IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2016

CORAM

The Hon'ble Mr.Justice R.Mahadevan

Writ Petition No. 6906 of 2004

A.Pongunaraj
Proprietor
M/s.Thangaselvamani Talkies,
Main Road, Puthiyamputhur,
Ottapidaram Taluk, Tuticorin District. ... Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by the Secretary to Government,
Commercial Taxes and Religious Endowments Dept,
Fort St. George, Chennai - 9.

2. The Special Commissioner and Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

3. The Entertainment Tax Officer,
Ettayapuram, Tuticorin District.

4. The Tahsildar,
Ottapidaram Taluk,
Tuticorin District. ... Respondents

Prayer:-

Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for records on the files of the second respondent in Lr.No.Drafting Cell II/58520/99, dated 30.04.2003, received on 13.05.2003 and to quash the same as being without jurisdiction, authority of law, contrary to principles of natural justice and unjustified on facts and law and directing the first and second respondents to pass orders afresh in accordance with Rule 45-C of the Tamil Nadu Entertainment Tax Rules, 1939, taking into consideration the representations dated 13.12.1999, 8.2.2001, 21.8.2001 and 19.5.2003, submitted to the first and second respondents.

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For Petitioner : Mr.C.Venkat Raman

For Respondents : Mr.S.Mohana Sundaram
Additional Government Pleader

O R D E R

The challenge in this Writ Petition is to the order, dated 30.04.2003 passed by the second respondent, bearing Lr.No.Drafting Cell II/58520/99, whereby, the application submitted by the petitioner for waiving the entertainment tax got rejected.

2. At the outset, the learned counsel appearing for the petitioner submits that the issue involved in this Writ Petition is no longer res integra, as it is covered by the earlier decision of this Court rendered in W.P.Nos.15703 and 15705 of 2000, dated 08.02.2007, in which also, a similar prayer was sought for, and the said Writ Petition was allowed, following the earlier order, dated 02.11.1999 made in W.P.No.12591 of 1999. The learned counsel also produced a copy of the said order, dated 08.02.2007, for perusal of this Court, and submitted that, in the light of aforesaid orders, the present Writ Petition is liable to be allowed.

3. The learned Additional Government Pleader for respondents/Tax do not dispute the position, and agree that the Writ Petition can be allowed on the same lines.

4. Heard both sides, and gone through the judgment relied upon by the learned counsel appearing for the petitioner. For better appreciation, the operative portion of the order, dated 08.02.2007, is extracted hereunder:-

> " 6. There cannot be any dispute about the observation of the Government. It is true that as against the demand of differential tax, the petitioner move the High court and this Court has enunciated the law that the circular issued by the Commissioner would not prevail over the statutory provision and thereby the petitioners are not entitled to as per the statute. But having suffered such an order, the petitioners approached the first respondent to waive the tax, to which the

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first respondent has power under the statute. He also pointed out that the rates reduced has been fixed by the petitioners on the strength of the circular issued by the second respondent, the Commissioner of Commercial Taxes and the further factor has also been pointed out that in an identical situation, the first respondent Government, has granted the relief of waiver in favour of those petitioners who has collected reduced rate of admission based on the circular, who applied for waiver when the differential tax was demanded, which factum has been revealed in the order made in W.P.No.12591 of 1999 dated 02.11.1999 in the case of Sabari Theatre vs. State of Tamil Nadu and others, wherein this Court, after referring to Rule 45(C) of the Tamil Nadu Entertainment Tax Rules, has held as follows:-

> "4. It is an admitted case by both the parties that during the relevant period, the petitioner collected a sum of Rs.1.15 per ticket in respect of class No.IV and that the Entertainment Tax Officer also have endorsed the same by putting seal during the relevant period. This, in my view, has not been given due consideration by the first respondent while considering the application filed by the petitioner on 07.03.1991, and passing the order dated 06.04.1992.
>
> 5. It is brought to my notice during the course of arguments that in similar circumstances, the first respondent had passed an order on 01.08.1988, relating to the request of waiver under Section 45-C of the T.N.E.T. Act by New Imperial Talkies Salem.
>
> 6. Under those circumstances, I deem it proper to set aside the impugned order and remand the matter back to the first respondent for

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fresh consideration, in the light of the orders passed earlier, in the application filed by the New Imperial Talkies on 01.08.1988, and ordered accordingly. The first respondent is directed to hear the parties and pass orders within 12 weeks from the date of communication of the order. The writ is allowed with the above direction."

7. In the impugned order, there is no explanation as to why the petitioners have been singled out when similarly placed persons was granted the relief of waiver under Rule 45-C of the Tamil Nadu Entertainment Tax Rules. The legislature thought it fit to confer upon the first respondent such power to meet the contingency of the present nature and like others. Hence, by pointing out the dismissal of the writ petitions filed by the petitioner, this Court is of the view that the petitioners cannot be non suited. The reasons should be shown to non-suit the petitioners for the claim of waiver by giving under what circumstances the relief of waiver has been granted to the theatre owner referred to in paragraph 5 of the order dated 02.11.1999 in Sabari Teatre's case and what are all the extra or different factors which were against the petitioners to non suit them for the relief. This aspect of the exercise has not been done by the first respondent.

8. In these circumstances, this Court is of the view that it is proper to set aside the impugned order and remand the matter back to the first respondent for fresh consideration in the light of the order passed earlier and in the application made by New Imperial Talkies on 01.08.1988 and the first respondent should directed to hear the parties and pass orders within a period of twelve weeks from the date of receipt of a copy of this order. Such an order is passed. "

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5. Thus, in the light of the order, as quoted supra, this Writ Petition is allowed, the impugned order is set aside, and the matter is remanded to the second respondent, who shall hear the petitioner and pass orders with regard to waiver of entertainment tax within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Commercial Taxes and Religious Endowments Dept,
Fort St. George, Chennai - 9.

2. The Special Commissioner and Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

3. The Entertainment Tax Officer,
Ettayapuram, Tuticorin District.

4. The Tahsildar,
Ottapidaram Taluk,
Tuticorin District.

+1cc to Mr.C.Venkatraman, Advocate, S.R.No.931
+1cc to the Government Pleader, S.R.No.1245

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