IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. Nos. 1523 to 1525 of 2014 and
W.M.P. Nos. 1, 1 and 1 of 2014

Vinayaga Friends Association,
Represented by its Secretary D.Baskaran,
No.388/14, Thuraipakkam,
Pallavaram, Kovilampakkam,
Kancheepuram District ... Petitioner in
W.P. No. 1523 of 2014

Puja Recreation Center,
Represented by its Secretary N.S.Arjun,
Old No.152, New No.371,
Konnur High Road,
Ayanavaram,
Chennai - 600 023. ... Petitioner in
W.P. No. 1524 of 2014

The Park Club,
Represented by its Secretary Geetha Kumar,
No.64, 100 feet Road,
Padi,
Chennai - 600 050. ... Petitioner in
W.P. No. 1525 of 2014

-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. ... Respondents
1 & 2 in all W.Ps

3. The Manager,
Tamil Nadu State Marketing Corporation Limited,
IMFS Depot, Thirumazhsai - Unit III,
Chennai - 602 107. ... 3rd Respondent
in W.P. No. 1523 of 2014

3. The Manager,
Tamil Nadu State Marketing Corporation Limited,
IMFS Depot, Chennai (South District),
Ambattur – III,
Chennai - 602 107. ... 3rd Respondent
in W.P. No. 1524 of 2014

3. The Manager,
Tamil Nadu State Marketing Corporation Limited,
IMFS Depot, Ambattur – II,
B-4, Industrial Estate,
Chennai – 600 058. ... 3rd Respondent
in W.P. No. 1525 of 2014

Prayer in W.P. No. 1523 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling 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.

Prayer in W.P. No. 1524 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records pertaining to the impugned order dated 13.12.2013 made in R.C.1046/2013/A1 passed by the third respondent and quash the same.

Prayer in W.P. No. 1525 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records pertaining to the impugned order dated 16.12.2013 made in Pdl.No.105/A5/2013 passed by the third respondent and quash the same.

For Petitioners
in all W.Ps : Mr.R.Thiagarajan

For Respondents
in all W.Ps : Mr.V.Veluchamy
Govt. Advocate for R1
No appearance for R2 and R3

C O M M O N O R D E R

The relief sought for in the present Writ Petitions is to call for the records in pursuant to the orders dated 13.12.2013 and 16.12.2013 passed by the third respondent and to quash the same.

2. The orders impugned is a demand seeking differential amount from the petitioners. The petitioners being a recreation club are entitled to sell alcoholic liquor to its members for

consumption within the club premises. The petitioners have issued FL 2 license and they are complying with the conditions of license scrupulously without any deviation. The Government of Tamil Nadu issued G.O.Ms.No.139, Commercial Taxes and Registration (B1) Department dated 08.11.2013 amending the second schedule to the Tamil Nadu Value Added Tax Act, 2006. By the said GO, there has been a revision of the rate of tax levied at the second point of sale in the State. The issue raised in this regard were challenged by the other similar placed petitioners in W.P. (MD) Nos. 19910 of 2013 etc., batch and the Hon'ble Division Bench of the Madurai Bench of High Court delivered a Judgment on 17.12.2019 and the relevant paragraphs are extracted hereunder:

> "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 statue in our opinion has to be construed strictly for imposing any liability.
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> 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 statue 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. In view of the findings in the Judgment cited supra, the impugned orders passed by the third respondent in proceedings Nos.Na.Ka.Pa.Vay.01/A1/2013 dated 13.12.2013, R.C.1046/2013/A1 dated 13.12.2013 and Pdl.No.105/A5/2013 dated 16.12.2013 are quashed and the Writ Petitions stand allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vji
To
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,
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3. The Manager,
Tamil Nadu State Marketing Corporation Limited,
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4. The Manager,
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IMFS Depot, Chennai (South District),
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5. The Manager,
Tamil Nadu State Marketing Corporation Limited,
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B-4, Industrial Estate,
Chennai – 600 058.

W.P. Nos. 1523 to 1525 of 2014
and
W.M.P. Nos. 1, 1 and 1 of 2014

PCH[co]
NSK 06/09/2021