BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2023

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. (MD) No. 1564 of 2023
and
W.M.P. (MD) No. 1423 of 2022

Aqua Club,
Rep. By its Secretary J.Jerom Shadrack ... Petitioner

-vs-

The State Tax Officer (FAC),
Office of the State Tax Officer,
Nagercoil Rural,
Kanyakumari District. ... Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned notices issued by the respondent in TIN. 33026503267/2021-22 dated 03.11.2022 and TIN. 33026503267/2020-21, dated 23.11.2022 and quash the same.

For Petitioner : Mr. T.Bashyam

For Respondent : Mr. D.Gandhiraj
Special Government Pleader

ORDER

Heard Mr. T.Bashyam, Learned Counsel for the Petitioner and Mr. D.Gandhiraj, Learned Special Government Pleader, who takes notice for the Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the notices dated 03.11.2022 and 23.11.2022 issued by the Respondent, which are evidently notices calling for objections, if any, from the Petitioner for the proposal to levy tax under the Tamil Nadu Value Added Tax Act, 2007 (hereinafter referred to as 'the TNVAT Act' for short).

3. It is the case of the Petitioner that in view of the doctrine of mutuality, the supply of liquor to the members of its club would not amount to a transaction of sale of goods from one person to another attracting taxation under the TNVAT Act, placing reliance on the decision of the Hon'ble Supreme Court of India in ***State of West Bengal -vs- Calcutta Club*** [(2019) 19 SCC 107], where it has been held as follows:-

"52.1 The doctrine of mutuality continues to be applicable to

incorporated and unincorporated members' clubs after the 46th Amendment adding Article 366(29-A) to the Constitution of India.

*52.2 **CTO -vs- Young Men's Indian Assn.** [(1970) 1 SCC 462] and other judgments which applied this doctrine continue to hold the field even after the 46th Amendment.*

52.3 Sub-clause (f) of Article 366(29-A) has no application to members' clubs."

4. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] that a charge memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read as follows:-

*"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide **Executive Engineer, Bihar State Housing Board -vs- Ramdesh Kumar Singh** [JT 1995 (8) SC 331], **Special Director -vs- Mohd. Ghulam Ghouse** (AIR 2004 SC 1467), **Ulagappa -vs-***

Divisional Commissioner, Mysore *[2001(10) SCC 639[,* ***State of U.P. -vs- Brahm Datt Sharma*** *(AIR 1987 SC 943) etc.*

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the reply to be submitted to the Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for the Court to interfere at this pre-mature stage of the matter.

5. In such circumstances, without expressing any view on the merits of the controversy involved in the matter, the Writ Petition is disposed on the following terms:-

(i) it shall be incumbent upon the Petitioner to submit its explanation to the show cause notices, which are impugned in the Writ Petition, if not done already, to the concerned authority by 31.03.2023;

(ii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioner to explain its position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment;

(iii) if any adverse decision is taken, the Petitioner may pursue legal remedies in accordance with law;

(iv) consequently, the connected Miscellaneous Petition is closed; and

(v) there shall be no order as to costs.

30.01.2023
(6/7)

NCC : Yes/No
Index: Yes/No
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Note:- Issue order copy by 06.03.2023.

To

The State Tax Officer (FAC),
Office of the State Tax Officer,
Nagercoil Rural,
Kanyakumari District.

P.D. AUDIKESAVALU, J.

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(6/7)

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