

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3950 OF 2002

COSMOPOLITAN CLUB

...APPELLANT (S)

VERSUS

THE STATE OF TAMIL NADU & ORS.

...RESPONDENT(S)

ORDER

Appellant, Cosmpolitan Club, is incorporated under Section 26 of the Companies Act, 1913. The said Club is in appeal against the judgment and order dated 5th December, 2001, of a Division Bench of Madras High Court, whereby it was held that the appellant was liable to pay sales tax under the Tamil Nadu General Sales Tax Act, 1959, on the supplies of food and drinks to its members.

The main contention on behalf of the appellant is that when a members' club supplies food or drinks to its members, there is no sale because a members' club only acts as the agent of the member. Reliance is placed in this behalf upon the judgments of this Court in *Secretary, the Madras Gymkhana Club Employees Union Vs. Management of the Gymkhana Club* (1969) 1 SCR 742 and *Joint Commercial Taxes Officer, Harbour Division-II, Madras Vs. Young Men's Indian Association* (1970) 1 SCC 462. In the former case it was held that a club belongs to the members for the time being on its list of members. Thus, members can deal with the club as they

like. A club is identified with its members at a given point of time, so that it cannot be said that a club has an existence apart from its members. Even more relevant to the issue is the decision in the case of *Young Men's Indian Association* (1970) 1 SCC 462 which dealt with the very question, namely, “whether the supply of various preparations by each club to its members involves a transaction of sale? It was held, based upon the definition of “sale” in the Sale of Goods Act, 1930, that there was no sale exigible to tax “if there is no transfer of property from one to another...If the club, even though a distinct legal entity, is only acting as an agent for its members in matter of supply of various preparations to them, no sale would be involved as the element of transfer would be completely absent”.

In this case the show cause notice was issued to the Club on 10th March, 1993 in which it was, inter alia, alleged that after the amendment of Act 28 of 1984 by insertion of a new clause (v) to Section 2(n) of the said 1959 Act, supply of goods by any unincorporated association or body of a persons to a member thereof for cash, deferred payment or other valuable consideration, shall also be deemed to be sales.

To complete the chronology of events, it may be further stated that the said show cause notice was challenged in 1993 by the Club by filing a Writ Petition in the High Court which came to be later transferred to the Tribunal. The Tribunal dismissed the matter on merits. That decision of the Tribunal has been

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confirmed by the impugned judgment. Suffice it to state that in this case there was no determination by the fact finding authorities regarding the relationship between the Club and its members in the matter of supply of food and drinks; that is to say, was the Club acting as an agent of the members or did the property in food and drinks pass from the Club to the members?

At this stage it may be mentioned that after the judgment of the High Court dismissing the Writ Petition, the Assessment Order was passed against which the Club has preferred an appeal before the First Appellate Authority which has also dismissed this appeal and as of today the matter, being T.A.No. 17 of 2000, is pending before the Tribunal.

In the circumstances, we think it appropriate that the matter should go back to the Tribunal, who will decide, on facts, as to the exact relationship between the parties in the matter of supply by the Club of food and drinks to its members. In other words, the principle of mutuality and agency among other circumstances shall be gone into by the Tribunal before which the said appeal is pending.

At this stage it may be noted that the Department is also relying upon clause (vi) inserted to Section 2(n) of the 1959 Act. All these amendments have been brought on the statute book in view of the 46th Amendment of the Constitution. We grant liberty to both sides to add by way of amendment any ground open to them in law in the pending appeal before the Tribunal. All contentions

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that are available to both the sides are expressly kept open and they may raise the same before the Tribunal. The Tribunal shall decide the said appeal without reference to the impugned judgment of the High Court which is under appeal.

We express no opinion on the merits of the matter. The judgment under appeal is set aside and the matter is remitted to the Tribunal to decide the pending appeal in accordance with law and in accordance with the directions given hereinabove. Subject to above, the Civil Appeal is disposed of with no order as to costs.

.....J.
[S.H. KAPADIA]

New Delhi,
September 25, 2008

.....J
[B. SUDERSHAN REDDY]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6064 OF 2008
(Arising out of SLP(C) No. 6296 of 2004)

THE MADRAS RACE CLUB

...APPELLANT (S)

VERSUS

THE STATE OF TAMIL NADU & ANR.

...RESPONDENT(S)

ORDER

Leave granted.

This matter is a sequel to our Order delivered today in the case of *Cosmopolitan Club Vs. The State of Tamil Nadu & Ors.* (Civil Appeal No. 3950 of 2002).

For the reasons given in our order delivered today, we grant liberty to the appellant (assessee) to prefer an appeal against the Order passed by the Assessing Officer dated 28th November, 2003 (Annexure P-2). Such appeal would be filed within a period of four weeks from today. It is made clear that the appeal shall be decided on merits. It will not be dismissed on the ground of limitation. All other directions given in our Order in *Cosmopolitan Club* shall equally apply to the facts of the present case.

The Civil Appeal is allowed accordingly with no order as to costs.

.....J.
[S.H. KAPADIA]

**New Delhi,
September 25, 2008**

.....J
[B. SUDERSHAN REDDY]