BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).Nos.19876, 19877 and 19878 of 2022
and
W.M.P(MD).Nos.14468, 14470, 14472,
14474 and 14476 of 2022

W.P.(MD).No.19876 of 2022:
Tvl.Veenue Recreation Club,
Rep by its Secretary,
R.Sridhar ... Petitioner

Vs.

1.The State Tax Officer,
Bodinayakkannur,
Theni District.

2.The Branch Manager,
Indian Overseas 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.33645081909/2020-21 and 2021-22 dated 20.07.2022 and quash the same as illegal and unconstitutional 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.19877 of 2022:

Tvl.Solai Thendral Recreation Club,
Rep by its Secretary,
M.Kulothungan ... Petitioner

Vs.

The State Tax Officer (ST),
Madurai Rural West Circle,
Madurai. ...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 order passed by the respondent in his Proceedings TIN.No.33525043466/2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 dated 30.07.2022 and quash the same as illegal.

W.P.(MD).No.19878 of 2022:

Tvl.Kathiravan Recreation Club,
Rep by its Secretary,
T.Baskaran ... Petitioner

Vs.

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

2.The Branch Manager,
Canara 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.33226403725/2021-22 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. 1055201000342 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 orders passed by the first respondent in TIN.No.33645081909/2020-21 and 2021-22, TIN No.33525043466/2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 and TIN.No.33226403725/2021-22, dated 20.07.2022, 30.07.2022 and 03.08.2022 respectively 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. 500101011560320 and 1055201000342.

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 they have not received any instructions from the first respondent with regard to the petitioner's account put on hold.

5.Since it is only a pre assessment notice, the second respondent Banks not to act upon any directions of freezing the bank accounts of the petitioners, till the pre assessment is completed and appropriate orders passed.

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. No costs. Consequently, connected miscellaneous petitions are closed.

26.08.2022

Index : Yes / No
Internet : Yes/ No
vsg

Note:Issue Order Copy on 30.08.2022

To

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

M.NIRMAL KUMAR, J.

vsg

W.P(MD).Nos.19876,
19877 and 19878 of 2022
and
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