IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.2384 of 2004

D.Nageswaran ...Petitioner

Vs.

The Entertainment Tax Officer-II,
The Entertainment Tax Office,
Palani.

...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records in C.T. Prop. File No.1/03 dated 27.11.2003, and quash the same as illegal.

For Petitioner : Mr.A.Thiyagarajan, Senior Counsel for Mr.R.Sundaram

For Respondent : Mr.K.Venkatesh Government Advocate

O R D E R

Heard Mr.A.Thiyagarajan, the learned Senior Counsel for Mr.R.Sundaram, the learned counsel for the petitioner, and Mr.K.Venkatesh, the learned Government Advocate for the respondent.

2. The petitioner is an individual, and he is aggrieved by the order passed by the respondent under the provisions of the Entertainment Tax Act, which was amended, by Amending Act 23 of 2003, after the advent of cable TV.

3. After hearing the learned counsel appearing for the parties and perusing the materials placed on records, including the parawise instructions given by the Commercial Tax Officer -2 (FAC), Palani, dated 05.07.2007, to the Special Government Pleader (Taxes) High Court, Madras, it is clear that the impugned order, is an order passed by the respondent, levying tax as an interim measure, under Section 7(c) of the Tamil Nadu Entertainment Tax Act, 1939, and there is no such power vested with the respondent to pass such order, levying tax on any assessee. Therefore, this is sufficient to set aside the

impugned order. The two other important objections raised by the petitioner are that, the United Cable System is a Partnership Firm, consisting of 18 partners, and the petitioner is one among the partners, and they have extensive Cable TV Units, in and around Palani, and they are registered as assessee on the file of the Entertainment Tax Officer II, Palani. The Firm is regularly filing returns and paying the tax, wherever payable, and the petitioner, being one of the Partners, cannot be individually assessed to the entertainment tax.

4. The respondent's contention is that, the Partnership Concern, viz., United Cable System is a different entity, and though the petitioner claims that he is one among the Partners and not liable to be pay tax individually, he has his own Cable network and customers, and hence, he is another entity. Further, United Cable System is registered with the Entertainment Tax Office-I, Palani, and lies within the jurisdiction of Palani -I Circle, whereas, the petitioner's Cable Network lies within the jurisdiction of Palani -II circle, and he being the Proprietor of the Cable Network, has to appear before the Entertainment Tax Officer - II, Palani when called upon, and as he failed to appear when called, he has been proceeded against.

5. In the light of the above facts, this Court is of the view that the impugned order, being an interim order is liable to be set aside, granting liberty to the respondent to do proper exercise before issuing notice to the petitioner. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall cause due verification of the records filed by the United Cable System and examine as to whether the petitioner's cable connections are operated within the jurisdiction of the respondent and the income earned through petitioner's network has been declared in the returns filed by the Partnership Firm (United Cable System) and whether it was assessed to tax, and thereafter, if the respondent find reason to proceed against the petitioner, the respondent is at liberty to do so after issuing show cause notice. At the time, when the Writ Petition was admitted, interim stay was granted subject to the payment of 50% of the demand. This amount shall remain with the respondent and shall abide by the fresh orders to be passed by the respondent in terms of the above direction. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Entertainment Tax Officer-II,
The Entertainment Tax Office,
Palani.

+1 cc to M/s.R.Sundaram Advocate sr 50368
+1 cc to the Government Pleader Taxes sr 50373

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