IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2016

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THE HON'BLE Mr.JUSTICE M. DURAISWAMY

W.P.No.8797 of 2016
and WMP Nos.7804, 7805 and 7806 of 2016

Sushanth Prasad ....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

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in proceedings No.Sa.Ku-4/569/2012 dated 9.1.2012 and of the first respondent in G.O.(D) No.529 dated 31.12.2015, quash the same and consequently direct the respondents to grant entertainment tax exemption to the movie "புகழ்" co-produced by the petitioner.

For petitioner : Mr.R.Muthukumarasamy
Senior Counsel for
Mr.J. Abishek

For respondents : Mr.S.Kanmani Annamalai
AGP (T)

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in proceedings No.Sa.Ku-4/569/2012 dated 9.1.2012 and of the first respondent in G.O.(D) No.529 dated

31.12.2015, quash the same and consequently direct the respondents to grant entertainment tax exemption to the movie "புகழ்", co-produced by the petitioner.

2. Pursuant to the Government Order (Standing) No.72, issued by the first respondent, granting entertainment tax exemption, Government Order (Standing) No.89, issued by the first respondent, laying down the condition for the grant of exemption of entertainment tax and the Government Order (Standing) No.2 dated 3.1.2012, issued by the first respondent, constituting a Committee to view, consider and recommend for the exemption of entertainment tax, the petitioner applied for exemption of entertainment tax for the Tamil Movie "புகழ்". The petitioner also obtained "U" category certificate for the said Tamil Movie.

3. A six members Commitee, consisting of four non-official members, appointed by the second respondent, from the list of 22 names, mentioned in the Government Order, along with two official members, viewed the film and out of the six members, three members have given their recommendation in favour of granting exemption of entertainment tax and three members have given their opinion against the exemption of entertainment tax for the Tamil Movie "புகழ்".

4. Based on the Circular dated 09.01.2012, since the members are equally divided with regard to the grant of exemption, the first respondent rejected the request, made by the petitioner for the grant of exemption of entertianment tax on 31.12.2015. Aggrieved over the order, passed by the first respondent, the petitioner has filed the present writ petition.

5. In the Circular dated 09.01.2012, in Clause-9, it has been stated that in case of the opinion of the Viewing Committee is equally divided with regard to the grant of exemption of entertianment tax, the exemption cannot be granted to the movie.

6. When the matter came up for hearing on 16.03.2016, Mr.R. Muthukumarasamy, learned Senior Counsel, appearing for the petitiioner, submitted that the moive is scheduled to be released on 18.03.2016 and therefore, in the interest of justice, the respondents may be directed to constitute a fresh committe for viewing the movie and give their opinion to the respondents and based on the opinion of the Committee, the issue of exemption to the movie can be decided.

7. Since there are 22 members in the Viewing Committee, this Court directed the respondents to constitute a 5 members Committee, consisting of non-official members from the 22 members and also directed the five members Viewing Committee, to be constituted by the respondents, to view the movie and give their opinion.

8. Accordingly, the respondent constituted a Committee, consisting of five non-official members viz., Tvl.A.L. Raghavan, Senthil, Babu @ N.V. Ananthakrishnan, Ramji and Ms.L.R. Easwari and the members also viewed the movie and all the members have given their individual recommendation, for the grant of the exemption of entertainment tax to the movie. The respondents also filed a report to that effect before this court which was also taken on record. Since the five members Viewing Committee had given an unanimous report, stating that the petitioner's movie "புகழ்" is entitled for exemption for entertainment tax, this Court directed the respondents to process the application, submitted by the petitioner, for exemption of entertainment tax, taking into consideration the report of five members Viewing Committee.

9. Thereafter, when the matter came up for hearing on 28.03.2016, a representation was made by the learned Additional Government Pleader, stating that the respondents have decided to grant entertainment tax exemption to the Tamil Movie "புகழ்", however, since the model code of conduct for the Assembly Election to the Tamil Nadu Legislative Assembly, 2016 is in force, the respondents have to send a letter to the Election Commission of India for getting its approval. Further, it was represented that the respondents are expecting the approval from the Election Commission by the end of the said week. In view of the submissions, made by the learned Additional Government Pleader, the matter was adjourned to today i.e., 01.04.2016.

10. When the matter was taken up for hearing today, Mr.S. Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondents, submitted that the first respondent has passed a Government Order dated 31.03.2016, granting exemption to the Tamil Movie "புகழ்". However, in paragraph-5 of the said Government Order, the first responent has stated that the petitioner's movie is entitled for tax exemption from the date of issuance of the Government Order i.e., 31.03.2016.

11. Mr.R. Muthukumarasamy, learned Senior Counsel appearing for the petitioner, submitted that when the respondents have taken a policy decision to grant exemption, they cannot restrict the exemption by granting the same from the date of issuance of the Government Order and that the exemption should be granted from the date of release of the movie.

12. The learned Senior Counsel, in support of his contention, relied upon the judgment reported in 2016(1) SCC 560 (Lloyd Electric and Engineering Limited vs State of Himachal Pradesh and Others), wherein the Hon'ble Supreme Court held as follows:

> 14. The State Government cannot speak in *two* voices. Once the Cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31-3-2009, up to 31-3-2013, and the Notification dated 29-5-2009, accordingly, having been issued by the Department concerned viz. Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be taken by the left hand. The Government shall speak only in one voice. It has only one policy. The departments are to implement the government policy and not their own policy. Once the Council of Ministers has taken a decision to extend the 2004 Industrial Policy and extend tax concession beyond 31-3-2009, merely because the Excise and Taxation Department took some time to issue the notification, it cannot be held that the eligible units are not entitled to the concession till the Department issued the notification.
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> 15. It has to be noted that the Finance Department of the State Government had concurred with the proposal of the Department of Industries to extend the tax concession beyond 31-3-2009 till 31-3-2013 and the Council of Ministers had accordingly taken a decision also. No doubt, the statutory notification issued by the Excise and Taxation Department under Section 8(5)(b) of the Act on 18-6-2009 has stated that the eligible units will be

entitled to the concession with immediate effect. Merely because such an expression has been used, it cannot be held that the State Government can levy the tax against its own policy. The State Government is bound by the policy decision taken by the Council of Ministers and duly notified by the Department concerned viz. Department of Industries.

16. That apart, it appears, the Excise and Taxation Department itself has not actually intended the notification to take effect from 18-6-2009. The definition given to the new and the existing industrial units in the Notification dated 18-6-2009 would indicate so. To quote:

"Explanation I.—For the purposes of this notification—

(i) 'new industrial unit' means an industrial unit located in Himachal Pradesh which commenced/commences production on or after 31-12-2004, but will not include any industrial unit which is formed as a result of re-establishment, mere change of ownership, change in the constitution, re-structuring or revival of an existing industrial unit;

(ii) 'existing industrial unit' means an industrial unit which commenced production before 31-12-2004;"

17. Even otherwise, it is not altogether a new concession that has been notified by the Excise and Taxation Department in the impugned Notification dated 18-6-2009. As we have noted above, it is an extension of the 2004 Industrial Policy and the resultant tax concession to the eligible units which was available up to 31-3-2009. Therefore, for all purposes, what is notified by the Excise and Taxation Department on 18-6-2009 is an extension of the said concession beyond 31-3-2009 and that is why the notification has used the expression "… for the period ending 31-3-2013" without otherwise

indicating the concession already being enjoyed by the eligible units till 31-3-2009.

13. In the case on hand, admittedly, the petitioner had submitted his application for grant of exemption of entertainment tax before the respondent on 16.12.2015 and the respondents have rejected the application for grant of exemption of entertainment tax on 31.12.2015. Challenging the said order, the petitioner has filed the writ petition on 07.03.2016. As already stated, the movie was scheduled to be released on 18.03.2016 and it was represented by the learned Senior Counsel that the movie was also released on 18.03.2016.

14. After the rejection of the application for grant of exemption of entertainment tax, by its order dated 31.12.2015, now, by the new Government Order issued on 31.03.2016, the first respondent had taken a different stand stating that the petitioner's movie is entitled for exemption of entertainment tax. However, while taking a different stand, the first respondent has stated that the exemption will come into effect only from the date of issuance of the Government Order i.e., 31.03.2016.

15. When the petitioner had applied for the exemption on 16.12.2015 and the respondent had rejected the same by its order dated 31.12.2015 and when the respondents are taking a different stand by giving exemption to the petitioner's movie, they cannot now say that the exemption will come into effect only from 31.03.2016 and not from the date of release of the movie. The judgment, relied upon by the learned Senior Counsel for the petitioner, squarely applies to the facts and circumstances of the present case. Once the first respondent had decided to grant exemption of the entertainment tax, exemption should come into effect only from the date of release of the movie and not from the date of issuance of the Government Order. The Order passed by the first respondent dated 31.12.2015 is proved to be erroneous, by the issuance of the present Government Order dated 31.03.2016.

16. In these circumstances, following the judgment reported in 2016(1) SCC 560 (Lloyd Electric and Engineering Limited vs State of Himachal Pradesh and Others), I am of the considered view that the impugned order dated 31.12.2015, passed by the first respondent, is liable to be set aside and accordingly, the same is set aside. The petitioner's tamil movie "புகழ்" is entitled for exemption of entertainment tax from the date of release i.e., on 18.03.2016. With these observations, the writ

petition is allowed. No costs. Consequently, connected Mps are allowed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

sr
To

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.

+ 1 cc to Government Pleader SR.20812

W.P.No.8797 of 2016

KJI(CO)
Eu 12.04.16