BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.19449 of 2022
and
W.M.P.(MD).Nos.14190 and 14193 of 2022

Srilingam Recreation Club,
Represented by its Secretary,
M.Muthupandi ... Petitioner

Vs.

The Assistant Commissioner (ST),
Thirumangalam Assessment Circle,
Thirumangalam,
Madurai 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. TIN: 33306503627/2020-2021, 2021-2022 for 2 assessment years dated 29.06.2022 and quash the same.

For Petitioner : Mr.E.Marees Kumar

For Respondent : Mr.P.Subbaraj,
Government Pleader.

ORDER

The petitioner's club was served with the notice dated 29.06.2022 for the proposed tax due of Rs.5,35,765/- (Five Lakhs Thirty Five Thousand and Seven Hundred and Sixty Five only) and Rs.9,29,156/- (Rupees Nine Lakhs Twenty Nine Thousand and One Hundred and Fifty Six only) for the years 2020-2021 and 2021-2022.

2. The contention of the petitioner is that the petitioner's club is a registered members club which is a non-proprietor one. The petitioner is a Secretary and the club has got FL.2 license. The petitioner's club in order to satisfy the needs of the members, had paid necessary fees and obtained license. The petitioner's club caters to the needs of the members. The petitioner's club provides food and snacks for the members and also served liquor to the members. The transaction between the petitioner's club and the members are beyond the concept of agent of mutuality and thereby, made the club beyond the net of taxation under the Constitution of India as well as the provisions of TNVAT Act. The petitioner submits that this proposition has been decided by the Court in the case of ***West Bengal Taxation Tribunal (WBTT) in Calcutta Club Vs The Deputy Commissioner.*** Further in view of the same, issuance of the notice is bad in law. He further submitted that on a

similar situation, this Court in W.P.(MD).No.11625 of 2022 in the case of ***Five Star Recreation Club Vs. The State Tax Officer*** has passed an order. The same is applicable to the petitioner case.

3. The learned Government Pleader appearing for the respondent submitted that the Apex Court order in the case of Calcutta club is applicable only to members club and to service to its members and not to non members club and for non members. In this case, the petitioner had made sales to non members to the tune of Rs.36,94,931/- (Rupees Thirty Six Lakhs Ninety Four Thousand and Nine Hundred and Thirty One only) and Rs.64,07,969/- (Rupees Sixty Four Lakhs Seven Thousand Nine Hundred and Sixty Nine only) for the years 2020-2021 and 2021-2022. Hence, notice has been issued.

4. The learned counsel for the petitioner refuted the same stating that without verifying the sales register and other records, calculating the sale to non members at the rate of 14.5% is bad in law. The petitioner is ready to produce the documents to show that the service has been made only to the members and non members are not entertained, unless they are guest to the members, which is very much permitted.

5. The learned Government Pleader further submitted that it is only a notice. The petitioner can very well make their submissions, objections to their authorities and thereafter, they would consider the explanation with records. It is seen that on a presumption, 14.5% is taken as sale to non members without verifying the records. From the notice nothing could be inferred on what basis 14.5% arrived.

6. The petitioner a membership club is served with a notice, seeking explanation. In view of the same, this Court directs the petitioner to appear before the respondent on or before 12.09.2022 along with explanation and records to show that the arrival of 14.5% is not proper, imaginary, without any materials.

7. 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:-*
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> *(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".*

8. With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

24.08.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

The Assistant Commissioner (ST),
Thirumangalam Assessment Circle,
Thirumangalam,
Madurai District.

M.NIRMAL KUMAR, J.

Nsr

W.P(MD).No.19449 of 2022

24.08.2022