BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 19.08.2016
CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P(MD)No.14608 of 2016
and
WMP(MD)Nos.10837 & 10838 of 2016

Chakra Club,
represented by its Secretary A.Ulaganathan,
No.3/1016/5, Paraipatti,
Viswanatham Panchayat,
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 circular issued by the 2nd Respondent in Na.ka.No.417/2016/B, dated 21.07.2016 and quash the same.

For Petitioner : M/s.K.Gokul
For Respondents : Mr.M.Muniasamy

ORDER

Heard both sides.

2.Counter of Second Respondent is filed.

3.By consent, the main Writ Petition itself is taken up for final disposal.

4.According to the Petitioner/Club, it is a registered Society bearing Sl.No.206/2004 and it is a basically a Recreation Club. As a matter of fact, the Club purchased liquor cases from TASMAC godown after remitting appropriate charges. There is no sale taking place as such in the club. In reality, the members join together and consume liquor and the expenditure involved is shared. Furthermore, the Club pays a privilege fee of Rs.6,00,000/-. Further, the Petitioner/Club is running a bar for the past three years.

5.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. Also that, the said 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.

6. The primordial 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:

> [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."

7. Advancing his arguments, the Learned Counsel for the Petitioner contends 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.

8. It cannot be gain-said that Section 3(1)(b) of Tamil Nadu Value Added Tax Act, 2006, and points out 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.

9. The Learned Counsel for the Petitioner/Club takes an emphatic stand that the Petitioner / Club is not under the net of Sales Tax now and therefore there is no need for it to take Registration Certificate, under the Sales Tax Act. Also, it is the stand of the Petitioner / Club that it is a non-proprietary running club, after obtaining proper F.L. License from the Commissioner of Prohibition and Excise.

10. The crystalline stand 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. Further, 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.

11. Further, 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.

12. Conversely, 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. In this connection,the Learned Standing Counsel for the Respondents proceeds to state 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."

13. The Learned Standing Counsel for the Respondents brings it to the notice of this Court that the First Respondent in R.C.No.9942/N2/2016, dated 19.07.2016, addressed to all the District Managers, all Depot Managers TASMAC 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".

14. In fact, the contention of the Learned Standing Counsel for the Respondents is 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.

15. In this regard, the Learned Standing Counsel for the Respondents informs this Court that the constitutional validity of G.O.Ms.No.47, dated 27.03.2012, which brought an amendment to 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.

16. 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.

17. At this juncture, 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.

18. While summing up, the Learned Standing Counsel for the Respondents invites the attention of this Court to the fact 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.

19. Suffice it for this Court to point out that in the present case, the Respondents had taken a stand 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.

20. In this connection, it is not out of place to make a pertinent mention that 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. Also, 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.

21. By means of reply, the Learned Counsel for the Petitioner submits 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 opportunity/time is provided to the Petitioner/Club, then, the Club would definitely furnish the TIN (Tax Payers Identification Number) Registration Certificate, before the Second Respondent.

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

23. Insofar as the impugned Circular, dated 21.07.2016 of the Second Respondent is concerned, this Court comes to an inevitable conclusion 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 opines that a reasonable time of three weeks is quite good enough to the Petitioner to furnish TIN (Tax Payers Identification Number) Registration Certificate copy, before the Second Respondent, to secure the ends of justice.

24.In view of the fore-goings, 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.

25. 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 (CSII)

/True Copy/

Sub Assistant Registrar

vsn
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.

JAM/PV-PM/2.09.16/6p-3c

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