BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.01.2020
CORAM

THE HONOURABLE MR.JUSTICE M.DURAISWAMY
AND
THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.P(MD)No.1678 of 2020
and
W.M.P.(MD)Nos.1412 and 1413 of 2020

M/s.A1 Welfare Club,
Rep. by its Secretary P.Kannan ... 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 Taxes Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

3.The Assistant Commissioner (CT),
Madurai Rural East Assessment Circle,
Madurai, Madurai District.

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

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 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 : Mr.T.Bashyam

For Respondents : Mrs.S.Srimathy
Special Government Pleader

ORDER

[Order of the Court was made by **M.DURAISWAMY,J.**]

The petitioner has filed the above writ petition 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 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.

2.Mrs.S.Srimathy, learned Special Government Pleader takes notice for the respondents.

3.It is brought to the notice of this Court that the Hon'ble Supreme Court in a recent Judgment in ***STATE OF WEST BENGAL AND OTHERS v. CALCUTTA CLUB LIMITED*** in ***Civil Appeal No.4184 of 2009***, dated 03.10.2019, had settled the identical issue sought for in the present writ petition. The relevant portion of the Judgment, dated 03.10.2019, reads 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."*

4.Following the decision of the larger Bench of the Hon'ble Supreme Court in the ***CALCUTTA CLUB*** case, the Hon'ble Division Bench of this Court disposed of a batch of writ petitions in W.P.(MD)Nos.10981 of 2017 etc. batch, by order dated 13.11.2019, on the following terms:-

> *"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 petitioners' 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."*

5.The learned counsel appearing on either side submitted that the issue involved in the present writ petition is covered by the decision of the Hon'ble Division Bench made in W.P.(MD)No.10981 of 2017 etc. batch. Following the said order, we permit the petitioner 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 continue to apply to the incorporated and unincorporated members and this issue should be taken into consideration by the assessing authorities. However, the other issues which may required to be adjudicated by the assessing office, since the prayer sought for in the present writ petition is for declaratory relief.

6.With these observations, the writ petition is disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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,
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Ezhilagam, Chepauk,
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3.The Assistant Commissioner (CT),
Madurai Rural East Assessment Circle,
Madurai, Madurai District.

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

+1 CC to MR.T.BASHYAM, Advocate (SR-3598[F] dated 29/01/2020)
+1 CC to SPL.GP (SR-3884[F] dated 30/01/2020)

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MK (07.02.2020) 4P 7C