BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2022

CORAM

**THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

W.P(MD).Nos.19873, 19874 and 19875 of 2022
and
W.M.P(MD).Nos.14462, 14463, 14464,
14465, 14478 and 14481 of 2022

**W.P.(MD).No.19873 of 2022:**

Tvl.Robin Recreation Club,
Rep by its Secretary,
K.Reegan ... Petitioner

**Vs.**

1.The State Tax Officer,
Uthamapalayam Assessment Circle,
Uthamapalayam,
Theni District.

2.The Branch Manager,
City Union Bank,
Cumbum Branch,
Theni District. ...Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent in his Proceedings TIN.No.33475102906/2020-21 and 2021-22 dated 03.08.2022 and quash the same as illegal and unconstitutional and consequently directing the first respondent to unfreeze the Current Account of the petitioner bank account operated with the second respondent bank vide Current Account No.500101011999318 forthwith.

**W.P.(MD).No.19874 of 2022:**

Tvl.Five Star Recreation Club,
Rep by its Secretary,
R.Thangapandi ... Petitioner

**Vs.**

1.The State Tax Officer,
Uthamapalayam Assessment Circle,
Uthamapalayam,
Theni District.

2.The Branch Manager,
City Union Bank,
Cumbum Branch,
Theni District. ...Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent in his Proceedings TIN.No.33565102905/2020-21 and 2021-22 dated 03.08.2022 and quash the same as illegal and unconstitutional and consequently directing the first respondent to unfreeze the Current Account of the petitioner bank account operated with the second respondent bank vide Current Account No.500101011560320 forthwith.

**W.P.(MD).No.19875 of 2022:**

Tvl.Royal Recreation Club,
Rep by its Secretary,
T.Raja ... Petitioner

**Vs.**

1.The State Tax Officer,
Uthamapalayam Assessment Circle,
Uthamapalayam,
Theni District.

2.The Branch Manager,
HDFC Bank,
Cumbum Branch,
Theni District. ...Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent in his Proceedings TIN.No.33725102914/2020-21 and 2021-22 dated 03.08.2022 and quash the same as illegal and constitutional and consequently directing the first respondent to unfreeze the Current Account of the petitioner bank account operated with the second respondent bank vide Current Account No.50200057542715 forthwith.

For Petitioner : Mr.C.Jeganathan
For 1st Respondent : Mr.C.Satheesh
Government Advocate
For 2ndRespondent : Mr.N.Dilip Kumar
Standing Counsel
in all W.Ps.

**COMMON ORDER**

The petitioner is the Secretary, has challenged the impugned order passed by the first respondent in TIN.Nos.33475102906/2020-21 and 2021-22, 33565102905/2020-21 and 2021-22, and 33725102 ...)-21 and 2021-22, dated 03.08.2022 and consequently to direct the first respondent to unfreeze the Current Account of the petitioner bank account operated with the second respondent bank vide Current Account Nos. 500101011999318, 500101011560320 and 50200057542715 respecitively.



2. The primary contention of the petitioner is that the pre-assessment notices cannot be issued to a recreation club, which is a settled position, 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 Government Advocate for the first respondent submitted 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.The learned Standing Counsel appearing for the second respondent submitted that on receipt of the communication from the first respondent dated 17.08.2022, directing the second respondent to take action under Section 45 of the Tamil Nadu Value Added Tax Act,2006, the accounts of the petitioner have been put on hold and they only acted as per the notice of the Tax authorities.

5.Recording the same, this Court finds that the issuance of notice to the second respondent invoking Section 45 of the Tamil Nadu Value Added Tax Act,2006, would not arise. It is only a pre assessment notice. Further, the mode of recovery under Section 45 of the Tamil Nadu Value Added Tax Act,2006, is that the Assessing authority must give a notice in writing to the dealer and thereafter, only proceed further. It is only a pre assessment notice and there is no tax or any money due to the Tax authorities.

Hence, the issuance of the notice to the bank is bad in law

**(*)Deleted**

6.Further, 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."*

**(*)"*7. Accordingly, these Writ Petitions are disposed of. The petitioner, if so pleased, is to file an appropriate petition challenging the attachments. Hence, the consequential proceedings would not arise in this case. No costs. Consequently, the connected miscellaneous petitions are closed."***

Sd/-

Assistant Registrar(AD-II)

**(*)Corrected as per the order of this court dated 02/09/2022 made in WP(MD).No. 19873 to 19875**

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/11/2022
Sub Assistant Registrar(CS)

Vsg

**(*) To be Substituted the order already despatched on 30.08.2022**

To

The State Tax Officer,
Uthamapalayam Assessment Circle,
Uthamapalayam,
Theni District.

+1 CC to M/s.SPL.GP ( SR-41104[F] dated 29/08/2022 )

+1 CC to M/s.N.DILIPKUMAR, Advocate ( SR-**43170**[F] dated 29/( )

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and 19875 of 2022
and
W.M.P(MD).Nos.14462, 14463,
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tp(CO)
KB(16.11.2022) 5P 4C