IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.05.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS.13292 AND 13300 OF 2022
AND W.M.P.NOS.12573 AND 12574 OF 2022

Palladam Health and Recreation Club,
Rep.by its Secretary S.Saminathan
...Petitioner in W.P.No.13292 of 2022

Milleners Recreation Club,
Rep.by its Secretary A.Muruganantham,
...Petitioner in W.P.No.13300 of 2022

Vs.

The Assistant Commissioner (CT),
Office of the Assistant Commissioner (CT),
Tiruppur South Circle,
Tiruppur.
...Respondent in W.P.No.13292 of 2022

The Assistant Commissioner (ST) (FAC),
Kodumudi Assessment Circle,
Karur-639 001
...Respondent in W.P.No.13300 of 2022

Prayer in W.P.No.13292 of 2022 :- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Pre-Assessment Notice issued by the respondent in TIN.33132325401/2017-18, dated 08.04.2022, and quash the same.

Prayer in W.P.No.13300 of 2022:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Assessment Order passed by the respondent in TIN.33386503037/2021-22, dated 04.04.2022, and quash the same.

In both the cases

For Petitioner : M/s.Lakshmi Sriram

For Respondents : Mr.Richardson Wilson,
Additional Government Pleader

COMMON ORDER

By this common order, both these Writ Petitions are being disposed.

2. In W.P.No.13292 of 2022, the petitioner has challenged the impugned Pre-Assessment Notice dated 08.04.2022 bearing reference TIN.33132325401/2017-18.

3. In W.P.No.13300 of 2022, the petitioner has challenged the impugned Assessment Order dated 04.04.2022 in TIN.33386503037/2021-22.

4. The challenge to both the impugned Pre-Assessment Notice and the impugned Assessment Order is in the light of the decision of the Hon'ble Supreme Court in the State of West Bengal and Others Vs.Calcutta Club Limited, (2019) 19 Supreme Court Cases 107.

5. The learned Additional Government Pleader for the respondent submits that W.P.No.13292 of 2022 is not maintainable and it is pre-mature as the petitioner has to reply to the impugned Pre-Assessment Notice issued by the Commercial Tax Department.

6. The learned Additional Government Pleader for the respondent in W.P.No.13300 of 2022 submits that the petitioner has purchased alcoholic liquor from TASMAC for a sum of Rs.15,71,411/- and has suppressed this fact inasmuch as no return was filed declaring the same. It is further submitted that in the monthly returns filed under Section 21 of the TNVAT Act, 2006 also the petitioner has reported the transaction as ' NIL' .

7. I have considered the arguments advanced by the learned counsel for the petitioners and the learned Additional Government Pleader for the respondents in the respective Writ Petitions.

8. As far as the petitioner in W.P.No.13292 of 2022 is concerned, the writ petition is pre-mature. Therefore, I am inclined to dispose this Writ Petition by directing the petitioner to file a reply to the pre-assessment notice dated 08.04.2022 within a period of 30 days from the date of receipt of a copy of this order. On receipt of such reply, the respondent shall pass appropriate orders on merits and in accordance with law, after duly considering the decision of the Hon'ble Supreme Court cited supra.

9. As far as the petitioner in W.P.No.13300 of 2022 is concerned, it appears that the petitioner had not replied to the pre-assessment notice dated 07.03.2022 and thus the impugned order has been passed.

10. Considering the fact that the petitioner in W.P.No.13300 of 2022 was not heard before the impugned Assessment Order was passed, I am inclined to quash the impugned Assessment Order dated 04.04.2022 and remit the case back to the respondent to pass a speaking order. The impugned order which stand quashed, shall be treated as corrigendum to the impugned pre-assessment notice dated 07.03.2022. The petitioner shall file a reply within a period of 30 days from the date of receipt of a copy of this order. The Assessing Officer shall pass appropriate orders on merits and in accordance with law, after hearing the petitioner, within a period of 30 days thereafter. The Assessing Officer shall also consider the applicability of the decision of the Hon'ble Supreme Court cited supra before passing final order.

11. These Writ Petitions stand disposed with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Vacation Officer

// True Copy //

Sub Assistant Registrar

nvi/kkd

To

1.The Assistant Commissioner (CT),
Office of the Assistant Commissioner (CT),
Tiruppur South Circle,
Tiruppur.

2.The Assistant Commissioner (ST) (FAC),
Kodumudi Assessment Circle,
Karur-639 001

+1cc to the Special Government Pleader (Taxes) Sr.No.31779

W.P.Nos.13292 and 13300 of 2022
and W.M.P.Nos.12573 and 12574 of 2022

SSI(CO)
RVM(31/05/2022)