BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2020

CORAM :

**THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE**
**AND**
**THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD**

W.P.(MD) Nos.19777, 20429, 20559, 20705 of 2013, 867, 902, 1376 of 2014 and M.P. (MD) Nos.1 of 2013 (3 Petitions), 2 of 2013 (3 Petitions), 3 of 2013 (1 Petition), 1 of 2014 (3 Petitions) and 2 of 2014 (2 Petitions)

Friends Recreation Club,
Rep. by its Secretary, Manjunath,
S/o Soundarajan, 3/122b, Visalakshi Nagar,
Sengamalanatchiyapuram, Virudhunagar District
... Petitioner in WP(MD). 19777/ 2013

Thirunagar Sports Club,
Rep by its Secretary,
V. Alagarsamy,
S/o. Velchamy,
No. C- 99 , Veeraragavaperumal Street,
Thirunagar, Madurai- 006.
... Petitioner in WP(MD). 20429/ 2013

Muthumari Manamagil Mandram,
Rep by its Secretary,
K.Kasirajan,
S/o. Karuthakanna Thevar,
No. 11-1-81, F-9, T.K. Complex,
Sathya Nagar 1st Street,
Madurai Road,
Usilampatti, Madurai District
... Petitioner in WP(MD). 20559/ 2013

1. T.Kodeeswaran, S/o. A. Thangam,
   Licensee,
   Hotel Thangam,
   36/6, Madurai Road,
   Srivilliputtur,
   Virudhunagar District

2. G. Manikannan, S/o. Ganesan,
Licensee,
Hotel Saravana,
No. 5/54, Madurai Main Road,
Krishnan Kovil,
Coonur Post,
Srivilliputtur Tk, Virudhunagar District

3. A. Sundari, W/o. Late. Annadurai Selvan,
Licensee,
Sri Raja Lodge A/c Hotel Revathy,
32, Madurai Road,
Srivilliputtur,
Virudhunagar District

4. V. Mohanraj S/o. T. Vanaraj,
Licensee,
Hotel Muthu, No. 8a/8a-1/8a2, Vahaikulan Street,
Srivilliputtur, Virudhunagar District

5. Dharanipathi, S/o. B. Ramanujam,
Licensee,
Sri Andal Boarding and Lodging,
Bye- Pass Road, Thiruparkadal Road, Srivilliputhur,
Virudhunagar District.

6. V.Manoharan, S/o. Vanamoorthy Naidu,
Licensee, Hotel Ajay Residency,
55, Rajaji Road,
Srivilliputtur,
Virudhunagar District

... Petitioners in WP(MD). 20705/ 2013

Sri Sudharsana Sabha,
Rep. by its Secretary,
R.K. Nagarajan, S/o.K.M. Ramasamy Udayar,
Gandhi Road, Thanjavur District.

... Petitioner in WP(MD). 867/ 2014

S.R.Srinivas,
S/o Raju Reddiar, Licensee, Hotel Shrinivas, No.58 C,
Gandhi Raod, Sivakasi, Virudhunagar District

... Petitioners in WP(MD). 902/ 2014

K.Raman, S/o Karuppa Thevar,
Managing Director, Madurai Residency,
No.14, 15 West Marret Street, Madurai 1
... Petitioners in WP(MD). 1376/ 2014

- Vs. -

1. The Principal Secretary To Govt., Commercial Taxes and Registration Dept., Govt. of Tamil Nadu, Fort.St.George, Chennai

2. The Managing Director, TASMAC, Cmda Tower 4th Floor, Gandhi Irwin Bridge Road, Egmore, Chennai

3. The District Manager, TASMAC, Virudhunagar District
... Respondents in WP(MD). 19777/ 2013

1. The Principal Secretary To Government,
Commercial Taxes and Registration Department,
Government of Tamil Nadu, Fort St. George, Chennai.

2. The Managing Director,
Tamil Nadu State Marketing Corporation, Cmda Tower 4th Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai.

3. The District Manager,
Tamil Nadu State Marketing Corporation,
Madurai District
... Respondents in WP(MD). 20429/ 2013

1. The Principal Secretary To Government,
Commercial Taxes and Registration Department,
Government of Tamil Nadu,
Fort St. George,
Chennai.

2. The Managing Director,
Tamil Nadu State Marketing Corporation, Cmda Tower 4th Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai.

3. The District Manager /sub Collector,
Tamil Nadu State Marketing Corporation Ltd.,
Madurai District
... Respondents in WP(MD). 20559/ 2013

1. The Principal Secretary To Government,
Commercial Taxes and Registration Department,
Government of Tamil Nadu, Fort St. George, Chennai.

2. The Managing Director,
Tamil Nadu State Marketing Corporation, Cmda Tower 4th Floor,
Gandhi Irwin Bridge Road, Egmore, Chennai.

3. The District Manager
Tamil Nadu State Marketing Corporation, Virudhunagar District
... Respondents in WP(MD). 20705/ 2013

1. The Principal Secretary To Govt.,
Commercial Taxes and Registration Dept.,
Govt. of Tamil Nadu, Fort St. George, Chennai.

2. The Managing Director Tamil Nadu State Marketing Corporation,
Cmda Tower 4th Floor, Gandhi Irwin Bridge Road, Egmore, Chennai.

3. The District Manager, Tamil Nadu State Marketing Corporation,
Thanjavur District
... Respondents in WP(MD). 867/ 2014

1. The Principal Secretary To Govt.,
Commercial Taxes and Registration Dept., Govt. of Tamil Nadu,
Fort.St.George, Chennai

2. The Managing Director,
Tamil Nadu State Marketing Corporation, Cmda Tower 4th Floor,
Gandhi Irwin Bridge Road, Egmore, Chennai

3. The District Manager, Tn State Marketing Corporation,
Virudhunagar District
... Respondents in WP(MD). 902/ 2014

1. The Principal Secretary To Govt.,
Commercial Taxes and Registration Dept.,
Govt. of Tamil Nadu, Fort.St.George, Chennai

2. The Managing Director, Tn State Marketing Corporation, Cmda Tower 4th Floor, Gandhi Irwin Bridge Road, Egmore, Chennai

3. The Deputy Collector, District Manager, Tasmac, Madurai West, Madurai

... Respondents in WP(MD). 1376/ 2014

Prayer in WP(MD). 19777/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Declaration declaring that G.O. Ms. No. 139 dated 08.11.2013 issued by the 1st respondent is inapplicable to holder of FL2 license.

Prayer in WP(MD). 20429/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of any other order of direction in the nature of Writ of Declaration declaring that G.O.Ms.No. 139 dated 08.11.2013 issued by the 1st Respondent is inapplicable to holder of FL2 license.

Prayer in WP(MD). 20559/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Declaration declaring that G.O.Ms.NO. 139 dated 08.11.2013 issued by the 1st respondent is unconstitutional and inapplicable to holder of FL2 license .

Prayer in WP(MD). 20705/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Declaration declaring that G.O.Ms.No. 139 dated 08.11.2013 issued by the 1st respondent is inapplicable to holders of FL3 license .

Prayer in WP(MD). 867/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Declaration, declaring that G.O. Ms. No.139 dated 08.11.2013 issued by the 1st repsondent is inapplicable to holder of FL2 license.

Prayer in WP(MD). 902/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Declaration, declaring that G.O. Ms. No. 139 dated 08.11.2013 issued by the 1st respondent is inapplicable to holder of FL3 license.

Prayer in WP(MD). 1376/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Declaration, declaring that the Section 1 (2) (b) of the Tamil Nadu Value Added Tax (5th Amendment) Act, 2013, as published in the Tamil Nadu Government Gazette No.329 dated 08.11.2013 in so far as it relates to the petitioner's sHotel is concerned, as arbitrary, unjust , illegal , uncostitutional and unenforceable in law.

| | | |
|---|---|---|
| For Petitioners in W.P. (MD) Nos.19777, 20429, 20705 of 2013, 867, 902 of 2014 | : | Mr.K.Gokul |
| For Petitioner in W.P (MD) No.20559 of 2013 | : | Mr.T.Antony Arul Raj |
| For Petitioner in W.P. (MD) No.1376 of 2014 | : | Mr.V.Ramajegadeesan |
| For 1st respondent in W.P.(MD) Nos.19777, 20429, 20559, 20705 of 2013, 867, 902, 1376 of 2014 | : | Mrs.J.Padmavathi Devi<br>Spl. Government Pleader |
| For respondents 2 and 3 in W.P.(MD) Nos.19777, 20429, 20559, 20705 of 2013, 867, 902, 1376 of 2014 | | Mr.H.Arumugam<br>Standing Counsel |

ORDER

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

Challenge in these batch of writ appeals is to G.O.Ms.No.139, Commercial Taxes and Registration (B1), dated 8.11.2013 issued by the State of Tamil Nadu on the ground that the same is inapplicable to holder of FL2 license.

2. An identical question came up for hearing before this very Bench in ***Star Club v. The Principal Secretary to Government, reported in MANU/TN/9087/2019***, wherein this Court allowed the writ

petitions and the imposition of liability through demand notices issued under the Government Order in respect of the period from 1.4.2013 to 7.11.2013 at the third point of sale was struck down. However, this Court confined the liability only to the period after the notification. Paragraphs 8 to 12 of the said judgment are reproduced herein under:

> *"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.*
>
> *10. It is trite that a fiscal legislation imposing tax is generally governed by the normal presumption that it is not retrospective and it is a cardinal principle of tax law that the law to be applied is that which is force for the assessment year in question until otherwise provided expressly or by necessary implication. The rule applies to the charging sections and other substantive provisions. A provision which*

*has the effect of opening up liability will be subject to the rule of strict construction. A legislation cannot be given a greater retrospectivity than is expressly mentioned in the statute nor can such a provision be construed to initiate recovery of liability or commence proceedings in relation thereto in the absence of any charging provision. The impugned realisation sought to be made from the petitioners through the notices of demand would ultimately turn out to be unduly oppressive and confiscatory in nature, inasmuch as by virtue of the impugned liability created under the provisions under challenge, tax would be realised in respect of transactions that have already attained finality and stand foreclosed as the goods have already been supplied by the petitioners to their customers who are no longer available for meeting any such liability that has been created subsequently by virtue of the impugned Government Order.*

*11. We also find that the period of liability in respect of all the petitioners extending from 01.04.2013 to 07.11.2013 had been protected by an interim measure through the orders of this Court.*

12. Accordingly, the Writ Petitions are allowed and the imposition of liability through the demand notices issued under the impugned Government Order in respect of the period from 01.04.2013 to 07.11.2013 at the third point of sale is struck down. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

3. These writ petitions are partly allowed to the extent mentioned above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sasi

To:

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

2 The Managing Director
Tamil Nadu State Marketing Corporation
CMDA Tower 4th Floor
Gandhi Irwin Bridge Road
Egmore, Chennai.

3 The District Manager
Tamil Nadu State Marketing Corporation
Virudhunagar District.

4 The District Manager/ Sub Collector,
Tasmac, Madurai.

5 The District Manager,
Tasmac, Thanjavur District.

6 The Deputy Collector/District Manager,
Tasmac, Madurai West, Madurai.

+1CC TO MR.M.MUTHUGEETHAYAN, Advocate Sr. No.7895
+1CC TO MR.H.ARUMUGAM, Advocate Sr. No.8159
+1CC TO THE SPECIAL GOVERNMENT PLEADER
SR.No. 8086, 8106, 8104, 8083 & 8082

W.P.(MD) Nos.19777, 20429, 20559, 20705 of 2013, 867, 902, 1376 of 2014 and M.P. (MD) Nos.1 of 2013 (3 Petitions), 2 of 2013 (3 Petitions), 3 of 2013 (1 Petition), 1 of 2014 (3 Petitions) and 2 of 2014 (2 Petitions)

24.2.2020

MR(CO)
TR(06.03.2020) 9P 10C