IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 8.6.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.17297, 17298 of 2003

S.Loganathan ... petitioner in W.P.No.17297 of 2003

L.Malathi ... petitioner in W.P.No.17298 of 2003

versus

THE ENTERTAINMENT TAX OFFICER
(CTO) SALEM RURAL CIRCLE OFFICE OF THE
C.T.O.(SALEM RURAL) SALEM ... Respondent in both the WP

W.P.No.17297/2003 filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the respondent dated 24.2.2003 in his proceedings in Na.Ka.38/2002 A6, quash the same and consequentially direct the respondent to refund the excess sum of Rs.22,534/- paid by the petitioner and collected by the respondent for the period from 15.2.1999 to 25.11.2000, along with due interest to the petitioner.

W.P.No.17298/2003 filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the respondent dated 24.2.2003 in his proceedings in Na.Ka.38/2002 A6, quash the same and consequentially direct the respondent to refund the excess sum of Rs.18,460/- paid by the petitioner and collected by the respondent for the period from 15.7.1997 to 20.7.1998, along with due interest to the petitioner.

For petitioner ... Mr.N.Muralikumaran
For respondent ... Mr.Manokaran Sundaram, A.G.P.

COMMON ORDER

The petitioners in these Writ Petitions are husband and wife and the challenge in both the Writ Petitions is to the order passed by the first respondent, Competent Authority, under the Tamil Nadu Entertainment Tax Act, refusing to grant refund of the alleged excess tax remitted by the petitioners.

2. The petitioners were the lessees of Yercaud Township Panchayat Union Theatre and they have been granted license to run the theatre for a specific period. The petitioners were permitted to pay entertainment tax on compounding basis under Section 5-B of the Tamil Nadu Entertainment Tax Act, 1939 at the rate of Rs.2,290/- per week for the period from 15.2.1999 to 11.6.2000, i.e. for 48 weeks. Yercaud was shown as Township in Schedule III of Tamil Nadu Entertainment Tax Act, 1939. The petitioners' case is that by a notification published in Salem District Gazette dated 15.7.1997, Yercaud became a village panchayat and therefore, they stated that entertainment tax stood modified @ Rs.1975/- instead of Rs.2290/- per week and therefore, they sought for reduction of the excess tax calculated. This request made by the petitioners was rejected by the impugned order.

3. I have heard Thiru.N.Muralikumaran, learned counsel for the petitioners and Thiru.Manokaran Sundaram, learned Additional Government Pleader for the respondent.

4. The learned counsel for the petitioners placed reliance on the decision of the Hon'ble Division Bench of this Court in Odean Mani Thiraiarangam rep. By its Partner vs. State of Tamil Nadu [1983 (2) MLJ 392].

5. Firstly, it has to be pointed that the petitioners were granted license to run the theatre for the period from 8.1.1999 to 2.8.2001. They did not run the theatre for the entire period and they stopped the operation midway on 25.11.2000. This specific averment made in the counter affidavit filed by the respondent has not been denied by the petitioner. That apart, it is to be seen as to whether elevation of Yercaud from Village Panchayat or Town Panchayat and publication in the District Gazette will automatically alter the schedule to the Entertainment Tax Act. In fact, this issue was considered by the Hon'ble Division Bench and it was pointed out that once an area ceases to find place in the Table by reason of its being included within the City of Madras on the strength of a notification under Section 3(9) of the Madras city Municipal Corporation Act, automatically that area ceases to enjoy as and from the date of such inclusion the benefits of Section 5-B of the Tamil Nadu Entertainments Tax Act. The Hon'ble Division Bench further pointed out that the option permitted under the section as per the provisions in section 5-B(5) shall continue to be in force till the end of the financial year in which such option is permitted.

6. Thus, even assuming that the area in which the theatre was constructed falls within the jurisdiction of village panchayat, yet the option of paying entertainment tax under

Section 5-B is to continue till the end of financial year and from the counter affidavit, it is seen that well before the financial year was over, the petitioners stopped operations, though the notification in the Salem District Gazette is dated 15.7.1997, the petitioners did not immediately agitate the issue. Rather, the petitioners took part in the auction and obtained license rights in the year 1999, much after the District Gazette notification. Therefore, the petitioners are estopped from raising such a plea now. Furthermore, the question of refund would not arise because what was collected is a tax and that tax has undoubtedly been passed on to the persons who had visited the theatre for viewing movies, by purchasing tickets. Thus, in any event, the petitioners are not entitled to the relief sought for.

7. For all the above reasons, the Writ Petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

THE ENTERTAINMENT TAX OFFICER
(CTO) SALEM RURAL CIRCLE
OFFICE OF THE C.T.O.(SALEM RURAL) SALEM

+1cc to M/S.Mcgan Law firm, Advocate Sr.30840
+1cc to the Special Government Pleader Sr.30848

W.P.Nos.17297, 17298 of 2003

mp(CO)
srg(13/07/2016)