BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.21590 of 2022
and
W.M.P.(MD) Nos.15730 and 15732 of 2022

Tvl. Robin Recreation Club,
W-6/23, Main Road,
Hanumanthanpatti,
Uthamapalayam Taluk,
Theni District,
Rep., by its Secretary,
Mr.K.Regan .. Petitioner

Vs.

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

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

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records pertaining to the impugned proceedings passed by the 1st respondent vide

TIN No.33475102906/2012-13 dated 03.12.2015 and consequential proceedings in Na.Ka.No.747/2016-A3 dated 03.08.2022 and consequential proceedings issued by the 1st respondent in ROC 747/2016/A3 dated 17.08.2022 and quash the same.

For Petitioner	:	Mr.Sricharan Rangarajan Senior Counsel assisted by Mr.C.Jeganathan
For R1	:	Mr.J.Ravindran Additional Advocate General assisted by Mr.D.Ghandiraj Special Government Pleader
For R2	:	Mr.N.Dilipkumar Standing Counsel

ORDER

This writ petition is filed for the following relief:

> *"For the issue of a Writ of Certiorari, calling for the records pertaining to the impugned proceedings passed by the first respondent vide TIN No.33475102906/2012-13 dated 03.12.2015 and consequential proceedings in Na.Ka.No.747/2016-A3 dated 03.08.2022 and consequential proceedings issued by the first respondent in ROC 747/2016/A3 dated 17.08.2022 and quash the same."*

2. The main argument advanced by Mr.Sricharan Rangarajan, learned Senior Counsel appearing on behalf of the petitioner is that the impugned order is one passed without jurisdiction, since by reason of the judgment of the Hon'ble Supreme Court in ***State of West Bengal and Ors. Vs. Calcutta Club Limited*** reported in ***(2019) 9 SCC 107,*** any facility availed by a member of a club with regard to the food, beverages, etc., does not constitute a sale between a club and a member and is therefore, not liable to be taxed. The same is based on the doctrine of mutuality. This proposition has been consistently followed and the Hon'ble First Bench of this Court in a batch of writ petitions in W.P.(MD) Nos.12115 to 12129 of 2019 etc., by order dated 26.02.2020 has observed that in the light of the said judgment of the Hon'ble Supreme Court, the show cause notices issued by the Assessing Officer proposing levy on the writ petitioners, who were Recreation Clubs, ought to be interfered with. The petitioner Club was one of the petitioners before the Hon'ble First Bench. He would submit that when this position of law has not changed, the first respondent has come forward with the impugned order. He would further submit that the first respondent has taken into

account the entire purchase value and arrived at the tax, which is *per se* wrong. He would, therefore, submit that the impugned order has to be set aside.

3. Per contra, Mr.J.Ravindran, learned Additional Advocate General assisted by Mr.D.Ghandiraj, learned Special Government Pleader appearing for the respondents would submit that mere perusal of the quantity of the liquor purchased by the petitioner from the TASMAC would clearly indicate that the same was purchased for the purpose of the club alone and that the petitioner club was selling it to outsiders and therefore, the same is taxable and no exception can be taken to the demand.

4. Heard the learned counsel for the parties and perused the records.

5. Perusal of the impugned order would indicate that the first respondent has treated the entire purchase as taxable and has ignored the

judgment of the Hon'ble Supreme Court and that of the First Bench of this Court. The first respondent is fully aware that the petitioner as a club supplies liquor to its members, however the respondent has not factored the consumption of liquor by the members. Therefore, there appears to be a *prima facie* error in the order concerned.

6. Be that as it may, the petitioner must have shown proof that the liquor purchased have been consumed by their members. Therefore, in the light of the judgment of the Hon'ble Supreme Court as also the First Bench of this Court, the demand is erroneous and has to necessarily be interfered with. However, taking note of the fact that the petitioner has not responded to the original show cause notice and given details of the consumption by the members of the club, the matter shall be remitted back to the first respondent for fresh consideration.

7. Thus, for all the above reasons, this Writ Petition is allowed, the impugned proceedings passed by the first respondent vide TIN No. 33475102906/2012-13 dated 03.12.2015, the consequential proceedings

in Na.Ka.No.747/2016-A3 dated 03.08.2022 and the consequential proceedings in ROC 747/2016/A3 dated 17.08.2022 are set aside and the matter is remitted back to the first respondent for fresh consideration. The petitioner shall file their reply to the show cause notice with all attendant documents within a period of 15 days from today (21.04.2023) and on receiving the said documents, the first respondent shall consider the same, afford an opportunity of personal hearing and pass orders within a period of one month therefrom. It is made clear that in case, the hearing is delayed on account of the petitioner, the petitioner shall be permitted to continue the enquiry only after depositing a sum of Rs.20,00,000/- (Rupees Twenty Laksh only). No costs. Consequently, connected miscellaneous petitions are closed.

21.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

abr

To

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

P.T.ASHA, J.

abr

W.P.(MD) No.21590 of 2022

Dated: 21.04.2023