IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/7/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable Mrs.JUSTICE V. BHAVANI SUBBAROYAN

Writ Appeal No.837 of 2017

Tvl. Sivam Theatre
rep. By Thiru R.Elangovan
73 Railway Station Road
Mettupalayam
Coimbatore 641 301. ... Appellant

Vs

1. The Assistant Commissioner (CT) (FAC)
Mettupalayam Circle
Coimbatore.

2. The Tahsildar
Mettupalayam
Coimbatore District. ... Respondents

Appeal filed under Clause 15 of Letters Patent against the order made in W.P.No.3254 of 2017, dated 9/2/2017.

Prayer in wp.3254/2017

Writ Petition filed under Article 226 of the Constitution of India praying for the Issuance of a Writ of Certiorarified Mandamus calling for the records on the files of the first respondent in proceedings in TNET: 03/2002-03 dated 01.02.2016 and quash the same being illegal invalid and violated the principles natural justice and also law laid down by this Honourable Court and direct the 1st respondent to grant sufficient opportunity before passing order and pass orders.

For appellant ... Mr.P.R.Kumar

For Respondents ... Mr.K.Venkatesan
Government Advocate

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

Challenge in this appeal, is to an order made in W.P.No.3254 of 2017, dated 9/2/2017, by which, the writ Court, declined to issue a certiorarified mandamus, to quash the order, dated 1/2/2016, of the Assistant Commissioner (CT) (FAC), Mettupalayam, Coimbatore District, who directed the petitioner, to pay the excess collection of Rs.8,92,862/-, along with penalty, at 150% of Rs.13,39,293/-, within fifteen days, from the date of demand, failing which, action would be initiated, as per Section 14 (1) (d) of the Tamil Nadu Cinemas (Regulation Act 1955).

2. Facts of the case, as deduced from the material on record are that on 25/8/2015, @ 10.00 p.m., on the directions of the District Collector, Coimbatore, The Tahsildar, Mettupalayam, Coimbatore District, inspected Sivam Theatre. At the time of his inspection, "Tamil" film, viz., "VASUVUM SARAVANANUM ONNA PADICHAVANGA", was screened. As per G.O.(D) No.322 CT & R (CT) Department, dated 13/8/2015, the said movie was exempted from entertainment tax. The rates of admission, as on 25/8/2015, is as follows:-

I class	...	Rs.39/- per person
II class	...	Rs.29/- per person
III class	...	Rs.19/- per person
IV class	...	Rs.4/- per person.

3. The Inspecting Officer found that the owner of the theatre had collected more than the admitted rate fixed by the competent authority and recorded statements from persons, who had issued the tickets and viewers. The inspecting Officer, has also collected unused tickets found in the office. Details of which are reproduced.

First Class	...	S.Nos.3852 to 3900	...	Rs.80/- per ticket
Second class	...	S.Nos.7186 - 7200	...	Rs.70/- per ticket
Third class	...	S.Nos.14207 - 14300	...	Rs.50/- per ticket

4. The Inspecting Officer, came to a preliminary conclusion that the availability of unused tickets, proved that the theatre owner had issued the tickets, with exorbitant rates. He has worked out the collection of admitted amount and un-admitted amount and accordingly, arrived at the excess collection of amount, as hereunder:-

Amount	Admission rate collected	Ticket issued Nos.	Total value (in Rs.)	First class rate admitted	Value	Difference
I class	Rs.80/-	3851	3,08,080/-	Rs.39/-	Rs.150,189/-	Rs.1,57,891/-
II class	Rs.70/-	7185	5,02,950/-	Rs.29/-	Rs.2,08,365/-	Rs.2,94,585/-
III class	Rs.50/-	14206	7,10,300/-	Rs.19/-	Rs.2,69,914/-	Rs.4,40,386/-
Total						Rs.8,92,862/-

5. Though Cinema screened in the theatre upto 25/8/2015, was exempted from payment of Entertainment Tax, but the theatre has collected an excess amount of Rs.8,92,862/-. Following the decision of this Court in K.VISWANATHAN Vs. STATE OF MADRAS {1961 (II MLJ 294 at page Nos.296 and 297 (Madras)}, wherein, this Court has held that the excess amount collected should be paid to the Government and having regard to Section 5 G of the Tamil Nadu Entertainment Tax Act,1939, the Assistant Commissioner (CT), Mettupalayam Circle, issued a notice, dated 3/11/2015, calling upon the theatre, to pay the excess collection of Rs.8,92,862/-, along with penalty at 150% of Rs.13,39,293/- within fifteen days, from the date of receipt of notice, failing which, action would be initiated, as per Section 14 (1) (d) of the Tamil Nadu Cinemas (Regulation) Act, 1955.

6. Responding to the notice, theatre, vide reply, dated 30/12/2015, denied sale of tickets at higher rates. theatre/writ petitioner has contended that action has been taken, at the instance of somebody. Writ petitioner, has further stated that tickets issued with the permitted rates alone have been sold. theatre has also stated that the "Tamil" film, viz., "VASUVUM SARAVANANUM ONNA PADICHAVANGA", is exempted from Entertainment Tax.

7. After considering the material on record, vide proceeding No.TNET:03/2002-03, dated 1/2/2016, the Assistant Commissioner (CT) (FAC), Mettupalayam Circle, Coimbatore, has ordered payment of the above said amount. Being aggrieved, theatre has filed W.P.No.3254 of 2017, for issuance of a writ of certiorarified mandamus, as stated supra.

8. Before the writ Court, contentions have been made that reply, dated 30/12/2015 of the theatre has not been considered, in proper perspective, by the Assistant Commissioner (CT) (FAC),

Mettupalayam Circle, Coimbatore. Further contention has been made that the order of the Assistant Commissioner (CT) (FAC), Mettupalayam Circle, Coimbatore/first respondent, on the basis of best judgment method, without providing copies of the judgment, and statements taken from the viewers, is in violation of the principles of natural justice.

9. Further contention has been made that Government have issued G.O.Ms.No.159 Commercial Taxes and Registration (CT) Department, dated 22/8/2017, granting exemption from payment of Entertainment Tax, for movies titled in "Tamil", and therefore, there is no need for the writ petitioner, to pay Entertainment Tax and in such a view of the matter, there is no evasion of payment of Entertainment Tax. Contention has been made that the method of estimation of excess collection, based on single ticket and making a huge demand, is erroneous.

10. After hearing, the learned counsel appearing for the parties, writ Court, at paragraph Nos.7.1 and 7.2, has ordered as follows:-

> "7.1. The petitioner, in this Court, has placed on record only the reply dated 30/12/2015. A perusal of the contents of the said reply would show that the petitioner has not denied the fact that cash, amounting to Rs.8,92,862/- (Rupees Eight lakhs Ninety Two thousand Eight hundred and sixty two only), purporting to the proceeds of sale of tickets, was found in his premises.
>
> 7.2. A perusal of the reply would show that the petitioner was not able to explain the difference in the two products arrived at by the first respondent. The first product was arrived at by multiplying the number of tickets sold with the rates stipulated qua tickets, albeit, net of taxes, while the second product involved the multiplication of tickets sold by rates, which included the component of tax. The variation in the two products, according to the first respondent, was equivalent to the cash found, on inspection in the premises of the petitioner. This variation, the petitioner was not able to address in the reply."

11. In so far as levy of penalty is concerned, the writ Court has set aside the same.

12. Though Mr.P.R.Kumar, learned counsel appearing for the appellant, urged the very same grounds and sought for reversal, this Court is not inclined to accept the same, for the simple reason that during inspection, the Inspecting Officer has collected un-issued tickets found in the office of the theatre, in various classes, at higher rates than the permitted under the Tamil Nadu Cinemas (Regulations) Act, 1955.

13. Tickets found in the office of the theatre were in the first class, un-issued tickets, bearing S.Nos.3852 to 3900, which accounts for 48 tickets in the first class, at the rate of Rs.80/- per ticket, 14 tickets in the second class, at the rate of Rs.70/- per ticket and in respect of third class, about 93 tickets, at the rate of Rs.50/- per ticket, higher than the admissible rate of Rs.4/- per ticket.

14. Though Mr.P.R.Kumar, learned counsel for the appellant contended that at the behest of somebody, action has been taken against the theatre, he is not in a position to explain, as to how the un-issued tickets were found in the theatre. Inspection has been done on the directions of the District Collector, Coimbatore District and estimation of excess amount collected, cannot at any stretch of imagination be said without any basis. Factum of existence of abovesaid tickets, in the office of the theatre itself is a cause, giving rise to best judgment.

15. Collection of un-issued tickets by the Tahsildar, the Investigating Officer and the report submitted are acts done in exercise of official acts and no malafide has been attributed to the Inspecting Officer.

16. Though the writ petitioner has denied collection of excess amount and also contended that the statements of consumers, were furnished and therefore, there is a violation of principles of natural justice, this Court is not inclined to accept the same. Theatre has been given an opportunity to explain. But, there is no fruitful answer, in the explanation, dated 30/12/2016, as to the tickets found in the office of the theatre. Writ Court has properly adverted to the grounds urged and while setting aside the penalty portion, has rightly directed the theatre to pay the excess amount.

17. In view of the above discussion, we are not inclined to interfere with the order passed by the learned Single Judge passed in W.P.No.3254 of 2017, dated 9/2/2017.

18. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

19. Though after the dismissal of the appeal, Mr.P.R.Kumar, learned counsel for the appellant sought leave to file an appeal, as against the order of the Assistant Commissioner (CT) (FAC), Coimbatore, having argued the matter on merits, this Court is not inclined to grant any liberty.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1. The Assistant Commissioner (CT) (FAC)
Mettupalayam Circle
Coimbatore.

2. The Tahsildar
Mettupalayam
Coimbatore District.

+ 1 cc to Mr.P.R.Kumar, Advocate,SR.52457

+ 1 cc to The Special Govt.Pleader(Taxes), SR.52644

W.A.No.837 of 2017

SK(CO)
NR 29/08/2017