IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.09.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.17999 of 2016
&
W.M.P.Nos.15749 and 15750, 26193 of 2016

Mr.S.Elred Kumar
Director,
M/s.R.S.Infotainment Pvt. Ltd., **.. Petitioner**

Vs.

1. The Principal Secretary to the Government
Commercial Tax and Registration Department
Fort St. George,
Chennai-600 009.

2. The Principal Secretary/Commissioner
of Commercial Taxes,
Commercial Tax Department,
Ezhilagam,
Chepauk, Chennai-600 005. ..
Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent made in the 1st impugned letter, dated 30.03.2016 in Letter No.Acts Cell-IV/13310/2016 and also to call for records of the 1st respondent made in the 2nd impugned letter, dated 04.05.2016 in Letter No.2470/cl/2016-4 and quash both the impugned letters and consequently direct the respondents to allow the application dated 25.02.2016 made by the petitioner to the 2nd respondent thereby granting exemption of entertainment tax made for the movie titled "KO-2", produced by the petitioner .

For Petitioner : Mr.L.Chandrakumar
for M/s.S.Subburaj

For Respondents : Mrs.S.Kanmani Annamalai.
Additional Government Pleader (Tax)

O R D E R

Heard Mr.L.Chandrakumar, learned counsel, representing for M/s.S.Subburaj, learned counsel for the petitioner and Mrs.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice for respondents. With the consent of the learned counsel on either side, the Writ Petition itself is taken up for final disposal.

2. The petitioner, in this Writ Petition, seeks for issuance of a writ of certiorarfied mandamus to quash the order passed by the second

respondent, dated 30.03.2016, and the consequential order of the first respondent, dated 04.05.2016, and to allow the petitioner's application dated 25.02.2016, made for grant of exemption from payment of entertainment tax for the feature movie “KO-II”.

3. The order, impugned in this Writ Petition is a communication from the Principal Secretary/Commissioner of Commercial Taxes, dated 30.03.2016, wherein, it was stated that the request for grant of exemption from payment of entertainment tax is deferred, on account of the fact, that the model code of conduct was in force, in terms of the directives issued by the Election Commission of India.

4. The petitioner moved the Vacation Court, and the Writ Petition was admitted on 12.05.2016, and interim order of stay was granted on the said date. Pursuant to the interim order, the feature film was released. During the pendency of the Writ Petition, the first respondent conceded to the request made by the petitioner, and vide G.O.(D).No.266/Commercial Taxes and Registration(C1) Department, dated 21.07.2016, granted exemption from payment on entertainment tax. However, the petitioner is only aggrieved by

that portion of the order, where, the relief has been granted only from the date of issuing the Government Order, and not from an anterior date. Therefore, the petitioner filed W.M.P.No.26193 of 2016, praying for a direction upon the respondents to grant exemption from payment of entertainment tax for the said feature film from the date of release of film i.e.13.05.2016.

5. The learned Additional Government Pleader appearing for respondents submitted that the power of granting exemption is vested with the Government, and the petitioner, being a Film Producer/Director, has no vested right to claim exemption, that too, from a particular date. The question, as to whether the petitioner has right to claim exemption or not, has become academic in the instant case, since the respondents, themselves, have considered the request positively, and granted exemption.

6. Therefore, the only issue, which would fall for consideration in this Writ Petition is, as to whether the grant of exemption should be from the date of issuing of the Government Order, i.e., from 21.07.2016, or from the date of release of the feature film.

7. It is seen that, when the petitioner sought for exemption, the

respondents did not grant the same, but, sent a communication, dated 04.05.2016, stating that since the model code of conduct was in force, they will not be in a position to consider the petitioner's request. Therefore, there was no outright rejection of the claim made by the petitioner at that point of time. The only embargo was on account of the notification issued by the Election Commission of India. Thereafter, when the petitioner challenged the same before this Court, by way of Writ Petition, this Court *prima facie* was of the view that the petitioner has made out a case for grant of interim stay. Accordingly, order of interim stay was granted, as a result of which, the Film was released on 13.05.2016. Therefore, if the Government Order dated 21.07.2016 is not given effect to from the date of release of the film i.e.13.05.2016, it would result in anomalous position, since the entertainment tax could not have been collected from the viewers either by the petitioner or the Cinema Theater owners, and therefore, at this distance point of time, the question of denying the grant of exemption from payment of entertainment tax from the date of release of the movie cannot be countenanced and is required to be considered.

8. In the result, the Writ Petition and W.M.P.No.26193 of 2016

stand disposed of, by directing the respondents to grant the benefit of exemption, as granted by the Government, vide G.O.(D).No.266 dated 21.07.2016 (referred above) with the effect from the date on which the Film was released, i.e.13.05.2016. Consequently, connected Miscellaneous Petitions, in W.M.P.Nos.15749 and 15750 of 2016 are closed. No costs.

15.09.2016

Index :Yes/No.

rm/sd

To

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T.S.SIVAGNANAM, J.,
rm/sd

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