IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 600 of 2014

Soorya Recreation Club,
Rep. by its Secretary R.Ganesh Kumar
No.78, Medavakkam Main Road,
Keelkattalai,
Chennai-600 117. ...Petitioner

-vs-

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

2. The Managing Director,
   Tamil Nadu State Marketing Corporation Limited,
   CMDA Tower-II, 4th Floor,
   Gandhi Irvin Bridge Road, Egmore,
   Chennai - 600 008.

3. The Manager,
   Tamil Nadu State Marketing Corporation Limited,
   IMFS Depot, Thirumazhsai - Unit III,
   Chennai - 602 107. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records pertaining to the impugned order dated 13.12.2013 made in Na.Ka.Pa.Vay.01/A1/2013 passed by the Third Respondent and quash the same.

For Petitioner : Mr. R.Thiagarajan

For Respondents : Mr. N.Inbanathan (For R1)
Additional Government Pleader

Mr. K.Sathish Kumar (For R2 and R3)
Standing Counsel

O R D E R
(through video conference)

Heard Mr. R.Thiagarajan, Learned Counsel for the Petitioner, Mr. N.Inbanathan, Learned Additional Government Pleader appearing for the First Respondent and Mr. K.Sathish Kumar, Learned Counsel for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Demand Notice No. Na. Ka. Pa.Ve. 01/A1/2013 dated 13.12.2013 issued by the Third Respondent calling upon the Petitioner to pay the differential amount due arising out of price revision of alcoholic liquors with retrospective effect for the period from 01.04.2013 to 07.11.2013 in terms of G.O. Ms. No. 139, Commercial Taxes and Registration (BI) Department dated 08.11.2013 issued by the Government of Tamil Nadu.

3. It is accepted by the Learned Counsel for both sides that the Division Bench of this Court in Star Club -vs- Principal Secretary to Government, Commercial Taxes and Registration Department, Chennai (Order dated 17.12.2019 in W.P. (MD) No. 19910 of 2013 etc., batch) has struck down G.O. Ms. No. 139, Commercial Taxes and Registration (BI) Department dated 08.11.2013 insofar as it relates to the period from 01.04.2013 to 07.11.2013 with retrospective effect for the sale of alcoholic liquors as provided in the Second Schedule to the Tamil Nadu Prohibition Act, 1937, notifying the percentage of tax applicable which stands imposed @ 14.5% at the third point of sale in the State, by holding as follows:-

> “8. In our considered opinion, in the instant case, the principle will apply more squarely as this is a case of indirect tax where the burden of collecting tax on the petitioners lay from the customers who have already purchased the goods and have disposed of any tax liability with the completion of the transaction of sale without there being any indication in the statute for imposition of any future deferred tax. The result, therefore, is that the petitioners cannot now realise tax in respect of goods already sold to the customers for which there was no statutory liability nor was there any existence of a specific charging section for realisation of such tax retrospective that is, of course, confined only to the period from 01.04.2013 to 07.11.2013.

9. As already indicated above, the grievance of the petitioners stands narrowed down only to this period of the transactions in relation to the aforesaid financial year and therefore, even though it was neither a benefit nor an exemption, yet inflicting an imposition later on clearly amounts to retrospectively realising a tax on the sale of the goods which under the impugned Government Order was not leviable to tax for the aforesaid period. Thus, the burden or the liability on the petitioners for the said period as created by the notices issued to the petitioners by the respondent Tax Department are unsustainable in law. The same, in our opinion, amounts to an unreasonable and an unfair imposition of liability which does not find support from the statutory provisions, as a taxing statute in our opinion has to be construed strictly for imposing any liability."

4. The Petitioner would be entitled to the same benefit following the aforesaid ruling of the Division Bench of this Court, and the demand made in the impugned notice for the said retrospective period is quashed to that extent. Though obvious, it is made clear that the liability of the Petitioner to pay tax at the revised rate from 08.11.2013 onwards shall remain undisturbed and the recovery of the same shall be governed by the relevant statutory provisions in the manner recognised by law.

5. The Writ Petition is ordered on the aforesaid terms. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

msm/vjt

To

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NRJK(CO)
KKV/03/12/2020