IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2159 OF 2012

Millennium Amusement Park, Pvt. Ltd. Nagpur
-vs-
The State of Maharashtra & Ors.

WITH

WRIT PETITION NO.2922 OF 2012

Fun'n Good Village, Polo Amusement, Nagpur
-vs-
The State of Maharashtra & Ors.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Shri Masood Shareef, Advocate with Shri Aadil Mirza for petitioners.
Mrs. K.S. Joshi, AGP for respondent Nos.1 to 3.

CORAM : B.P.DHARMADHIKARI & A.S.CHANDURKAR, JJ.

DATE : 02.02.2015.

Heard for sometime. Two contentions are raised by Advocate Shareef. Firstly, the Water Sports Activity and Amusement Park have still not completed 10 years and therefore it is exempted under Section 3AA(a) of The Maharashtra Entertainments Duty Act from payment of surcharge. Second contention is that sur-charge always is on duty or tax demanded and it cannot be on entire component of admission fee i.e. face value of ticket by which the consumers are admitting to establishment. Our attention is also invited to certificate dated 07/03/2009 issued by

Tahsildar, Hingna stating that petitioner has paid all dues of entertainment duty and fine. Reference to stand taken by Collector, Ratnagiri in similar matter as contained in impugned order dated 28/03/2012 is also made.

Learned AGP points out that impugned order passed by Divisional Commissioner Nagpur dated 28/03/2012 is after disposal of Writ Petition No.5119 of 2011 by this Court. She further submits that the provisions of Section 3AA(a) and (a-1) are very clear. The amendment on which petitioner is placing reliance have come into force from 21/12/2010 and therefore prospective in nature. The assessment here is for a period prior to said amendment.

The observations in impugned order and a letter issued by Government dated 22/02/2006 are also pressed into service to show that legal provisions have been correctly noticed by the authorities.

Advocate Shareef in reply pointed out the provisions for re-assessment. He submits that a discretionary treatment extended to petitioner must be fully evaluated by the authorities. He therefore states that matter should be placed back before the Assessment Officer to enable the petitioner to have full opportunity. According to him, petitioner has already given a security to discharge its liabilities and petitioner can also arrange for a reasonable payment, if such opportunity is extended to it.

Learned AGP is opposing any such demand. After hearing respective counsel, we find that the exemption to Water Sports Activity Park or Amusement Park which is not continued for 10 years has also been added from 21/12/2010. This has been looked into by Divisional

Commissioner while recording findings and he has concluded that said concession will not be applicable if Amusement Park does not continue for 10 years at one place.

However, we need not go into correctness of findings recorded by the Divisional Commissioner, as period to be looked into is prior to said amendment. The comparative reading of Section 3AA(a) with sub section (a-1) shows that while indicating the component on which surcharge is to be calculated, specific words are employed by state legislature. In clause (a), words used are " *all payments for admission to every entertainment*" or that " *all payments for admission*". In contradiction, in clause (a-1) words used are " *on the entertainment duty payable*". Thus, state legislature itself has very clearly pointed out the components on which surcharge is to be computed. Certificate issued to petitioner on 07/03/2009 by Tahsildar, Hingna does not speak of surcharge. Prayer clauses in writ petition are seeking direction or order for quashing the adjudication order dated 28/03/2012 mentioned supra and to set aside consequential demand notice. In this background, it is apparent that no case is made out warranting interference. Writ petitions are rejected. No order as to costs.

JUDGE **JUDGE**