IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.3981 to 3992 of 2017 &
W.M.P.Nos.4069, 4072, 4075, 4078, 4081,
4084, 4087, 4090, 4093, 4096, 4099 and 4102 of 2017

1.Thiru.V.K.Ayyavu ... Petitioner in W.P.No.3981 of 2017
2.Thiru.A.Palanisamy ... Petitioner in W.P.No.3982 of 2017
3.Thiru.D.Murugesan ... Petitioner in W.P.No.3983 of 2017
4.Thiru.V.Senthil Kumar ... Petitioner in W.P.No.3984 of 2017
5.Thiru.P.R.Ganesan ... Petitioner inW.P.No.3985 of 2017
6.Thiru.R.Shanumgam ... Petitioner in W.P.No.3986 of 2017
7.Thiru.P.Draisakthivel ... Petitioner in W.P.No.3987 of 2017
8.Thiru.A.Raju ... Petitioner in W.P.No.3988 of 2017
9.Thiru.N.Velliyangiri ... Petitioner in W.P.No.3989 of 2017
10.Thiru.L.Velliyangiri ... Petitioner in W.P.No.3990 of 2017
11.Thiru.K.Thangaraj ... Petitioner in W.P.No.3991 of 2017
12.Thiru.R.Rameshkumar ... Petitioner in W.P.No.3992 of 2017

Vs.

1.The Managing Director, TASMAC,
CMDA Tower, Egmore, Chennai – 600 008.

2.The District Manager/Deputy Collector,
TASMAC, Erode. ... Respondents in all WPs.

Prayer: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in order passed by the first respondent in Lr.Rc.No.6300/G2/2013 dated 23.11.2016 and the consequential order passed by the second respondent in Na.Ka.No.855/2016/R.2 dated 25.11.2016 and quash the same.

For Petitioners
(in all WPs.) : Mr.M.Nandhakumar
For Respondents
(in all WPs.) : Mr.M.John Kennedy

For Intervenor : Mr.V.Sundareswaran for Commissionerate of Chennai & Salem, Standing Counsel

COMMON ORDER

Heard Mr.M.Nandhakumar, learned counsel for the petitioners, Mr.M.John Kennady, learned counsel for the respondents and Mr.V.Sundareswaran, learned Standing Counsel, for the Commissonerate of Chennai and Salem, who has intervened in the matters.

2. The petitioners are licensees, who have been granted license by the respondent TASMAC to sell eatables and collect empty bottles from the TASMAC liquor shops. The license condition clearly states that the petitioners/ licensees have to remit service tax and it is the respondent TASMAC which has to collect the same and remit the service tax to the jurisdictional officer of the service tax Commissionerate. It appears that the respondent TASMAC did not take effective steps till the service tax Commissionerate issued direction to

them to remit the service tax, as respondent TASMAC are registered as service providers under the Finance Act.

3.Thus, the liability of TASMAC is to remit the service tax and this cannot be subject to, whether the licensees of TASMAC have remitted the same to TASMAC or not. In other words, the TASMAC being the service provider was bound to be registered under the service tax Commissionerate, which they have already done and the liability is on the service provider to remit the service tax. It appears that the respondent TASMAC did not take any effective steps to collect service tax at the appropriate time from the licensee, though there is a specific condition in the license to pay the same in terms of Condition No.44. However, when pressure was given by the service tax Commissionerate on the TASMAC to remit the amount, the second respondent issued circular to the licensees, which appears to be a general circular and not specific to any particular licensee, giving a broad outline as to how the service tax liability has to be determined.

4.The petitioners/licensees have approached this Court by filing these writ petitions, challenging the circular issued by the respondent TASMAC. As pointed out earlier, Condition No.44 of the license condition clearly mandates that the licensee is bound to pay, in addition to the license fee, the Central and State taxes for ex., the Sales Tax, Service Tax, Income Tax (TDS, TCS, etc.,), toll tax and other taxes or other expenses. Having agreed to such condition and secured the license, the petitioners cannot wriggle out of their obligation in payment of such taxes. Therefore, the challenge to the impugned circular has to necessarily fail.

5. However, at this stage, it is relevant to point out that a general circular can be given by the Managing Director to the Regional Managers or District Collectors, who in turn have to issue a demand to the respective licensees, clearly quantifying the amount and give them reasonable time to remit the same, failing which, the respondent TASMAC is entitled to proceed against the licensees for recovery in the manner as contemplated under the license/tender conditions.

6.As already mentioned, the liability of the TASMAC to remit the service tax is independent and distinct from the fact as whether they have collected the service tax from the licensees or not. The obligation as a service provider is not contingent or dependent upon whether the licensees have remitted the tax to them or not. It is for the TASMAC to recover it from the licensees and non-recovery cannot be justification for non payment of service tax to the Service Tax Commissionerate.

7. In view of the above, the impugned circulars are held to be valid. There will be a direction to the respondent TASMAC to issue individual demands to the licensees clearly stipulating as to what is the service tax liability, giving 15 days time to remit the same, failing which the respondent TASMAC is entitled to proceed for recovery of the service tax liability in terms of the tender/license conditions. Since this Court heard the learned Senior Standing Counsel for the Service Tax Commissionerate, who are not parties, but joined the proceedings as intervenors, Registry is directed to communicate a copy of this order to them.

8. The writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

28.07.2017

Index:Yes/No
abr/svki

T.S.SIVAGNANAM, J.

abr

To

1.The Managing Director,
TASMAC, CMDA Tower, Egmore
Chennai – 638 004.

2.The District Manager/Deputy Collector,
TASMAC, Erode.

3.The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Medu, Salem – 636 001.

4.The Principal Commissioner of Goods
and Service Tax, Chennai,
No.121, Uttamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.

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