BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **01.11.2019**
CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P.(MD).Nos.23012 and 23030 of 2019
and
W.M.P.(MD).Nos.19757, 19758, 19776 and 19778 of 2019

1.M/s.The Masters Club
Rep by its President P.Krishnasamy
S/o.T.Ponnusamy
No.86/1, Kalaignar Nagar,
Thandampalayam
Erode-638 109. ... Petitioner in W.P.(MD).No.23012 of 2019

2.Thirupparankundram Malligai Manamahil Mandram
Rep by its Secretary M.Vignesh
S/o.Maniraj
No.158-B-1, Ganesapuram,
Mudakku Road,
Madurai-625 010. ... Petitioner in W.P.(MD).No.23030 of 2019

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 Taxes Department,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The Assistant Commissioner(ST)
Kodumudi Assessment Circle,
O/o.The Assistant Commissioner (ST)
Commercial Taxes Building,
R.D.O.Office Campus,
North Pradakshanam Road,
Karur-639 001.

4.The Commissioner of
Prohibition and Excise Department,
Ezhilagam, Chennai. ... Respondents in both W.Ps

COMMON PRAYER: These petitions filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that the definition in Sec.2(15)(ix) to Explanation I and Sec.2(33)(vi) to Explanation I of Tamil Nadu Value Added Tax Act, 2006 are null and void, unconstitutional, inoperative and unenforceable and the recoveries pursuant thereto are without authority of law and infringe Article 19(g) and 265 of the Constitution of India.

For Petitioner in both W.Ps : Mr.T.Bashyam

For Respondents in both W.Ps : Mr.S.Angappan
Government Advocate

COMMON ORDER

(Order of this Court was made by **T.S.SIVAGNANAM, J)**

Heard Mr.T.Bashyam, learned counsel appearing for the petitioners and Mr.S.Angappan, learned Government Advocate appearing for the respondents.

2.By consent on either side, these writ petitions are taken up for disposal.

3.These writ petitions have been filed with an identical prayer for a writ of declaration to declare the definition of Sec.2(15)(ix) to Explanation I and Sec.2(33)(vi) to Explanation I of Tamil Nadu Value Added Tax Act, 2006, as null and void, unconstitutional, inoperative and unenforceable and the recoveries pursuant thereto are without authority of law and infringe Article 19(g) and 265 of the Constitution of India.

4.We need not go to decide the prayer sought for in the writ, as very recently the Hon'ble Supreme Court has settled the issue in the case of ***STATE OF WEST BENGAL & ORS. VS. CALCUTTA CLUB LIMITED***, in ***Civil Appeal No.4184 of 2009***, dated 03.10.2019. The issue before the Hon'ble Supreme Court was whether the judgment and order passed by the Division Bench of the Hon'ble Calcutta High Court affirming the view expressed by the West Bengal Taxation Tribunal and disposing of the appeal preferred by the dealer along with other connected appeals holding, inter alia, that the assessee, the Calcutta Club Limited, was not liable for payment of sales tax under the provision of the West Bengal Sales Tax Act, 1994. The Hon'ble Supreme Court by judgment dated 04.05.2016, referred the matter to the Larger Bench framing the following questions for consideration:

> *"i.Whether the doctrine of mutuality is still application to incorporated clubs or any club after the 46th amendment to Article 366 (29A) of the Constitution of India?*
>
> *ii.Whether the judgment of this Court in* ***Young Men's***

__Indian Association__ (supra) still holds the field even after the 46th amendment of the Constitution of India; and whether the decisions in __Cosmopolitan Club__ (supra) and __Fateh Maidan Club__ (supra) which remitted the matter applying the doctrine of mutuality after the constitutional amendment can be treated to be stating the correct principle of law?

Iii.Whether the 46th amendment to the Constitution by deeming fiction provides that provision of food and beverages by the incorporated clubs to its permanent members constitute sale thereby holding the same to be liable to sales tax?"

5.Subsequently, the matter was placed before the Larger Bench of the Hon'ble Supreme Court, by judgment, which by order dated 03.10.2019 held as follows:

"49.In light of the view that we have taken, it is unnecessary to advert to Shri Dwivedi's arguments that the explanation (1) to Section 2(10) of the West Bengal Sales Tax Act is a stand-alone provision and not an explanation in the classical sense. We, therefore, answer the three questions posed by the Division Bench in __State of West Bengal v. Calcutta Club Limited__ (supra) as follows:

(1)The doctrine of mutuality continues to be applicable to incorporated and unincorporated members' clubs after the 46th Amendment adding Article 366(29-A) to the Constitution of India.

(2)__Young Men's Indian Association__ (supra) and other judgments which applied this doctrine continue to hold the field even after the 46th Amendment.

(3)Sub-clause (f) of Article 266(29-A) has no application to members' club.

50.Having gone through the judgment and order of the West Bengal Taxation Tribunal dated 3rd July, 2006 and the impugned Calcutta High Court judgment dated 1st February, 2008, and in view of the answers to the three questions referred to the present Three Judge Bench (as listed hereinabove). We are of the view that no interference is called for in the findings of fact or declaration of law in this case. Accordingly, C.A.No.4184 of 2009 stands dismissed."

6.In the light of the decision of the Larger Bench upholding the view of the Hon'ble High Court in the Calcutta Club case, the doctrine of mutuality will continue to apply to incorporated and unincorporated members' clubs after the 46th Amendment adding Article 366(29-A) to the Constitution of India.

7.In the light of the recent decision of the Larger Bench of the Hon'ble Supreme Court, we have to necessarily interfere with the show cause notice issued by the Assessing Officers proposing to levy tax on the writ petitioners. However, we are convinced of the fact that there may be other issues, which may require to be adjudicated by the Assessing Officer and since the prayer sought for in these writ petitions are for declaratory relief, we dispose of these writ petitions by holding that the law laid down by the Hon'ble Supreme Court in the case of Calcutta Club Limited, dated 03.10.2019 holds good and it shall enure in favour of the petitioner's club.

8.Bearing the above legal principles in mind, we permit the petitioners to give suitable reply to the notice issued by the Assistant Commissioner and in the light of the decision of the Hon'ble Supreme Court, the theory of mutuality will apply to both incorporated and unincorporated clubs and this issue should be taken into consideration by the respective Assessing Authorities.

9.With the above observations, these Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

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

2.The Commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The Assistant Commissioner(ST)
Kodumudi Assessment Circle,
O/o.The Assistant Commissioner (ST)
Commercial Taxes Building,
R.D.O.Office Campus,
North Pradakshanam Road,
Karur-639 001.

4.The Commissioner of
Prohibition and Excise Department,
Ezhilagam, Chennai.

+2 CC to Mr.T.BASHYAM, Advocate SR-95759,95760
+1 CC to MSPl.GP (SR-95963[F] dated 04/11/2019)

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and
W.M.P.(MD).Nos.19757, 19758, 19776 and 19778 of 2019
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