IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09-02-2017

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.3254 of 2017

and W.M.P.No.3211 of 2017

Tvl. Sivam Theatre
Rep. by Proprietor Thiru R. Elangovan
S/o. Rangasamy
No.73, Railway Station Road
Mettupalayam
Coimbatore - 641 301 .. Petitioner

Vs.

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

2. The Tahsildar
Mettupalayam, Coimbatore Dist. .. Respondents

Prayer : 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 and direct the first respondent to grant sufficient opportunity before passing order and pass orders.

For Petitioner : Mr. P.R. Kumar
For Respondents : Mr. K. Venkatesh, Govt. Advocate(Taxes) for R1
Mr. Akhil Akbar Ali, Govt. Advocate for R2

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ORDER

1. Issue notice. Mr. K. Venkatesh, learned Government Advocate (Taxes) accepts notice on behalf of the first respondent and Mr. Akhil Akbar Ali, learned Government Advocate, accepts notice on behalf of the second respondent.

1.1 With consent of the learned counsels appearing for the parties, the writ petition is taken up for hearing and final disposal.

2. The writ petition is directed against the order dated 01-02-2016, passed by the first respondent.

2.1. By virtue of the impugned order, the petitioner has been directed to make over the excess collections qua movie tickets sold by him. The impugned order is indicative of the fact that the petitioner has collected excess amounts towards admission fee, which are pegged at Rs.8,92,862/- (Rupees Eight lakhs Ninety Two thousand Eight hundred Sixty Two Only). Apart from this, the impugned order has also mulcted the petitioner with penalty amounting to Rs.13,39,293/-(Rupees Thirteen lakhs Thirty Nine thousand Two hundred Ninety Three Only).

2.2. As per the impugned order, the petitioner is required to make over the excess amount collected along with stipulated penalty within 15 days of its receipt.

2.3. The Record shows that the impugned order is based on an inspection carried out by the concerned Authority on 25-08-2015. The inspection, apparently, revealed that the petitioner was collecting the component of entertainment tax as well from the viewers, although, the subject movie had been exempted from tax.

2.4. Pre-assessment notices were issued in this behalf by the first respondent on 03-11-2015 and 07-12-2015. Apart from these notices, the District Collector, Coimbatore also issued a notice dated 10-09-2015, to the petitioner. The petitioner, evidently, has filed his replies dated 26-11-2015, 11-12-2015, 22-12-2015 and 30-12-2015. However, it needs to be noted that the petitioner has placed on record only one reply, which is dated 30-12-2015.

3. The reasoning adopted by the first respondent in coming to the conclusion that an excess amount had been collected by the petitioner is reflected in the following observations contained in the impugned order:

> "The admission rate for the tickets allowed by the authority under Tamil Nadu Local Authority Finance Act 1961. The payment of seats, collected by any license of cinematograph exhibition under the Tamil Nadu Cinemas (Regulation) Act, 1955. The admission rate is fixed as follows:

Ist Class	:	Rs.39/- Per Person
IInd Class	:	Rs.29/- Per Person
IIIrd Class	:	Rs.19/- Per Person
IVth Class	:	Rs.4/- Per Person

> But the inspecting officer, found that the owner of the theatre collected more than the admitted rate fixed by the authorities concerned and recorded statements from the persons who issued tickets and who admited into the theatre to see the movie. The

officer has also collected unissued tickets found in the office which are as follows:

Ist Class	:	Sl.No:3852 to 3900	Rs.80 Per ticket
IInd Class	:	Sl.No:7186 to 7200	Rs.80 Per ticket
IIIrd Class	:	Sl.No:14207 to 14300	Rs.80 Per ticket

The unissued ticket proves that the theatre owner has issued tickets upto the unused ticket No. for admission of the persons to see the movie. The collection of admitted amount and unadmitted amount are workedout and the excess collection of amount are as follows:

	Admission Rate Collected	Ticket Issued Nos	Total Value	First Class Rate admitted	Value	Difference amount
Ist Class	Rs.80	3851	Rs.308080	Rs.39	Rs.150189	Rs.157891
IInd Class	Rs.70	7185	Rs.502950	Rs.29	Rs.208365	Rs.294585
IIIrd Class	Rs.50	14206	Rs.710300	Rs.19	Rs.269914	Rs.440386
Total						Rs.892862

However the Dealer in their reply dated 30.12.2015 have objected the above facts in written as the tickets that were seized during the inspection does not belong to their theatre and the person signed in the letter accepting the above facts was unknown to them. They also have included in their letter that the tickets sold were properly accounted in their weekly returns and was duly sealed from the Entertainment Tax Officer."

3.1 Based on the aforesaid rationale and in consonance with the ratio of the judgment of this Court in : K.Viswanathan Vs. State of Madras, 1961 II MLJ 294, the first respondent directed the petitioner to make over the excess collection and, as indicated above, also imposed penalty.

4. The learned counsel appearing for the petitioner says that the amount, purportedly, collected in excess was not collected against tickets issued and therefore, the directions to make over the excess payments is illegal. Furthermore, the learned counsel for the petitioner says that the stand taken in the reply dated 30-12-2015 has not been dealt with by the first respondent.

5. It is also the contention of the learned counsel for the petitioner that the provisions of Section 5-G of the Tamil Nadu Entertainments Act, 1939, ('the Act' in short) could not have been involved to levy penalty. Therefore, the levy of penalty is completely unsustainable.

5.1. It is the learned counsel's submission that Section 5-G is a special provision, which allows for assessment, levy of tax and imposition of penalty only in case of unlicensed exhibition of cinematograph films exhibited on Television via VCR or via Cable Television Network.

6. Mr. Venkatesh, learned Government Advocate, who appears on behalf of the first respondent and Mr. Akhil Akbar Ali, learned Government Advocate, who appears on behalf of the second respondent, say that no reasonable explanation was offered by the petitioner with regard to excess cash found at the designated premises, on the date of inspection. It is also the submission of the learned Government Advocates that due opportunity was given to the petitioner to furnish an explanation, in that behalf, and that, nothing that the petitioner stated was found to be satisfactory.

6.1. However, in fairness, Mr. Venkatesh, learned Government Advocate, accepts the position that penalty could not have been imposed on the petitioner by relying upon the provisions of Section 5-G of the Act.

7. I have heard the learned counsel for the parties and perused the record.

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 Sixty Two Only), purporting to be 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.

7.3. Therefore, insofar as that part of the order is concerned, I find no error in the order, and therefore, as held by this Court in K.Viswanathan Vs. State of Madras, the theatre owner cannot illegally collect tax and, then, keep the proceeds with himself.

7.4. However, insofar as the levy of penalty is concerned, quite clearly, the provision invoked does not apply, to the instant circumstances, as has been conceded by

Mr. Venkatesh, as well. Therefore, the writ petition is partially allowed; the penalty imposed is set aside. The other part of the order as indicated above is sustained.

8. Consequently, the connected miscellaneous petition shall stand closed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Assistant Commissioner [CT]
Mettupalayam Circle
Coimbatore

2. The Tahsildar
Mettupalayam, Coimbatore Dist.

+1 cc to Govt.Pleader,sr.8937

+1 cc to Mr.P.R.Kumar, advocate,sr.8538

+1 cc to Spl.Govt.Pleader,sr.8517.

sai(co)
krd 16/2

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