IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.34811 of 2004
&
W.P.M.P.No.42007 of 2004

M/s.Sri Kumari Theatre
By its Proprietor
Mr.G.Balaiah Naidu
Son of Govindasamy
No.5, Nagalapuram Road
Uthukottai Taluk
Tiruvallur District .. Petitioner

Vs.

1. The Joint Commissioner of
Commercial Tax IV
Office of the Special Commissioner
of Commercial Tax, Ezhilagam
Chennai - 5

2. The Deputy Commissioner (CT)
Chennai (South) Division
Greams Road, Chennai - 86

3. The Asst. Commissioner (CT)
Kancheepuram
Kancheepuram District

4.The Entertainment Tax Officer (ETO)
Tiruvellure
Tiruvellure District

5. The Collector of Chengai M.G.R.District
Office of the Collector's Office
Kancheepuram .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records on the file of the 1st respondent made in proceedings R.P.No.JJ 2/ET/162/2003 dated 31.8.2004 pursuant to the orders passed by the 4th respondent made in Proceedings B2/Rc/2515/2000 dated 09.10.2000 and quash the order of the 1st respondent dated 31.08.2004.

For Petitioner : Mr.V.Balakrishnan

For Respondent : Mr.Manoharan Sundaram
Additional Government Pleader

O R D E R

Heard Mr.V.Balakrishnan, learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has filed this writ petition challenging the order passed by the Joint Commissioner (second revisional authority), who has rejected the revision petition by order dated 31.08.2004, which was filed challenging the order passed by the Original Authority dated dated 09.10.2000, confirming the order of the Revisional Authority, namely Deputy Commissioner (CT), Chennai (South) Division dated 25.04.2003, who refused to interfere with the Assessment made under the provisions of the Tamil Nadu Entertainment Tax Act, 1939.

3. The short issue which falls for consideration is, as to whether the fourth respondent would be justified in demanding Entertainment Tax for the entire seating capacity for the period 1993-94 to 16.07.2000 without considering the fact that the petitioner had closed down the Balcony on 24.09.1993 pursuant to his application dated 13.08.1993 given to the Licencing Authority, namely the fifth respondent. The only reason for confirming the assessment by both the authorities is by stating that though the petitioner had made an application for surrendering the Balcony seats, orders were passed by the Licencing Authority only on 29.06.2000 and therefore, the petitioner had to pay the Entertainment Tax till the said date.

4. To examine as to whether this finding is correct, the facts of the case shall be gone into. The petitioner addressed a letter to the Collector on 13.08.1993 seeking permission to close down the Balcony. Accordingly, a direction was issued to the Tahsildar by the District Collector. The Tahsildar conducted an inspection, pursuant to which the Balcony was totally sealed and the seats were re-arranged. This is evident from the letter of the Tahsildar dated 13.09.1993. One more factor is that the petitioner addressed a letter to the Deputy Commercial Tax Officer on 29.09.1993 and surrendered the Balcony tickets. This fact is also not in dispute. Therefore, merely because the District Collector passed orders only on 29.06.2000 could hardly be a reason for the fourth respondent to disbelieve the stand taken by the petitioner that they have closed down the Balcony w.e.f

24.09.1994. This important factual aspect of the matter has been totally lost sight of by both respondents 1 and 2. Therefore, the petitioner is entitled to succeed.

Accordingly, the writ petition is allowed and the impugned order dated 31.08.2004 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gpa

To

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1 cc to The Special Government Pleader(T), sr.36678

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mp co
kra 22.07.2016