IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.04.2022
Coram:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, Chief Justice
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition Nos.9647 and 9651 of 2022
and
W.M.P.Nos.9390, 9391, 9394 and 9395 of 2022

Majestic Recreation Club,
Rep. by its Secretary A.P.Senthilraj,
S/o Palanichamy,
S.F.No.96/4, K.R.R.Layout,
Raja Vaikkal Veethi,
Karuvampalayam,
Tiruppur-641 604. ...Petitioner in W.P.No.9647 of 2022

Sarkar Samakulam Makkal Nala Sangam,
Rep. by its Secretary S.Kumar,
S/o Sachithanantham,
No.67-71, Brookefields Estate Private Limited,
Krishnaswamy Road,
Coimbatore-641 001. ...Petitioner in W.P.No.9651 of 2022

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 (ST) (FAC),
   Office of the Assistant Commissioner (ST),
   Central-1 Circle, Tiruppur.

4. The Commissioner of Prohibition
   and Excise Department,
   Ezhilagam, Chennai. ..Respondents in W.P.No.9647 of 2022

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 (ST),
   Office of the Assistant Commissioner (ST),
   R.S.Puram Circle,
   Dr.Balasundram Road,
   Coimbatore-641 018.

4. The Commissioner of Prohibition
   and Excise Department,
   Ezhilagam, Chennai. ..Respondents in W.P.No.9651 of 2022

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writs of Declaration declaring that the definition in Section 2(15)(ix) to Explanation I and Section 2(33)(vi) to Explanation I of the 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 Articles 19(g) and 265 of the Constitution of India.

For petitioners : M/s.Lakshmi Sriram in both W.Ps.
For respondents : Mr.M.Venkateswaran,
Spl.G.P. (Taxes) in both W.Ps.

COMMON ORDER

(The Common Order of the Court was made by The Honourable Chief Justice)

The Writ Petitions have been filed seeking to challenge Section 2(15)(ix) to Explanation I and Section 2(33)(vi) to Explanation I of the Tamil Nadu Value Added Tax Act, 2006, and recoveries made pursuant thereto, to be declared without authority of law and opposed to Articles 19(1)(g) and 265 of the Constitution of India.

2. Learned counsel for the petitioners submitted that the show cause notices were issued on the petitioners calling upon objections within 7 days and also for personal hearing. However,

the show cause notices were issued in ignorance of the judgment of the Supreme Court on the same issue in the case of State of West Bengal Vs. Calcutta Club Ltd., reported in 2019 (19) SCC 107. In reference to the said judgment, a Division Bench of this Court had disposed of similar Writ Petitions with appropriate direction and for that, reference to the order passed in W.P.(MD).Nos.23012 and 23030 of 2019, dated 01.11.2019 (M/s.The Master Club, represented by its President P.Krishnasamy and another Vs. The Government of Tamil Nadu, rep. by its Principal Secretary, Department of Commercial Taxes, Fort St.George, Chennai-600 009 and others) and also in W.P.(MD).Nos.12115 to 12129 of 2019, etc., dated 26.02.2020 (M/s.Real Recreation Club and others Vs. The Government of Tamil Nadu, rep. by its Principal Secretary, Department of Commercial Taxes, Fort St.George, Chennai and others), have been given. Accordingly, prayer has been made to cause interference in the impugned show cause notices.

3. The challenge to the show cause notices has been made referring to the fact that when the issue has already been decided by the Apex Court, then it should be to the knowledge of the competent authority before issuance of it, and if it is in ignorance of the judgment of the Supreme Court, this Court should cause interference therein.

4. We have also heard the learned Special Government Pleader appearing for the respondents on the above aspects of the matter.

5. We have considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. The prayer of the writ petitioner is to declare the definition given in Section 2(15)(ix) to Explanation I and Section 2(33)(vi) to Explanation I of the Act of 2006 to be unconstitutional. The argument to hold and declare the aforesaid provisions to be unconstitutional, has not been made, rather, it was in reference to the show cause notices issued by the respondents calling upon the objections and for personal hearing.

7. The above prayer made for declaring the above provisions of the Act of 2006 unconstitutional, is only for the sake of it. The issue now remains is in reference to the show cause notices issued by the respondents. The challenge to the show cause notices has been made mainly in reference to the

judgment of the Apex Court in the case of Calcutta Club Ltd. (supra) and to strengthen the argument, reference has also been made to the judgments of this Court in the case of M/s.The Masters Club (supra) and M/s.Real Recreation Club (supra). A perusal of the judgments of this Court in M/s.The Masters Club (supra) and M/s.Real Recreation Club (supra) does not show interference with the show cause notices, rather, referring to the judgment of the Apex Court in the case of Calcutta Club Ltd. (supra), observations have been made for consideration of such judgments by the assessing authority and with the aforesaid, the petitioners were permitted to give suitable reply to the show cause notices issued by the authority. It may be in the light of the decision of the Supreme Court or on any other issue. The other judgments relied on by the learned counsel for the petitioners was on the same issue and similar direction was given in the case of M/s.The Masters Club (supra) and M/s.Real Recreation Club (supra).

8. Thus, in none of the judgments, interference was made to the show cause notice.

9. The challenge to the show cause notice is not on the ground of competence of the authority or it to be unconstitutional offending any of the constitutional provisions. The argument is not even to the effect that the show cause notices are opposed to the statutory provisions.

10. In view of the above, we do not find that the Writ Petitions would be maintainable to challenge the show cause notices, more so, when the petitioners were called upon to submit their objections to the show cause notices and even for personal hearing. The petitioners could have raised the objections to the show cause notices in reference to the judgment of the Apex Court, as no one prevented the petitioners from submitting their reply/objections to this effect and seek personal hearing. Instead of doing so, the Writ Petitions have been filed to challenge the show cause notices even without filing reply to it, or raising objections in reference to the judgment of the Apex Court mentioned supra. We do not find that the Writ Petitions are maintainable for that purpose.

11. However, the Writ Petitions are disposed of, with liberty to the petitioners that if they so choose to file objections to the show cause notices within a period of one week from today and on all available grounds, and if such objections are filed, then after providing an opportunity of personal hearing, appropriate order can be passed by the respondents, but

it would be after considering the objections that are raised by the petitioners and also considering the judgments on the issue. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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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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   Coimbatore-641 018.

+2 Ccs to M/s. Lakshmi Sriram, Advocate sr 27513.
+1 CC to The Special Government Pleader(T) sr 27807 & 27806.

Writ Petition Nos.9647 and 9651 of 2022

NMI(CO)
SP(29/04/2022)