and Registration, dated 29.01.2016 has amended the Tamil Nadu Value Added Tax Rules, 2007, thereby every dealer has to furnish the invoice-wise sales effect them during the previous month along with VAT return to be filed on the succeeding month in the format mentioned in the annexure 18".

13. The Learned Standing Counsel further contends that only based on the instructions issued by the First Respondent, the Second Respondent had issued the Circular instructions in R.C.No.417/2016/B, dated 21.07.2016, to all F.L.2 and F.L.3 licensees to submit a copy of TIN (Tax Payers Identification Number) Registration Certificate and the Petitioner had challenged the same before this Court by filing the present Writ Petition.

14. In this connection, the Learned Standing Counsel for the Respondents informs this Court that the constitutional validity of Entry 1 and 2 Second Schedule of TNVAT Act, was challenged and now the matter is pending before the Hon'ble Supreme Court and that

will not apply to the facts of the present Writ Petition.

15. The Learned Standing Counsel for Respondents proceeds to submit that the Circular, dated 21.07.2016 of the Second Respondent is strictly in accordance with law and Rules and Regulations and therefore, it is perfectly valid in Law.

16. The learned Standing Counsel for the Respondents fairly submit before this Court that, if at all the Petitioner requires time to produce the TIN Certificate, before the Second Respondent, then, the same may be sought for before the Second Respondent, by means of filing of petition by the Petitioner / Club and, when the Petitioner files a Petition in this regard, certainly, the Second Respondent would consider the same, as per the Rules and Regulations and further in accordance with Law.

17. Lastly, the Learned Standing Counsel for the Respondents submits that, as per G.O.(Ms)No.18, Commercial Taxes and Registration, dated 29.01.2016, (Annexure18) there is a Second Column " Buyer Taxpayer Identification Number, Name of the Buyer, Commodity Code, Point of Sale (First / Second / Third / Forth) etc., and this has to be filled up and submitted by the Petitioner / Club, before the Second Respondent, who in turn, will send the same through Commercial Taxes Department, to the Head Office of the First Respondent.

18. In effect, the clear-cut stand of the Respondents is that the Petitioner / Club must furnish its TIN (Tax Payers Identification Number) and a copy of the Registration Certificate, as sought for in the Circular, dated 21.07.2016 of the Second Respondent and in fact, the Petitioner / Club cannot wriggle out of the situation that it is in.

19. At this stage, this Court has perused the impugned Circular of the Second Respondent, dated 21.07.2016 and is of the considered view that the Petitioner / Club was directed to furnish TIN (Tax Payers Identification Number) copy of the Registration Certificate, before 27.07.2016. Further, the Petitioner was informed that, if he fails to furnish TIN (Tax Payers Identification Number) Registration Certificate, the F.L.2 and F.L.3 License holders would not be supplied with the liquor.

20. In this connection, it is projected on the side of the Petitioner that no reasonable time was provided to the Petitioner / Club in regard to issuance of the Circular, dated 21.07.2016, by the Second Respondent and therefore, if sufficient reasonable time is provided to the Petitioner / Club, then, they would definitely furnish the TIN (Tax Payers Identification Number) Registration Certificate, before the Second Respondent.



21. This Court has heard the Learned Counsel for the Petitioner and also the Learned Standing Counsel for the Respondents and noticed their contentions.

22. As far as the impugned Circular, dated 21.07.2016 of the Second Respondent is concerned, this Court opines that the time of six days granted to the Petitioner, by the Second Respondent, enabling the Petitioner to furnish the TIN (Tax Payers Identification Number) Registration Certificate, is too short / inadequate one, in the considered opinion of this Court. Hence, this Court is of the view that in this regard, a reasonable time of three weeks is quite sufficient to the Petitioner to furnish TIN (Tax Payers Identification Number) Registration Certificate copy, before the Second Respondent, to secure the ends of justice.

23. Accordingly, this Court grants three weeks time, from the date of receipt of a copy of this order, to the Petitioner to furnish the TIN (Tax Payers Identification Number) Registration Certificate, so as to enable it to obtain the said certificate and to produce the same before the Second Respondent. Till such time, the Second Respondent is directed to maintain the supply of liquor and, if any accounts are to be kept by the Petitioner / Club in this regard, the same may also kept by the Petitioner / Club and to this effect it is open to the Second Respondent to issue a communication to the Petitioner / Club, as it deems fit and proper, based on the facts and circumstances of the present case, which float on the surface.

24. With the aforesaid observation(s) and direction(s), the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (W)

/True copy/

Sub Assistant Registrar

To

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd., (TASMAC), Chennai.

2.The Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC) Godown, Soolakkarai, Virudhunagar,
Virudhunagar District.

+1 CC to Mr.T.BASHYAM, Advocate, SR No.42065