IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.22043 of 2019
WMP.Nos.21309 & 21311 of 2019

Chennimalai Nanbargal Manamakil Nala Sangam,
SF.No.154, Chenniya Valasu Road, Perundurai,
Erode.
Rep. by its President Mr.Nadusenniyan Saravanan
.. Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Commercial Taxes,
Fort St.George, Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
Commercial Tax Department,
Elilagam, Chepauk, Chennai - 600 108.

3. The State Tax Officer, (CTO),
Assistant Commissioner Circle,
Perundurai, Erode District - 638 001.

4. The Commissioner of Prohibition & Excise Department,
Elilagam, Chennai - 600 005.
.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of declaration, declaring that the definition in Section 2(15)(ix) and 2 (33(vi), explanation I of Tamil Nadu Value Added Tax Act 2006 are void, unconstitutional and unenforceable in respect of the petitioner concern.

For Petitioner : Mr.M.Dinesh

For Respondents: Ms.G.Dhana Madhuri,
Govt. Advocate (Taxes) for R1 to R3

O R D E R

(Order of the court was made by SUBRAMONIUM PRASAD, J.)

Petitioner, a registered club under the Societies Registration Act has filed the instant writ petition for an appropriate Writ/Order or direction for declaring that the definition of dealer in Section 2(15)(ix) and explanation 1 of Section 2 (33(vi)) of Tamil Nadu Value Added Tax Act 2006 are void, unconstitutional and unenforceable.

2. It is stated that the object of the club is to look after the welfare of the members, by organizing various indoor and out door games and providing refreshment to the members. The club also provides liquor to its members and for this purpose, the petitioner had got a valid license from the Commissioner of Prohibition & Excise Department.

3. Deponent is a Member of the club and paid a sum of Rs.6.00 lakhs, as licence fee, for running the club. According to the petitioner, the club does not fall within the definition of dealer under Section 2(15)(ix) of the TNVAT 2006, as there is no sale of any goods in the form of food, refreshments and drinks by the petitioner to its members. Section 2(15)(ix) "dealer" and explanation to the Section 2(33)(vi) of the Tamil Nadu Value Added Tax 2006, reads as under:-

> "(15) "dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-
> (i) a local authority, company, Hindu undivided family, firm or other association of persons which carries on such business;
> (ii) a casual trader;
> (iii) a factor, a broker, a commission agent or arhati, a del credere agent or an auctioneer, or any other mercantile agent by whatever name called, and whether of the same description as herein before or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, or through whom the goods are bought, sold, supplied or distributed;

(iv) every local branch of a firm or company situated outside the State;
(v) a person engaged in the business of transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;
(vi) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
(vii) a person engaged in the business of delivery of goods on hire purchase or any system of payment by installments;
(viii) a person engaged in the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
(ix) a person engaged in the business of supplying by way of, or as part of, any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration.

Section 2(33)(vi) :- a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;
Explanation I:-The transfer of property involved in the supply or distribution of goods by a society (including a co-operative society), club. firm or any association to its members. for cash, or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act."

4. The petitioner states that the Commissioner of Prohibition & Excise Department, Chepauk, Chennai has issued licence vide proceedings dated 07.06.2019, which reads as under:-

"PROCEEDINGS OF THE COMMISSIONER OF PROHIBITION AND EXCISE (i/c)

CREPAUK, CHENNAI - 600 005.

PRESENT: THIRU.R.KIRLOSH KUMAR, LA.S.,

R.DfS.No.P&E 2(2)1537312018 DATED :07.06.2019

Sub: Prohibition and Excise-Tamil. Nadu Liquor (Licence permit). Rules 1981-Erode District-The Secretary,Tvl. Chennimalai Nanbargal Manamakil Nala- Sangam Request for grant of FL.2 Licence - Orders issued.

Ref: 1) Application dated 13.'06.2018 received from the Tvl.Chennimalai Nanbargal Manamakil Nala Sangam, Erode District.

2) This office letter No.P&E 2(2)1537312018, dated 25.06.2018

3) From the District Collector, Erode letter No. J2/21138/ 2018, dated 10.03.2019.

ORDER:

The Secretary, Tvl. Chennimalai Nanbargal Manamakil Nala Sangam,

S.F.No.154, 6/6, Erode Road, Kurukku Street-4, Perundurai, Erode District has applied for the grant of a licence in Form F.A.1.2 under the ruje provision of the Tamil Nadu Liquor (Licence and Permit) Rules 1981, by remitting the required fees towards FL.2

SI. No	Nature' of fees	Amount in (Rs.)	Chalan No. & Date	Place of remittance
1.	Privilege Fee	6,00,000/-	451113.06.18	State Bank of India Treasury Branch, Chennai-1
2.	Licence Fee	10,000/-	Nil113.06.18	
3.	Application Fee	3,000/-	450/13.06.18	
4.	Difference Fee	2,19,500/-	274/24.04.19	

2. The above application was forwarded to the District Collector, Erode District for his inspection and report in the reference 2nd read above.

3. The District Collector, Erode District, in the reference 3rd read above has reported that after having an inspection of the premises' by the Assistant Commissioner (Excise), Erode it is seen that the applicant's club satisfies the conditions stipulated for the grant of a licence under rule 17 (b) (ii) of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 and that the privilege is not likely to be misused by the applicant. He has therefore recommended for the grant of FL.2 licence to the Secretary, Tvl. Chennimalai Nanbargal Manamakil Nala Sangam, S.F.No.154, 6/6, Erode. Road, Kurukku Street-4, Perundurai,

Erode District.

4. The request of the applicant has been examined in detail. The above club Secretary has remitted a sum of Rs.50,000/- (Rupees Fifty thousand only) vide Challan Nos.194 & 195, dated.28.05.2019 at State Bank of India, Treasury Branch, Chennai - 1, towards security deposit. The Licence bearing No.05/2019-2020 valid upto 31.03.2020 with at a time possessional limit of 2000 units only (Two Thousand Units Only) is granted and issued to the Secretary, Tvl. Chennimalai Nanbargal Manamakil Nala Sangam, S.F.No.154, 6/6, Erode Road, Kurukku Street-4, .Perundurai, Erode District , subject to the condition that the licensee should pay the difference in privilege fee, if any demanded in future.

5. As per rule 18 of Tamil Nadu Liquor (Licence and permit) Rules 1981, the licence granted shall be valid for the financial year beginning from the 1st of April or date of issue of the licence and ending with the 31s March.

6. The licensee has to strictly follow the rule 21 of the Tamil Nadu Liquor (Licence and Permit) Rules 1981. A licence holder desiring to renew the licence shall make an application in Form F.A.1.2 (the same as for the original grant of the licence) at least one month before the date of expiry of the licence. The application may be sent to the licensing authority direct. Where an application for renewal of the licence has not been made within a period of one month before the expiry as specified herein, but in no case after the expiry of the Licence, the licensing authority may admit such application, provided there are good and sufficient reasons for the delay on payment of an additional fee of twenty five percent of the'prescribed licence fee.

7. The area measurements and boundaries of the Bar and Store room shall be as follows:-

A licence with Fly-leaf and an approved copy of plan are enclosed. The Plan shall be kept in the licensed premises.

COMMISSIONER OF PROHIBITION AND EXCISE,(i/c),
CHEPAUK, CHENNAI -600 005."

5. In view of the above said proceedings, the petitioner apprehends that proceedings would be initiated against it under the Tamil Nadu Value Added Tax Act.

6. Article 246A was introduced by the Constitution (One Hundred and First Amendment) Act, 2016. The same reads as under:-

"Insertion of new article 246A.
2. After article 246 of the Constitution, the following article shall be inserted, namely:—

Special provision with respect to goods and services tax.

"246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State .State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."

7. By the virtue of the powers conferred under Article 246A, the Parliament brought in the Central Goods and Service Tax Act, 2017 and the Integrated Goods and Services Tax Act,2017. By the introduction of the Central Goods and Service Tax Act, 2017 and the Integrated Goods and Services Tax Act,2017, the Tamil Nadu Value Added Tax 2006, has been repealed. Section 174 of the Central Goods and Service Tax Act, is the repeal and saving clause. Section 174, reads as under:-

"174. (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.
(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal "

8. Mere apprehension of the petitioner does not persuade us to go into vires of the Section 2(15)(ix) and explanation 1 of Section 2 (33(vi), of Tamil Nadu Value Added Tax Act, 2006, which stands repealed. This exercise at this juncture would be only academic in nature. If and when action is taken against the petitioner, it is also open to the petitioner to take appropriate steps in accordance with law.

9. The writ petition is dismissed with the aforesaid observation. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pkn.

To

1.The Principal Secretary,
Government of Tamil Nadu,
Department of Commercial Taxes,
Fort St.George, Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
Commercial Tax Department,
Elilagam, Chepauk, Chennai - 600 108.

3. The State Tax Officer, (CTO),
Assistant Commissioner Circle,
Perundurai, Erode District - 638 001.

4. The Commissioner of Prohibition & Excise Department,
Elilagam, Chennai - 600 005.

+1cc to Mr.M.Dinesh, Advocate sr.65450
+1cc to Special Government Pleader sr.65544

W.P.No.22043 of 2019
WMP.Nos.21309 & 21311 of 2019

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nr 27/08/2019