IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2016

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THE HONOURABLE **MR.JUSTICE T.S.SIVAGNANAM**

W.P.Nos.33509 to 33511 of 2015

SPI Cinemas Private Limited,
Rep. By its Director
Mr.K.Niranjan Reddy,
No.25, Mahatma Complex,
Whites Road, Royapettah,
Chennai – 14. ... Petitioner
in all the Writ Petitions

Vs.

Commercial Tax Officer,
Royapettah Assessment Circle,
No.46, Greenways Road,
Chennai – 28. ... Respondent
in all the Writ Petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records of the impugned proceedings of the respondent passed in RC No.182/2015, dated 21.09.2015 for the years 2007-2008, 2008-2009 and 2009-2010 respectively and quash the same.

For Petitioner : Mr.N.Murali

For Respondent : Mr.K.Venkatesh, GA

COMMON ORDER

Heard Mr.N.Murali, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent, and with their consent, the writ petitions are taken up for disposal.

2. The impugned order is an order of assessment under the provisions of the Tamil Nadu Entertainment Tax Act, 1939. Initially, the respondent issued a notice dated 26.02.2015 under the provisions of the Tamil Nadu Value Added Tax Act, 2006, and alleged that the petitioner has collected excess amount as booking charges as against the ticket fare fixed by the Government at Rs.120/- and Rs.100/- respectively. Therefore, the respondent proposed to reassess the turnover of the petitioner under Section 27(1)(a) of the TNVAT Act. The petitioner submitted their objections pointing out that in terms of Rule 43-E of the Tamil Nadu Entertainment Tax Rules, the time limit for demanding tax for the income escaping assessment is five years from the expiry of the period to which the tax relates.

3. In these writ petitions, the relevant assessment years are 2007-2008, 2008-2009 and 2009-2010 and the period to which the tax relates is

31.03.2008, 31.03.2009 and 31.03.2010 respectively. Therefore, the petitioner's case is that in terms of Rule 43-E of the Rules, notices ought to have been issued on or before 31.03.2013, 31.03.2014 and 31.03.2015 respectively, whereas the notices have been issued only on 05.06.2015 which is clearly barred by limitation. On receipt of the objections, it appears that the respondent realized the mistake and issued another notice stating that the demand is in respect of Tamil Nadu Entertainment Tax Act, 1939.

4. The respondent, while passing the impugned order, has referred to the petitioner's objections, but has not dealt with the point of limitation which has been raised by the petitioner. Thus, when the petitioner raises a specific contention that the demand itself is barred by limitation, the respondent ought to have considered that point as it is a legal issue. If the submission made by the petitioner is correct, then the impugned reassessment proceeding itself is not sustainable. Since the respondent has failed to take into consideration of the important point raised by the petitioner, the matter requires to be reconsidered by the respondent afresh.

5. Accordingly, the writ petitions are allowed and the impugned assessments proceedings are set aside and the matter is remitted back to the respondent to reconsider the question of limitation and other issues which may be raised by the petitioner, after affording an opportunity of personal hearing and redo the assessment in accordance with law. No Costs. Consequently, connected miscellaneous petitions are closed.

30.08.2016

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To

Commercial Tax Officer,
Royapettah Assessment Circle,
No.46, Greenways Road,
Chennai – 28.

T.S.SIVAGNANAM, J.

Rkm

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