IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.18543 of 2012
and M.P.No.1 of 2012

M/s.Cosmopolitan Club
Rep. by its Honarary Secretary,
63, Anna Salai,
Chennai - 600 002. ... Petitioner

Vs.

The Assistant Commissioner (CT)
Triplicane I Assessment Circle,
Chennai. ... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent herein in Rc.No.386/2012/A3 and quash the proceedings dated 05.07.2012 issued therein.

For Petitioner : Mr.B.Raveendran

For Respondents: Mr.M.Hariharan,
Additional Government Pleader (Taxes)

ORDER

Challenging the notice dated 05.07.2012 issued by the respondent, the petitioner has come up with the present writ petition. By the impugned notice, the petitioner was called upon to get itself registered under the TNVAT Act, 2006 within three days, stating that the issue pending with the Tribunal relates to TNGST Act, 1959 and the present Act i.e. TNVAT Act, 2006 clearly says that any transfer of property/sales by club to the members also comes under the purview of sales and hence, liable to tax under the TNVAT Act, 2006.

2. Today, when the Writ Petition was taken up for consideration, the learned counsel for the petitioner as well as the learned Additional Government Pleader (Taxes) appearing for

the respondent jointly submitted that the issue involved herein is covered by the decision of the Supreme Court in State of West Bengal and others v. Calcutta Club Limited and others, [MANU/SC/1367/2019], wherein it is held as follows:

> "83. The expression "unincorporated associations" would include persons who join together in some common purpose or common action – see ICT, Bombay North, Kutch and Saurashtra, Ahmedabad v. Indira Balkrishna (1960) 3 SCR 513 at page 519-520. The expression "as the case may be" would refer to different groups of individuals either bunched together in the form 75 of an association also, or otherwise as a group of persons who come together with some common object in mind. Whichever way it is looked at, what is important is that the expression "body of persons" cannot possibly include within it bodies corporate.
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> 84. We are therefore of the view that the Jharkhand High Court and the Gujarat High Court are correct in their view of the law in following Young Men's Indian Association (supra). We are also of the view that from 2005 onwards, the Finance Act of 1994 does not purport to levy service tax on members' clubs in the incorporated form.
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> 85. The appeals of the Revenue are, therefore dismissed. Writ Petition (Civil) No.321 of 2017 is allowed in terms of prayer (i) therein. Consequently, show-cause notices, demand notices and other action taken to levy and collect service tax from incorporated members' clubs are declared to be void and of no effect in law."

3. Following the aforesaid decision, which holds good insofar as the present case is concerned, this Court is inclined to set aside the proceedings impugned herein. Accordingly, the writ petition stands allowed by setting aside the notice dated 05.07.2012 issued by the respondent. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli

To

The Assistant Commissioner (CT)
Triplicane I Assessment Circle,
Chennai.

+1cc to Mr.B.Raveendran, Advocate Sr.23841
+1cc to the Special Government Pleader Sr.24004

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srg 14/07/2020