BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.20519 of 2022
and
W.M.P.(MD).Nos.14857 and 14861 of 2022

Tvl.Theni Thai Recreation Club,
2B-B1, Theni Odaipatti Main Road,
Kamatchipalayam Taluk,
Uthamapalayam Taluk,
Theni District,
represented by its
Secretary,
V.Ramesh ... Petitioner

Vs.

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

2.The Branch Manager,
Federal Bank,
Chinnamanur 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.33185103405/2021-22 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. 19210200003709 forthwith.

For Petitioner : Mr.C.Jeganathan

For 1st Respondent : Mr.P.Subbaraj
Special Government Pleader

For 2nd Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

This writ petition has been filed to quash the impugned order passed by the first respondent in his proceedings TIN.No.33185103405/2021-22 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 No.19210200003709.

2.Mr.P.Subbaraj, learned Special Government Pleader takes notice for the first respondent and Mr.N.Dilip Kumar, learned Standing Counsel takes notice for the second respondent. By consent, this writ petition is taken up for final disposal at the admission stage itself.

3.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.

4. The learned Special Government Pleader for the first 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.

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.

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, this Writ Petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

01.09.2022

Index : Yes / No
Internet : Yes/ No
vsg

To

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

M.NIRMAL KUMAR, J.

vsg

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