IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.16600 of 2024
&
WMP Nos.18204 & 18205 of 2024

Tvl. Little Star Recreation Club,
rep. By its Secretary C.Chelladurai
Regd. No.229/2017,
77, Raja Mill Road,
Pollachi, Coimbatore District. ... Petitioner

Versus

1. The State Tax Officer,
Pollachi (West) Assessment Circle
Pollachi-642 001.

2. Joint Commissioner (State Tax), Intelligence
Integrated CT Building,
Dr.Balasundaram Chettiar Road,
Coimbatore-641 018. ...Respondents

Prayer : A Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari calling for the records pertaining to the impugned proceedings of the 1st Respondent in TIN.No.33116503646/2020-21 along with the Notice of Final Annual Assessment and Demand (Form-O) in TIN. No.33116503646 (AY:2020-21) dated 29.01.2024 and the consequential impugned notice in TIN No.33116503646 dated 16.05.2024 and quash the same as illegal.

For Petitioner	:	Mr.M.Sricharan Rangarajan Senior Advocate for Mr.C.Jeganathan
For Respondents	:	Mrs.K.Vasanthamala Government Advocate

ORDER

In this writ petition, an order dated 29.01.2024 in respect of assessment year 2020-21 is challenged.

2. The petitioner is a Club registered as a Society under the Tamil Nadu Societies Registration Act, 1975. The Club possesses a FL-II licence for supply of liquor to its members and their guests in accordance with the rules of the Club. Upon receipt of

show cause notice dated 28.11.2023, the petitioner submitted a reply dated 20.12.2023. In such reply, the petitioner asserted that the supply of liquor by the Club to its members and their guests is not liable to tax. In support of this submission, the petitioner relied upon the judgment of the Hon'ble Supreme Court in *State of West Bengal v. Kolkata Club (2019) 19 SCC 107.* The impugned order was issued in these facts and circumstances on 29.01.2024.

3. Learned senior counsel for the petitioner referred to the petitioner's reply and pointed out that the petitioner expressly relied upon the judgment of the Hon'ble Supreme Court. Without taking such submissions into consideration, he contends that the tax proposal was confirmed.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondents. She submits that the the order

of the Hon'ble Supreme Court would come to the aid of the petitioner only if the liquor is supplied to members of the Club and not to customers in general.

5. On examining the impugned order, it is evident that the petitioner's reply was referred to. Upon referring to such reply, the following conclusions were recorded:

> *"A notice was issued to the dealers in the reference 5th cited. The reply was furnished by the dealer on 22.12.2023 was not accepted. Again a personal hearing issued to them in the reference 6th cited and an opportunity of being heard was also offered. In spite of this opportunity the dealer have utilized and produced already submitted documents.*
>
> *In this regard, carefully examined their connected documents. But their reply not accepted and not correct. Hence, it is proposed to recover the Tax @ 14.5% on the actual*

> *sales turnover of alcoholic liquors for Rs.**1,53,65,395/-** during the year 2020-21 as per the second schedule of TNVAT Act 2006 along with interest Under section 42(3) of the TNVAT Act 2006."*

The above extract discloses that the reply was referred to but the contentions in the reply were not dealt with. Instead, it is recorded in the impugned order that the reply was not accepted. It is thus clear that the impugned order is completely unreasoned and consequently unsustainable.

6. For reasons set out above, the impugned order dated 29.01.2024 is set aside and the matter is remanded for reconsideration. After providing a reasonable opportunity to the petitioner, including a personal hearing, the respondent is directed to issue a fresh order within three months from the date of receipt of a copy of this order. In view of the assessment order being set aside, the bank attachment is raised and it is made clear

that no recovery or other proceedings may be initiated.

7. W.P.No.16600 of 2024 is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are also closed.

25.06.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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To

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