BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.13764 of 2022
and
W.M.P(MD).Nos.9767 and 9769 of 2022

Vanavil Recreation Club,
Rep by its Secretary,
Nandakumar ... Petitioner

Vs.

The Assistant Commissioner (ST)
Virudhunagar III Assessment Circle,
Ground Floor, CT Building,
Madurai Road,
Virudhunagar,
Virudhunagar District ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned Pre-Assessment Notices issued by the respondent in Assessment No.33346421464/2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022 dated 28.04.2022 and 02.05.2022 for 5 years, and quash the same

For Petitioner : Mr.E.Marees Kumar
For Respondent : Mr.P.Subbaraj
Special Government Pleader

ORDER

The petitioner is the Secretary of Five Star Recreation Club has challenged the pre-assessment notices issued by the respondent in Assessment No.33346421464/2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022 dated 28.04.2022 and 02.05.2022 for 5 years and quash the same.

2. The primary contention of the petitioner is that the pre-assessment notices cannot be issued to a recreation club, which has been a settled provision in the case of ***State of West Bengal Vs Calcutta Club Limited*** reported in ***2019 (9) SCC 107***. The Apex Court clearly held that applying the doctrine of mutuality, any facility avail by the members of the club for food, beverages is not a sale transaction between the club and its members and not eligible to be taxed. It is specifically held that no consideration is passed for supplies of food, drinks or beverages and there was only reimbursement of the amount by the members and therefore, no sales tax could be levied. Thus stressing upon the doctrine of mutuality, the demand of tax from the club and its members has been quashed. This proposition has been consistently followed by this Court in W.P.(MD).Nos.25501 of 2019 and 12115 to 12119 of 2019 etc., batch and recently in W.P(MD).No.9856 of 2022.

3. The learned Special Government Pleader for the respondent submits that following the Supreme Court judgment, this Court had passed several orders. It is only a pre-assessment notice and at the initial stage, if at all the petitioner has any explanation to be offered following the above order, they can approach the Assessment Officer. The Assessment Officer would take appropriate decision by following the guidelines issued by the Apex Court as well as this Court. The Apex Court in the case of **State of West Bengal Vs Calcutta Club Limited** clearly stated that following the doctrine of mutuality and held that there is no sale transaction between the club and its members.

4. In view of the same, this Court passed the similar order, which reads as under:

> *"5. Therefore, this Court is of the considered opinion that the petitioner shall give explanation for the show cause notice. This writ petition is disposed of with the following directions:-*
>
> *(i) The petitioner is directed to give explanation for the show cause notice.*
>
> *(ii) The respondent is directed to conduct an enquiry by granting personal hearing and thereafter pass final orders. Until the final order is passed, the respondent shall not take any step to collect the assessment amount.*
>
> *No costs. Consequently, the connected miscellaneous petitions are closed."*

5. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

30.06.2022

Index : Yes / No
Internet : Yes/ No
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To

The Assistant Commissioner (ST)
Virudhunagar III Assessment Circle,
Ground Floor, CT Building,
Madurai Road,
Virudhunagar,
Virudhunagar District

M.NIRMAL KUMAR, J.

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