

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE A.V. SESA SAI

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WRIT PETITION No. 13608 OF 2005

Date: 03.02.2016

Between:

Machilipatnam Communication (P) Limited.,
Rep., by its Managing Director,
Krishna District.

... Petitioner

And

The Commissioner,
Machilipatnam Municipality,
Machilipatnam & others.

... Respondents

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No. 13608 OF 2005

ORDER: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

Heard learned counsel for the parties.

In this writ petition, the petitioner seeks the following prayer:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue Writ of Mandamus or any other writ, order or direction, declaring that the petitioner is not liable to pay the entertainment tax on cable service provided by it to the cable operators in the absence of any prescription of the rules regarding the manner of levy, collection of tax, submission of returns by the petitioner, as mentioned in Section 15A(3) of the Andhra Pradesh Entertainment Tax Act 1939 and consequently set aside the impugned final notices of the respondent dated 31-05-2005 seeking payment of entertainment tax of Rs.2,30,700/-, as without authority of law and to pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.”

It appears, initially, on 06.11.2004 notice was issued to the petitioner under Section 15A of A.P. Entertainment Tax Act, 1939 read with G.O.Ms.No.708 (REV) CT-III, dated 03.10.2000. The petitioner replied to the notice vide their letter, dated 20.11.2004, raising certain questions/objections, which, according to the petitioner, go to the root and also demonstrate that they are not liable to pay the tax as demanded. Thereafter, the respondents issued final notice, dated 31.05.2005.

In the instant writ petition, both the notices, namely, notice, dated 06.11.2004, and final notice, dated 31.05.2005, have been challenged. We have perused the final notice, which, though make reference to notice, dated 06.11.2004, and the reply in the final notice we find that the questions/objections raised by the petitioner in their reply are not considered by the concerned authority.

Learned counsel for the respondents could not and did not point out from the final notice that the reply of the petitioner to the notice, dated 06.11.2004, was considered by the respondents while issuing final notice. In view thereof, learned counsel for the parties have agreed for the following order:

“The respondents shall consider the petitioner's reply, dated 20.11.2004, to the notice, dated 06.11.2004, and pass fresh order/issue fresh final notice of demand, if necessary. The respondent shall grant an opportunity of being heard

to the petitioner and decide the notice, treating it as show cause notice, and reply on merits in accordance with law as expeditiously as possible and preferably within a period of eight weeks from the date of receipt of this order. The petitioner is directed to communicate this order to the concerned authorities within a period of ten days from today. It is open to the petitioner to file additional reply, if they so desire, and place additional material on record in support thereof within a period of two weeks from today.”

With these observations, the writ petition is disposed of.

Miscellaneous petitions, if any, shall also stand disposed of. There shall be no order as to costs.

DILIP B. BHOSALE, ACJ

A.V. SETHA SAI, J

Date: 03.02.2016

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Note: Furnish C.C. today.