



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE S.SRIMATHY

W.P(MD)No.21646 of 2019

The Joint Commissioner of State Tax,
Commercial Taxes Department,
Tirunelveli Division,
Palayamkottai.

... Petitioner

vs.

1.The State Consumer Disputes Redressal Commission,
Chennai.

2.The District Consumer Redressal Forum,
Tirunelveli.

... Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the respondents to grant any relief in favour of any consumers against the petitioner's Department in Tirunelveli Division, in the Consumer Petition before them respectively.

For Petitioner : Mr.A.K.Manikkam
Special Government Pleader

For Respondents : No Appearance



WEB COPY



ORDER

This Writ Petition is filed for Writ of Mandamus, forbearing the respondents to grant any relief in favour of any consumers against the petitioner's Department in Tirunelveli Division, in the Consumer Petition before them respectively.

2. The petitioner is the Joint Commissioner of State Tax, Commercial Taxes Department. The said department is one of the administrations for the State Revenue consolidation, which is constituted by the Sovereign of State. The contention of the petitioner is that some consumers have filed cases before the second respondent Consumer Forum citing the officials working in the Tirunelveli Commercial Taxes Division as opposite parties. As on date, more than 115 cases were filed and pending before the second respondent. The further contention of the petitioner is that the department does not do any service within the meaning of Consumer Protection Act, 1986.

3. The second respondent has recently issued an order in the case filed by one Thiru.C.Maharaja, Consumer of Hotel Annapoorna in C.C.No. 89 of 2019, dated 09.07.2019. The said consumer has filed the case for



levying GST tax on the supply of curd before the second respondent against the Hotel Annapoorna, Palayamkottai and Assistant Commissioner of State Tax, Palayamkottai. However, the said consumer and the Assistant Commissioner of State Tax, Palayamkottai also added as one of the opposite parties. The said petition was allowed and directed the Hotel Management as well as the Assistant Commissioner of State Tax jointly or severally liable to pay Rs.10,000/- for making customer for putting the customer in distress.

4. The petitioner is executing the statutory function under the State GST Act. The petitioner is not collecting any GST over and above what is prescribed in the GST Act. If the Hotel Management is imposing any GST beyond the prescription of the Act, the petitioner will not be liable for the same. Therefore, the petition filed by the so-called consumer is beyond the purview of the Act and the Consumer Court is not having any jurisdiction and pass orders against the statutory authorities and against the statutory functions.

5. The learned Single Judge of this Court has already considered this issue in W.P.(MD)Nos.21614 of 2019 and batch, vide order dated 18.03.2022, wherein, it has been held as under:-



“...3.Though the writ petitions have been filed for a prohibition, it appears that appropriate remedy against the order of the Consumer Forum rejecting the request for deleting the name of the petitioner was available to the petitioner under Article 227 of the Constitution of India as wide power has been vested with this Court in its power of Superintendence of all Court. On the other hand, the jurisdiction of this Court under Article 226 of the Constitution of India has been invoked by the petitioner.

4.The 1st respondent/District Consumer Forum ought to have examined the issue as to whether the petitioner herein was either a necessary party or the proper party in the consumer complaints filed for the alleged deficiency of service by the respective hotels (the 4th respondent in the respective writ petitions) in the complaints filed by the 3rd respondent in these writ petitions. Though the provisions of the Code of Civil Procedure is not strictly applicable to the proceeding before the Consumer Forum, nevertheless the principles under the Code of Civil Procedure, as far as joinder, mis-joinder and non-joinder of parties are concerned, is to be followed in the proceeding before it.

5.Undoubtedly, the petitioner is neither necessary nor a proper party in the said proceeding. The 1st respondent Tribunal ought to have entertained the applications filed by the petitioner for deleting their name from the respective consumer complaints. If there was any complaint regarding the extra collection of tax by the hotels, it was open for the complainant (3rd respondent in the respective writ petitions) to file appropriate applications under Section 54 of the TNGST Act for refund of the excess tax, if any, that may have been cancelled. Clearly, the proceedings initiated against the



petitioner was unnecessary.

6.Considering the above, I am inclined to allow these writ petitions by directing the 1st respondent/District Consumer Forum to delete the name of the petitioner from the respective consumer complaints and pass appropriate orders in the complaints filed by the respective 3rd respondent in the respective consumer petitions before it.

7.These writ petitions stand allowed, accordingly. No costs. Consequently, connected miscellaneous petitions are closed.”

6. The petitioner, Commercial Taxes Department is executing the statutory function under the State GST Act and the petitioner is not collecting any GST over and above what is prescribed in the GST Act. If the Hotel Management is imposing any GST beyond the prescription of the Act, the petitioner will not be liable for the same. The consumer may have right against the Hotel Management but not against the Commercial Tax Department. Therefore, following the said decision, this Court is also inclined to allow the writ petition. The respondents are directed to forebear from entertaining any petition against the statutory authority.

7. Accordingly, the Writ Petition is allowed. No costs.



sjj

WEB COPY

NCC : Yes/No

Index: Yes/No

Internet: Yes/No

S.SRIMATHY, J.

sjj

To

1.The State Consumer Disputes Redressal Commission,
Chennai.

2.The District Consumer Redressal Forum,
Tirunelveli.

W.P(MD)No.21646 of 2019

20.07.2023