IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 5029 of 2009 (W)

PETITIONER(S):

JACOB V.THOMAS,
VALLAKALIL CINE COMPLEX,
MAVELIKKARA-690 101, ALAPPUZHA.

BY ADVS.SRI.JOHN BRITTO,
SRI.C.A.RAJEEV.

RESPONDENT(S):
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1. **MAVELIKARA MUNICIPALITY,**
   MAVELIKKARA, ALAPPUZHA,
   REPRESENTED BY ITS SECRETARY.

2. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY,
   LOCAL ADMINISTRATION DEPARTMENT,
   SECRETARIAT, TRIVANDRUM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 5029 of 2009 (W)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE COMMUNICATION DATED 09/12/2008 OF THE PETITIONERS TO THE 1ST RESPONDENT.
EXT.P2	COPY OF THE COMMUNICATION DATED 02/02/2009 FROM THE 1ST RESPONDENT TO THE PETITIONERS.
EXT.P3	COPY OF THE REPRESENTATION DATED 09/02/2009 OF THE PETITIONERS TO THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.5029 of 2009

Dated this the 6th day of August, 2015

JUDGMENT

The petitioner is the licensee of Vallakalil Theatre and the co-licensee of Santhosh Movie House and Sandra Movie House in Mavelikkara Municipality.

2. According to the petitioner, all the three movie houses are situated in one compound and functioning under valid license issued by the first respondent. Spectators are admitted on purchase of tickets on payment. The Government have enacted the Kerala Local Authorities Entertainments Tax Act, 1961 for imposition and collection of taxes and amusements and other entertainments in the State of Kerala. Accordingly, the petitioner is paying entertainment tax on each ticket sold by them for each admission as provided under Section 6 of the Act. The prevailing practice followed is that the petitioner gets the tickets stamped by the first respondent on payment of the entertainment tax for those tickets in

advance.

3. While so, on 1.12.2008, the first respondent convened a meeting of the theatre owners under their jurisdiction and suggested composition of the entertainment tax so as to avoid delay and inconvenience to the Municipality and the theatre owners on account of the tax remittances and stamping of tickets on day to day basis. The threatre owners including the petitioner consented to the same, on condition that the composition be effected on the basis of the average of the tax remitted for the past two years. Pursuant to the meeting, the petitioner also sent Ext.P1 written communication dated 9.12.2008 to the first respondent showing the details of the average tax remittances for the previous two years and confirming that if the proposal was acceptable to the first respondent, the petitioner was prepared for composition of the entertainment tax. The first respondent served on the petitioner Ext.P2 communication dated 2.2.2009 stating that the Municipal Council has decided to compound the entertainment tax for three months and

that the petitioner has to remit an amount of Rs.12,441/- in respect of Santhosh Movie House, Rs.8,815/- in respect of Sandra Movie House and Rs.8640/- in respect of Vallakalil Theatre for each day. The petitioner alleges that amounts fixed in Ext.P2 is more than ten times as was being paid by the petitioner. The first respondent has treated Ext.P1 communication as an application for composition of entertainment tax, whereas it is only a written proposal to the suggestions made by the first respondent. The petitioner alleges that he had made it very clear in Ext.P1 that the petitioner was prepared for composition only on the basis of the average tax remittances for the previous two years as detailed in Ext.P1. Proviso to Rule 5(1) provides that the tax so compounded shall not be less than 75% of the probable estimate of tax payable under Section 3, which sufficiently indicates that while compounding the tax shall not be more than the tax which was being paid normally under Section 3.

4. It is pointed out that a reading of Rule 4 reveals

that the request for composition is to be made at the instance of the petitioner. According to the petitioner, the local authority cannot compel the petitioner to compound the tax. The petitioner was not heard before the decision to compound the tax at such high amount was taken; it is alleged. The probable estimate of tax payable under Section 3 was not considered by the first respondent before fixing the amount payable under the composition. The petitioner also alleges that Ext.P3 representation dated 9.2.2009 submitted by the petitioner pointing out the illegality of the decision to compound and requesting to withdraw the decision to compound and collect the tax as was being done, has not been responded. Later, the first respondent has informed the petitioner that tickets will not be sealed from 15.2.2009 unless the petitioner remits the tax in advance for three months as per the amounts fixed in Ext.P2. It is with this background the petitioner has come up before this Court.

5. Though notice has been served on the respondents, they have not turned up.

6. This Court by interim order dated 16.2.2009 directed the respondents to seal the tickets of the petitioner on payment of admitted tax actually due instead of insisting the petitioner to pay the compound tax demanded.

7. The principle underlying the composition of tax under Section 4 of the Kerala Local Authorities Entertainments Tax Act, 1961 is for consolidated payment of tax in advance for a specific period. The petitioner cannot be taxed with the burden of paying more than he was otherwise paying normally. By the impugned order, the first respondent has fixed the tax payable for each day at more than ten times the average daily remittance made by the petitioner for the last two years, as can be seen from Exts.P1 and P2. Proviso to Rule 5(1) provides that the tax so compounded should not be less than 75% of the probable estimate of tax payable under Section 3, which would indicate that while compounding, the tax should not be more than the tax which was being paid normally under Section 3.

8. In view of the above, this Court is of the definite view that the petitioner has to be allowed to enjoy the benefit of the interim order already granted by this Court.

Therefore, the writ petition is disposed of directing the respondents to seal the tickets of the petitioner on his paying the admitted tax actually due, instead of insisting the petitioner on payment of the compounded tax, as demanded in Ext.P2.

sd/-A.V.RAMAKRISHNA PILLAI
JUDGE

css/ **true copy**

P.S.TO JUDGE