IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.9906 of 2002
and
W.P.M.P.No.8060 of 2002
&
W.P.M.P.No.29298 of 2003

Hari Vignesh Theatre,
Rep. By its Proprietor,
Mr.S.SP.RM.Subramania Chettiar,
Palaganatham,
Madurai-3.

... Petitioner

-Versus-

Entertainment Tax Officer,
(Deputy Commercial Tax Officer),
Madurai (Rural) South,
Madurai.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorari calling for the records relating to the order dated 25.02.2002 passed by the respondent in E.T.No.4/94-95 (Roc.A5/2711/96).

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondent : Mr.Manohar Sundaram,
AGP (T)

ORDER

Challenging the order of assessment made in E.T.No.4/94-95 dated 25.02.2002 by the respondent in respect of the assessment year 1994-95, the petitioner has come forward with this writ petition.

2. The case of the petitioner in brief is that it is a proprietorship concern engaged in the business of exhibiting films. While so, on 29.12.1994, the said theatre was inspected by the officials of the respondent department. During such inspection, it was found that the books of accounts were not maintained property. The officials alleged certain irregularities in maintaining the books

of accounts. Accordingly, a notice dated 25.10.1997 came to be issued to the petitioner alleging that there was escapement of turnover and calling for objections, if any. Subsequently, the petitioner approached this court and obtained orders in his favour for supply of copies of certain documents. Thereafter, the petitioner filed its objections. Having considered the objections filed by the petitioner and the documents, the respondent ultimately passed an order holding that there was escapement of turn over from assessment to the tune of Rs.29,28,843/- and imposed tax and penalty. It is the said order now under challenge in this writ petition.

2. Heard both sides and also perused the records carefully.

3. On the basis of the one day inspection conducted on 29.12.1994 by the officials of the respondent department, the assessment in question came to be made for the whole year and on which basis, necessary demand has been made.

4. The issue involved in this writ petition is already covered by the order of this court in Sri Balamurugan Theatre v. The Entertainment Tax Officer, Madurai Rural (South),Madurai and others [W.P.No.13812 of 2003 dated 12.08.2005] following a judgement of a Division Bench of this Court in Annamalai v. Assistant Commissioner (76 STC 271).

5. In the light of the above settled position, this court is inclined to modify the assessment only to the extent of one week's collection and direct the respondent to act accordingly.

6. In the result, the writ petition is disposed of and the impugned order is modified restricting the estimation only for a period of one week. The respondent shall accordingly pass an assessment order and make demand. No costs. Consequently, connected WPMPs are closed.

-s/d-
Assistant Registrar(CSIV)
dt:10/09/2015

True Copy

Sub-Assistant Registrar

kmk

To

1.The Entertainment Tax Officer, (Deputy Commercial Tax Officer),
   Madurai (Rural) South, Madurai.

+1 cc to Mr.Ibrahim Ali Advocate sr.45480
+1 cc to Special Government Pleader Taxes sr.45707

W.P.No.9906 of 2002

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