THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.16518 of 2006

ORDER: (**Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan**)

The relief sought for in this writ petition is to declare the notice of the respondent dated 23.6.2006 as illegal, null, void and arbitrary and consequently declare the Form I Distraint order dated 1.8.2006, issued by the respondent, as arbitrary and illegal.

The dispute in the writ petition relates to the concesssional rate of tax which cinema theatres are entitled to for exhibiting films produced within the State of Andhra Pradesh in various categories. The erstwhile Government of Andhra Pradesh authorized the A.P. Film Development Corporation to issue certificates for the films produced under various categories and, based on the said certificates, entertainment tax was required to be determined and collected.

The petitioner's grievance is that, though they are entitled for concessional rate of tax, the Entertainment Tax Officer had passed orders, and had levied entertainment tax, without extending them the benefit of such concession.

Sri S. Suri Babu, learned Special Standing Counsel for Commercial Taxes, would, however, contend that the burden is on the assessee to produce certificates to show that they are entitled for concessional rate of tax; and, in the absence of any such certificates being produced, the order impugned in this writ petition does not merit interference.

In a batch of writ petitions, i.e., in W.P. No. 14668 of 2005 and batch dated 24.4.2007, this Court had directed the assessing authority to issue a notice afresh, and thereafter recover the amount. By order, in Writ Petition No. 16116 of 2006 dated 30.6.2016, a Division Bench of this Court permitted the petitioner therein to submit a representation within three weeks from the date of the order, enclosing thereto documentary evidence of the taxes paid by them and deductions, if any, to which they were entitled to; and the respondents were directed to pass orders afresh within a period of two months from the date of receipt of the representation. It was made clear that failure on the part of the petitioner, to file their representation, would enable the respondents to proceed and pass appropriate orders afresh.

Sri S. Suri Babu, learned Special Standing Counsel for Commercial Taxes, would submit that the petitioner is a chronic defaulter; tax arrears are due from him from the year 1989 onwards; a mere direction to dispose of the representation would not suffice; the interests of the Revenue should be safeguarded; and the petitioner should be directed to produce documentary evidence within a specified time frame to establish that they are entitled to concessional rate of tax.

In the light of the submissions of the learned Special Standing Counsel for Commercial Taxes, we consider it appropriate to dispose of the writ petition directing the authorities to keep the assessment orders in abeyance for a period of four weeks from today. In case, the petitioner produces documentary evidence to show that they are entitled for the concessional rate of tax within three weeks from today, the assessing authority shall consider the same and, if the documents support their claim for being granted concessional rate of tax, the assessing authority should then pass an assessment order afresh, in accordance with law.

Needless to state that, in case the petitioner fails to produce documentary evidence within the aforesaid period of three weeks to show that they are entitled for the concessional rate of tax, the assessment order, kept in abeyance, shall revive and it is open to the respondent, thereafter, to take action pursuant to the earlier order in accordance with law.

The writ petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

9th November, 2016

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Date: 9.11.2016

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