IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2016
DELIVERED ON : 05.02.2016

DATED : 05.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.1658 of 2016 &
W.M.P.Nos. 1432 to 1434 of 2016

Red Giant Movies
Rep. by its Manager & S.Saravanamuthu 180
Murasoli Achagam Kodambakkam High Road
Nungambakkam, Chennai-34. ... Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Principal Secretary to Government
Commercial Taxes and Registration Department
Secretariat, Fort St. George
Chennai-600 009.

2. The Commissioner
Commercial Tax Department
Ezhilagam, Chepauk
Chennai-600 005.

3. Mr.Siva Dass Meena
Principal Secretary to Government (In- Charge)
Secretariat
Fort St. George
Chennai-600 009. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in G.O.Ms. No.11 dated 14.1.2016 and quash the same and direct the 1st respondent to grant exemption from Entertainment Tax for full length Tamil Movie titled "கெத்து" from the date of release i.e. 14.1.2016 and consequently refund the tax.

For Petitioner : Mr.P.Wilson, Sr. Counsel
for Mr.Richardson Wilson

For Respondent : Mr.A.L.Somayaji, Advocate General
Asst. by Mr.Haribabu,
Additional Government Pleader
& Mr.Cibi Vishu,
Additional Government Pleader

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in G.O.Ms. No.11, dated 14.01.2016 and to quash the same and direct the first respondent to grant exemption from Entertainment Tax for full length Tamil Movie titled "கெத்து" from the date of release i.e. 14.1.2016 and consequently refund the tax.

2. According to the petitioner, they produced a full length Tamil movie titled "கெத்து" at the cost of several crores of rupees and the movie was released on 14.01.2016. The said film was issued a "U" certificate by the Central Board of Film Certification on 11.01.2016. Immediately thereafter, i.e., on 11.01.2016 itself, the petitioner applied to the first respondent for the exemption from the payment of entertainment tax under the Tamil Nadu Entertainment Tax Act, 1939. According to the petitioner, one of the conditions for applying the entertainment tax exemption is that the film should obtain a "U" certificate from the Central Board of Film Certification. The petitioner also paid the stipulated fee of Rs.10,000/- on 11.01.2015, along with a covering letter, the petitioner also produced the list of artistes and technicians, copies of the story synopsis, song lyrics, copy of the dialogue scripts and the certificate from the CBFC.

3. Under G.O.Ms.No.72, dated 22.07.2006, the Government decided to grant exemption for movies with a Tamil title. Under G.O.Ms.No.89, dated 21.07.2011, the Government imposed certain other conditions on movies for the grant of exemption from entertainment tax. The Government of Tamil Nadu constituted a panel of members from which a Viewing Committee comprising of persons as officials members and persons as non-officials members are drawn. The mandate of the said Viewing Committee is to view and to assess the movie which have applied for entertainment tax exemption and to recommend to the second respondent whether the movie deserves exemption from entertainment tax. The second respondent would then forward the recommendation to the first respondent, who would then issue the appropriate Government Orders. When Producers of the movie apply for the exemption of entertainment tax, the second respondent constitutes a committee of 7 members out of which, 3 official members and 4 non-official members are drawn from the said panel of members constituted through the G.O.(Standing) No.002, dated 03.01.2012 and the said Committee views the movie and makes a report recommending exemption or otherwise to the second respondent, who then forward it to the first respondent for orders.

4. In the affidavit filed in support of the writ petition, the petitioner has also stated that the Government Order in G.O.(Standing) NO.002, dated 03.01.2012 has been challenged by

the petitioner in W.P.No.12050 of 2014 wherein, the qualification of 7 persons on the Committee was challenged. According to the petitioner, since they have challenged the Government Order, the first respondent has not accorded entertainment tax to any of the other 4 movies produced by the petitioner. Further, in the affidavit, the petitioner has stated that the Committee is loaded with persons who are affiliated to the ruling AIADMK party and therefore, carry ill-will against the petitioner firm's partner Mr.Udhayanidhi Stalin, who is the son of Mr.M.K.Stalin, the Treasurer of the DMK party, which is the principal opposition party in the State. Further, the petitioner has stated that the first respondent mechanically and routinely rejects all the applications of the petitioner for exemption from the entertainment tax.

5. According to the petitioner, the 6 members committee constituted by the second respondent viewed the petitioner's movie "கெத்து" on 12.01.2016 and all the members rejected the grant of exemption for the reason that the word "கெத்து" is not a Tamil word. According to the petitioner, "கெத்து" is purely a Tamil word as per Tamil Dictionary, therefore, the rejection on the ground that the word "கெத்து" is not the Tamil word is mis-found besides run against the very tenor and vigor of Government Orders passed for empowering exemption from the entertainment tax, if the title of the movie is in Tamil language. Further, the petitioner contended that the first respondent erroneously followed the recommendations of the Viewing Committee as well as the recommendations of the second respondent. The petitioner also submitted that the respondents had granted entertainment tax exemptions for various movies, where the title of the movies were not in Tamil word. Hence, challenging the order dated 14.01.2015, the petitioner has filed the above writ petition.

6. The respondents filed their counter wherein they have stated that based on the recommendations of the Committee Members, who, after viewing the movie, have given their unanimous opinion that the said movie is not entitled for exemption of entertainment tax. According to the respondents, mere naming of film with Tamil title does not ensure that the story line of the film will be in accordance with Tamil culture and dignity. According to the respondents, the word "Gethu" does not find place in the University of Madras Tamil Dictionary and that the word "Kethu" alone is a Tamil word. Further, the respondents contended that the first respondent sought the comments from the Directorate of Tamil Development regarding the word "Gethu" and a detailed reply dated 25.01.2016 was received from the Directorate of Tamil Development wherein, the Director has stated that the word "Gethu" does not find place in "Sangam" and other ancient Tamil literatures. According to the respondents, the word "Gethu" is not a Tamil word. Further, the respondents contended that the word "Gethu" is not a Tamil word and that "Kethu" alone finds a

place in the dictionaries and Tamil literatures. In these circumstances, the respondents prayed for dismissal of the writ petition.

7. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner, in support of his contentions relied upon the following judgments:-

(i) 1978(1) SCC 405 [Mohinder Singh Gill and others v. Chief Election Commissioner, New Delhi and others], wherein, in paragraph 8 the Hon'ble Supreme Court held as follows:-

> "8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji[2]:
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> "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."
>
> Orders are not like old wine becoming better as they grow older.

(ii) 2005(6) SCC 776 [Punjab State Electricity Board Limited v. Zora Singh and others] wherein the Hon'ble Supreme held that there cannot be any doubt whatsoever that even if an order is found to be not vitiated by reason of malice on fact but still can be held to be invalid if the same has been passed for unauthorised purposes, as it would amount to malice in law.

(iii) 1969(3) SCC 769 [Smt.Gunwant Kaur and others v. Municipal Committee, Bhatinda and others], wherein, the Hon'ble Supreme Court held that when the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inoppropriate to try it in the writ jurisdiction, or for anologous reasons.

(iv) 2015 (9) SCC 433 [State of Kerala and others v. M.K.Jose] wherein, the Hon'ble Supreme Court held that merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

8. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner, also submitted that the respondents had granted exemption of entertainment tax in respect of Tamil movies where the title of the said movies were either having English words or English letters.

9. Mr.A.L.Somayaji, learned Advocate General, appearing for the respondents submitted that the first respondent had rejected the application submitted by the petitioner claiming entertainment tax exemption based on the recommendation of the Viewing Committee and the second respondent. Further, the learned Advocate General submitted that even as per dictionaries the word "Gethu" is not a Tamil word and only the word "Kethu" is a Tamil word. That apart, the learned Advocate General submitted that in the covering letter annexed along with the application, the petitioner himself had mentioned the title of the movie as "Gethu" in English and the Censor Certificate was also issued in favour of the petitioner for the movie titled as "Gethu". Further, the learned Advocate General submitted that the Directorate of Tamil Development had also given a letter stating that the word "Gethu" is not a Tamil word.

10. On a careful consideration of the materials available on record and the submissions made by the learned Senior Counsel on either side, it could be seen that the one and only dispute that arise for consideration in this writ petition is whether the word "கெத்து" which is mentioned as "Gethu" in English is a Tamil word or not.

11. On a perusal of the report submitted by the 6 Members Viewing Committee, it could be seen that all the 6 members have stated that the title of the movie is not in Tamil, therefore, the movie is not entitled for tax exemption. The recommendations of the 6 members Viewing Committee reads as follows:-

S.No.	Name of the Viewers	Comments/Recommendations
1	D.Rama Devi	Movie has been granted with "U" Certificate. However,the title of the movie is not in Tamil. Therefore, I recommend that the movie is not entitled for exemption of entertainment tax.

S.No.	Name of the Viewers	Comments/Recommendations
2	M.C.Thyagarajan	There is no violence, no usage of any other language not it is against Tamil culture. The movie has got "U" Certificate. However, the title of the movie is not in Tamil. Therefore, I recommend not to grant tax exemption.
3	Shankar Ganesh	This film was granted with "U" Certificate. The film has no violence, does not undermine women nor other languages have been used. The movie does not contain obscenity. It is a good film, good acting. Only one deficiency is that the title of the movie is not in Tamil. Since it has not complied with the conditions, I recommend the movie is not qualified for exemption from the entertainment tax.
4	A.L.Raghavan	The film has got "U" Certificate. The movie does not contain obscenity, has no violent scene. But the title is not in Tamil. Hence, the movie is not qualified as per Government G.O.
5	M.N.Rajam	The film has got "U" Certificate. The movie does not contain obscenity, has no violence of scene. The title of the film is not in Tamil. Hence I recommend that the movie is not qualified as per Government G.O.
6	Vani Jayaram	The story is good. The movie has no obscenity and no different languages has been used. However, the title of the movie is not in Tamil. Therefore, I recommend not to grant tax exemption.

12. The learned Advocate General produced the original records before this court and on perusal of the original records, I found that in the individual recommendation of each of the 6 members, the name of the movie has been mentioned in

Tamil as "கெத்து". In spite of mentioning the name as "கெத்து", the members came to the conclusion that the word is not a Tamil word.

13. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner, produced various dictionaries wherein, the word "கெத்து" has been shown as a Tamil word. Even in the dictionary, viz., "A Comprehensive Etymological Dictionary of the Tamil Language", published by the Directorate of Tamil Etymological Dictionary Project, Chennai, the word "கெத்து" finds a place.

14. When the "கெத்து" has been included in the Tamil dictionaries, I am not in a position to understand how the 6 members Viewing Committee unanimously came to the conclusion that the word "கெத்து" is not a Tamil word.

15. In the application dated 11.01.2016, submitted by the petitioner for the grant of exemption of entertainment tax, the petitioner has given all the details in Tamil mentioning the title of the movie as "கெத்து" in Tamil. In the covering letter, the title of the film has been written as "Gethu" (in English). The covering letter was sent by the petitioner along with the application for the purpose of sending the demand draft for a sum of Rs.10,000/- towards the fee payable by the petitioner and the list of other documents. In the Censor Certificate, the title of the movie has been mentioned as "Gethu". When the petitioner has mentioned the title of the movie as "கெத்து" in the application submitted by them for grant of exemption of entertainment tax, the word mentioned in the covering letter and in the Censor Certificate as "Gethu" in English have no relevance. The Censor Certificate was produced solely for the purpose of showing the movie has been certified "U", which is one of the condition imposed by the respondents for claiming exemption under the entertainment tax. When the petitioner has correctly mentioned the title of the movie as "கெத்து" in Tamil in their application, the reason for rejecting the application stating that it is not "Kethu", it is only a "Gethu", cannot be accepted.

16. Even the word "தமிழ்" has been written in English as "Tamil". Though the actual pronunciation of the "தமிழ்" in English is "Thamil", we write the word "தமிழ்" in English only as "Tamil". If the contention of the respondents is accepted, then, the word "Tamil" itself cannot be construed as a Tamil word. In that case, the word "Tamil" can be written only as "டமில்". Therefore, when we write the word "தமிழ்" as "Tamil" in English, the contention of the respondents that the word "Gethu" cannot be construed as a Tamil word, cannot be accepted.

17. It is pertinent to note that the Tamil word "கெத்து" has been written in English as "Gethu" and not the English word "Gethu" has been written as "கெத்து" in Tamil.

18. It is pertinent to note that even without the covering letter the application for exemption can be processed provided the petitioner pays the requisite fee to the respondents and produce all the required documents. But, in the absence of the application, the the exemption for entertainment tax cannot be granted to the petitioner based on the covering letter and the Censor Board Certificate.

19. When the petitioner has mentioned the title of the movie as "கெத்து", that too, in Tamil, the respondents should have taken into consideration the title of the movie as mentioned in the application and granted exemption. That apart, the findings of the 6 members Committee that the word "கெத்து" is not a Tamil word is not supported by any evidence. The basis for coming to such a conclusion was not explained by the members of the committee. Without any basis, the committee has come to a conclusion that the word "கெத்து" is not a Tamil word in spite of the fact that the said word, viz., "கெத்து" finds a place even in the dictionary, published by the Government. In spite of the word "கெத்து" has been mentioned in the dictionaries, the Directorate of Tamil Development, by letter dated 25.01.2016, which is subsequent to the filing of the writ petition, has given a finding that the said word is not a Tamil word. The reasoning given by the Directorate of Tamil Development cannot be accepted for the reason that they have not even perused the dictionaries, which was produced before this court, including the dictionary published by the Government.

20. As per G.O.Ms.No.72, dated 22.07.2006, the Government granted exemption for the movies with a Tamil Title. Further, as per G.O.Ms.No.89, dated 21.07.2011, the second respondent, by its proceedings dated 09.01.2012, laid down the criteria that a movie has to satisfy for being exempted from entertainment tax. The said conditions are:-

(i) The film should have "U" certification from the Central Board of Film Certification;

(ii) The story line should have elements that promote Tamil language and Tamil culture;

(iii) The dialogues in the film should predominantly be in Tamil language except for the scenes which warrant the usage of other languages due to the context;

(iv) Vulgarity and violence beyond tolerable levels will make the film ineligible for exemption.

The 6 members Viewing Committee gave a finding in favour of the petitioner with regard to all the four conditions. However, erroneously, without any basis, came to the conclusion that the word "கெத்து" is not a Tamil word. The respondents should have considered the title of the movie as written in the application dated 11.01.2016 and granted exemption of entertainment tax to the petitioner. When the title of the movie has been mentioned rightly as "கெத்து", which finds place in Tamil dictionaries, the mentioning of the title of the movie as "Gethu" in the covering letter and in the Censor Board certificate has no relevance for the grant of exemption of the entertainment tax. The first respondent has mechanically followed the recommendations of the 6 members Viewing Committee and the second respondent and rejected the petitioner's application. Therefore, the petitioner movie is entitled to grant of exemption from entertainment tax.

21. In these circumstances, the impugned order passed by the first respondent dated 14.01.2016 is set aside and the first respondent is directed to grant exemption from entertainment tax for the Tamil movie titled as "கெத்து" from the date of release i.e. 14.01.2016 and the first respondent is further directed to refund the tax from the said date to the petitioner.

With these observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Principal Secretary to Government,
State of Tamil Nadu
Commercial Taxes and Registration Department
Secretariat, Fort St. George
Chennai-600 009.

2. The Commissioner
Commercial Tax Department
Ezhilagam, Chepauk
Chennai-600 005.

3. Mr.Siva Dass Meena
Principal Secretary to Government (In- Charge)
Secretariat
Fort St. George,
Chennai-600 009

+1cc to Mr.Richardson Wilson, Advocate, S.R.No.7654
+1cc to the Special Government Pleader(Taxes), S.R.No.7735

W.P.No.1658 of 2016
&
W.M.P.Nos. 1432 to 1434 of 2016

EV(CO)
CA(11/02/2016)