



W.P. (MD) No. 4326 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

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

W.P. (MD) No. 4326 of 2023
and
W.M.P. (MD) No. 4080 of 2023

Surya Club,
Rep.by its Secretary G.Jayakumar,
S/o.Gopalsamy,
No.2/550/I, North Middle Street,
Alagammal Nagar, Sithurajapuram Village,
Sivakasi-626 189,
Virudhunagar District.

... Petitioner

Vs.

The Deputy State Tax Officer-1,
Office of the Assistant Commissioner (ST),
Sivakasi-2, Assessment Circle,
Sivakasi-626 124,
Virudhunagar District.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, for issue of Writ of Certiorari, calling for the records pertaining to the impugned notices



W.P. (MD) No. 4326 of 2023

WEB COPY issued by the respondent in VAT:33606503791/2018-29, VAT: 33606503791/2019-20, VAT:33606503791/2020-21, VAT: 33606503791/2021-22, VAT:33606503791/Apr 2022-June 2022 dated 08.12.2022 and quash the same.

For Petitioner : Mr. K.Gokul

For Respondent : Mr. K.S.Selvaganesan
Additional Government Pleader

ORDER

Heard Mr. K.Gokul, Learned Counsel appearing for the Petitioner and Mr. K.S.Selvaganesan, Learned Additional 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 08.12.2022 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, 2006 (hereinafter referred to as 'the TNVAT Act' for short).



W.P. (MD) No. 4326 of 2023

WEB COPY

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.”



W.P. (MD) No. 4326 of 2023

WEB COPY

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



W.P. (MD) No. 4326 of 2023

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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*



W.P. (MD) No. 4326 of 2023

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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 notice, which is impugned in the Writ Petition, if not done already, to the concerned authority by 30.04.2023;
- (ii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted following the prescribed



W.P. (MD) No. 4326 of 2023

WEB COPY

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 Petitions are closed; and
- (v) there shall be no order as to costs.

02.03.2023

NCC : Yes/No

Index: Yes/No

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Note: Issue order copy by 08.05.2023.



W.P. (MD) No. 4326 of 2023

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W.P. (MD) No. 4326 of 2023

P.D. AUDIKESAVALU, J.

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W.P. (MD) No. 4326 of 2023

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