IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.01.2017
CORAM
THE HONOURABLE MR. JUSTICE P.N.PRAKASH
W.P.No.16650 of 2003 and
W.P.M.P.No.20833 of 2003

M/s.Associate Arts Enterprises
rep by its Partner K.A.R. Syed
No.3, Balaji Nagar,
Ekkattuthangal, Chennai - 600 097. ... Petitioner

Vs.

1.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

2.The Revenue Officer,
Corporation of Chennai,
Chennai - 600 003. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for records from the file of the respondents in Resolution No.845/98 dated 22.10.1998 as far as fixing the rate of advertisement tax for the hoardings in the City of Chennai is concerned and the consequential demand issued by the 2nd respondent in Demand Notice No.RDC.AT/1044/99 dated 23.10.2002 and quash the same.

For Petitioner : Mr.T.S.Venkateshan
For Respondents: Mr.V.Ayyadurai,
Additional Advocate General
for Mr.K.Soundararajan

O R D E R

The factual matrix of the case is as under:

The petitioner - Associate Arts Enterprises is into the business of erecting advertisement hoardings in the City of Chennai. The Corporation of Chennai, by the impugned demand notice dated 23.10.2002, called upon the petitioner to pay the tax on advertisement, amounting to a sum of Rs.11,84,683/- for erecting eight hoardings of various measurements, challenging which this Writ Petition has been filed.

2.The petitioner is not only challenging the impugned demand notice dated 23.10.2002, but is also challenging the Resolution No.845/1998 dated 22.10.1998 passed by the Corporation Council under which the tax on advertisement were revised.

3.Heard the learned counsel appearing for the petitioner and Mr.V.Ayyadurai, learned Additional Advocate General assisted by Mr.K.Soundararajan, learned counsel for the Corporation of Chennai.

4.The learned counsel for the petitioner places strong reliance on Section 129-A of the Chennai City Municipal Corporation Act, 1919 (hereinafter referred to as 'Chennai Act') and submitted that the Resolution dated 22.10.1998 passed by the Corporation Council was not approved by the State Government as mandated by Section 129-A. He also submitted that on earlier occasions when such revision of tax on advertisement were made by the Council, the approval of the State Government was sought, but whereas no such approval has been obtained by the Corporation in respect of the Resolution dated 22.10.1998.

5.Repelling the contention, Mr.V.Ayyadurai, learned Additional Advocate General submitted that approval of the State Government for fixing tax on advertisement is not required and that the Council has the power under Section 129-A to fix the rate of tax and that only when the Council seeks to grant exemption to a person from payment of tax on advertisement, approval of the State Government is required.

6.To appreciate the rival contentions, it may be necessary to extract the relevant portion of Section 129-A of the Chennai Act:

> "129-A Tax on advertisements - Every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure any advertisement or who displays any advertisement to public view in any manner whatsoever in any place whether public or private, shall pay on every advertisement which is so erected, exhibited, fixed retained or displayed to public view, [a tax calculated at such rates having regard to the location, size, reach and nature of the advertisement] and in such manner and subject to such exemptions as the council may, with the approval of the [State Government], by resolution determine:
>
> Provided that the rates shall be subject to the maxima and minima laid down by the [State Government] in this behalf [and in any case such rate of tax shall not exceed rupees five hundred per square meter per half-year]"

7.Section 129-A appears to be a self-contained code and for proper appreciation, the same can be broadly divided under the following heads, viz.,

(i) liability to pay tax on advertisement;

(ii) factors for levying such tax;
(iii) power of the Council to levy the tax; and
(iv) exemption from payment of tax.

8.The Section very clearly states that the legislature has empowered the State Government to fix the maximum and minimum rates of tax on advertisement and has also further laid down that the same shall not exceed Rs.500/- per square meter per half year. A lee-way is given to the Council to fix the tax between the minimum and maximum fixed by the State Government.

9.After having given such a restricted discretion, if it is to say that for every revision by the Corporation Council, within the minimum and maximum fixed by the State Government, requires further approval of the State Government, then in the considered opinion of this Court, the Section itself would be rendered redundant and the power of the Council will stand eclipsed. It stands to reason that only when the Council wants to give exemption to a particular category of advertisement or exemption to a particular person from payment of tax, approval of the State Government is required and not otherwise. Had the proviso not been there, then there may be sufficient force in the submission of the learned counsel for the petitioner.

10.As stated earlier, the legislature itself has fixed the cap on tax on advertisement by specifying that it shall not exceed Rs.500/- per square meter per half-year.

11.In view of the above, I am unable to persuade myself to agree with the interpretation proffered by the learned counsel for the petitioner that approval of the State Government is required for validating the Resolution of the Corporation Council, even if they fix the rate of tax between the minima and maxima fixed by the State Government.

12.The learned counsel for the petitioner submitted that the petitioner had erected only small hoardings without light fittings and therefore, he is not liable to pay the amount demanded by the Corporation.

13.In the opinion of this Court, whether he has erected a small or big hoarding is a disputed fact, which cannot be gone into in a Writ proceeding and it is open to the petitioner to work out his remedy in the manner known to law to establish this fact, if so advised.

14.The learned counsel for the petitioner further submitted that no order of assessment was passed by the Corporation before issuing the impugned demand notice.

15.Section 129-A of the Chennai Act itself casts a liability on every person, who erects a hoarding, to pay tax on advertisement. The Council is empowered to fix the rate of tax based on which the authorities would measure the hoarding and levy tax.

16.On a reading of the demand notice dated 23.10.2002, it is seen that the Revenue Officer, Corporation of Chennai has sent a letter No.AT/

1044/98 dated 24.03.1998 with assessment details, to which the petitioner did not respond. That apart, in the demand notice dated 23.10.2002, the subject portion reads as follows:

> "Sub: Advertisement Tax - Corporation of Chennai - Tax for the hoardings covered in S.L.P. arrears - Payment of Tax - Regarding."

17.From the above, it is clear that this dispute has gone upto the Supreme Court and only after the Hon'ble Supreme Court had passed certain orders, the present demand has been raised.

18.This Court does not find any infirmity either in the Resolution dated 22.10.1998 passed by the Council or the demand notice dated 23.10.2002 issued to the petitioner by the Revenue Officer, Corporation of Chennai. In the result, the writ petition stands dismissed. It is seen that at the time of admission on 18.06.2003, this Court has stayed the demand notice. In the light of the aforesaid discussion, the interim stay is vacated and the petition stands dismissed.

19.Mr.V.Ayyadurai, learned Additional Advocate General, assisted this Court as amicus curiae and this Court places on record its deep appreciation for the valuable assistance rendered by him.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner,
Corporation of Chennai,
Chennai - 600 003.

2.The Revenue Officer,
Corporation of Chennai,
Chennai - 600 003.

+1 cc to M/s.B.S.G.Firm Advocate sr 4793
+1 cc to Mr.K.Soundararajan Advocate sr 4577

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