IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.4297 and 4298 of 2013
and
M.P.Nos.1 and 1 of 2013

The Secretary,
The Coimbatore Club,
East Club Road,
Coimbatore. .. Petitioner in both writ petitions

Vs.

The Assistant Commissioner (CT)
Trichy Road Assessment Circle,
Coimbatore-18. .. Respondent in both writ petitions

PRAYER in W.P.No.4297 of 2013: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the respondent in TNLT No.02838/2008-09 and quash the proceedings dated 23.01.2013 issued therein.

PRAYER in W.P.No.4298 of 2013: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the respondent in TNLT No.02838/2009-10 and quash the proceedings dated 23.01.2013 issued therein.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.V.Haribabu
Additional Government Pleader
(in both Writ Petitions)

COMMON ORDER

The proposals to assess the petitioners turnover to tax under the Tamil Nadu Tax on Luxuries Act, 1981 (herein after referred to as the 'Act') for the assessment years 2008-2009 and 2009-2010, is under challenge in these present writ petitions.

2.The main ground raised by the petitioner in both these writ petitions is that clubs do not come under the purview of the Tax on Luxuries Act, 1981 and as such the respondent do not have any jurisdiction to issue the notice under the provisions of the said Act. It is not in dispute that the petitioner herein is a club.

3.Normally, the recourse available to the petitioners to a notice of this nature would be to raise their objections and this Court would not generally interfere by invoking its jurisdiction under Article 226 of the Constitution of India. Nevertheless, it is a settled proposition of law that when a notice is sent without jurisdiction or authority, the High Court will be justified in setting aside such notices. The short question for consideration in the present writ petition is as to whether the petitioner herein, which is a registered club, would come within the purview of the Tamil Nadu Tax on Luxuries Act, 1981 and be held liable for payment of tax on Luxuries.

4.The Tamilnadu Tax on Luxuries Act, 1981 has been enacted to provide for levy and collection of tax on luxuries. The term club has not been included or referred to in the entire Act. Apparently, the respondents have proposed to levy luxury tax by treating the petitioner as a hotel which includes a lodging house. Section 2(f) of the Act defines hotel as follows:

> "2(f)."hotel" means a building or part of a building where residential accommodation with or without board is by way of business provided for a monetary consideration and includes a lodging house."

5.A plain reading of the definition does not include "clubs", whose activities and objections are distinct as to that of a regular hotel or a lodging house. The issue as to whether, "club" would come under the purview of the Luxuries Act came up for consideration in the case of Bangalore Club Vs Assistant Commissioner of Commercial Taxes, Bangalore and another, in a decision reported in [2010] 27 VST 489 (Karn) wherein the vires of Section 2(4) of the Karnataka Tax on Luxuries Act was challenged by a club. The Hon'ble Division Bench of the Karnataka High Court held that the inclusion of the term "club" in the definition of "hotel" and the explanation inserted to Section 2(4) of the Act therein, with retrospective effect is not legal, valid and correct and liable to be struck down. By holding so, the clubs were taken out of the purview of the Karnataka Tax on luxuries Act and thereby they were not liable to pay Luxury Tax.

6.The learned counsel for the petitioner submitted that under the Tamil Nadu Tax on Luxuries Act, the term club has not been included into the definition of "hotel" and thereby there is no authority vested with the respondents to impose luxury tax on the petitioner's club.

7.Per contra, the learned Additional Government Pleader appearing for the respondent submitted that the activities of a club is akin to a hotel and would squarely fall within the definition of a hotel and therefore they are liable to pay luxury tax.

8.The learned Additional Government Pleader would further submit that the decision of Karnataka High Court in Bangalore Clubs case(supra), has been challenged before the Hon'ble Supreme Court and the same is pending and therefore reliance on the said decision is of little avail. The activities of a club vis-a-vis a hotel or a lodging house, is quite distinct and differentiable with each other.

9.As stated earlier, "club" has not been defined under the Act. However, the term club has been defined under Section 65 (25aa) of Service Tax Act, to mean any person or body of persons providing services, facilities or advantages primarily to its members, for a subscription or any other amount, with certain exceptions. When the definition of a "club" as defined for the purpose of service tax is compared to that of a definition of a "hotel or a lodging house", for the purpose of levy of luxuries Tax, it is seen that, places which involves in business for a monetary consideration in a building where residential accommodation with or without board is provided, has been brought within the purview of the Luxuries Tax Act, whereas a club in its general meaning and in the light of the definition for the purpose of service tax is concerned, restricts to include services, facilities or advantages primarily to the members of the club which is done for a subscription. As such the regular and ordinary activities of a club cannot be compared to that of a hotel and it is in this apparent view of such a distinction between these two terms, the "club" has not been brought within the scope of the Tamil Nadu Luxuries Act.

10.Nevertheless, the issue as to whether a club could be subjected to luxuries Act is said to be subject matter of a batch of cases pending before the Hon'ble Supreme Court. The law as it prevails as on date, is that clubs cannot be subjected to luxury tax. Another distinction between the Bangalore Club case and the case in hand is that while the Karnataka Tax on Luxuries Act has brought in the term "club" under the definition of a hotel by way of an amendment, the Tamil Nadu Tax on Luxuries Act, 1981, has excluded the term "club" from the purview of the Act.

11.In the absence of any powers vested on the authorities under the Tamil Nadu Tax on Luxuries Act to levy luxury tax on clubs, I am unable to comprehend as to how the respondents can proceed any further, pursuant to the notice contemplating levy of luxury tax on club. As such the exercise itself may be futile and this Court would be justified in interfering with the impugned notices by invoking its powers under Article 226 of the Constitution of India.

12.In the light of the above observations, the impugned notices dated 23.01.2013 in TNLT No.02838/2008-09 and TNLT No.02838/2009-10 on the file of the respondent are quashed. Nevertheless, since it is brought to the notice of this Court that the issue as to whether a club can be subjected to luxury Tax, is pending before the Hon'ble Supreme Court, the respondents are granted liberty to consider proposing levy of luxury tax on the petitioner, after the final decision of the cases pending before the Hon'ble Supreme Court and in accordance with the observations made therein.

13.These writ petitions stand allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

pnn

To

The Assistant Commissioner (CT)
Trichy Road Assessment Circle,
Coimbatore-18.

+1 cc to Mr.B.Raveendran, Advocate, S.R.No.66792

+1 cc to the Soecial Government Pleader (Taxes), S.R.No.67245

W.P.Nos.4297 and 4298 of 2013
and
M.P.Nos.1 and 1 of 2013

VBA(CO)
SSM(16/09/2019)