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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) 7532/2017</u>**

Date of decision: 15th December, 2017

AMARRASS SOCIETY FOR PERFORMING ARTS ..... Petitioner
Through Mr. Rajshekhar Rao with Mr. Zehra Khan and Mr. Zahid Ahmed, Advocates.

Versus

COMMISSIONER OF EXCISE, ENTERTAINMENT AND LUXURY TAX & ANR. ..... Respondent
Through Mr. Ramesh Singh, Standing Cousnel with Mr. Sandeep Pather, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, (J.) (ORAL)

Amarrass Society for Performing Arts, a society, has filed the present writ petition impugning the Assessment Order No. F 6(15) ETO 12-13/5557 dated 31st January, 2013 passed by the Entertainment Tax Officer, the assessing authority under the Delhi Entertainment and Betting Tax Act, 1996, and the appellate orders dated 11th June, 2013 passed by the Deputy Commissioner and 11th July, 2017 passed by the Financial Commissioner.

2. Order dated 31st January, 2013 had directed the petitioner society and Zobra Entertainment Private Limited to pay an amount of Rs.10,26,519/- as entertainment tax including interest and penalty, failing which action would be taken against both of them for recovery of the amount. The first appellate

order dated 11th June, 2013 passed by the Deputy Commissioner affirms the said order and had directed that the petitioner society would be blacklisted for furnishing false information to the department by applying for 'No Objection Certificate' and no permission would be granted in their favour in future till the dues were paid. The order of the second appellate authority, the Financial Commissioner dated 11th July, 2017 affirms the finding of the Entertainment Tax Officer and the first appellate authority.

3. During the course of hearing, the petitioner had raised a number of contentions. However, in the end the petitioner had confined their submission limited to sponsorship addition of Rs.10,00,000/- on which 15% entertainment tax amounting to Rs.1,15,000/- , it was held, was payable.

4. The petitioner vide application dated 9th October, 2012 had applied for exemption from payment of entertainment tax for a folk musical festival, namely, Amarrass Desert Music Festival to be held on 1st and 2nd December, 2012 at Zorba, 166, MG Road, New Delhi. It was stated in the application that folk musicians from different countries including India would participate. Entry would be by invite only and total expected gathering would be 600 persons per day. The sole purpose of organizing the festival was to revive the heritage of music in the country and rest of the world. The petitioner was hoping to get sponsorship for the event, though at that point of time they did not have any sponsorship.

5. By communication/order dated 30th October, 2012, the petitioner was granted 'No Objection Certificate' for exemption from payment of entertainment tax under the Act, subject to several conditions. The petitioner was required to comply with directions laid down in notification

dated 16th October, 2006, file detailed account of the performance including proceeds of the gate money, copy of the audit report for last financial year from a qualified Charted Accountant within fifteen days of the event, all incomes from the performance including the gate money would be credited to the petitioner society and there would be ceiling of Rs.500 on admission fee. There was another stipulation that income received by way of sponsorship/donation should not exceed Rs.50,00,000.

6. On 2nd December, 2012, Excise Intelligence Bureau had raided the premises at 166, MG Road, Ghitorni, New Delhi and had detected misuse of P-10 Excise permit and violations of the terms of grant of No Objection Certificate. It was observed that the musical event was in progress and Rs.1500/- was being charged for entry. Rs.200 for each liquor voucher was being charged separately. About 200-250 people were present in the premises at the time of raid.

7. FIR No 386/2012 dated 3rd December, 2012 was registered at Police Station Vasant Kunj under Section 33 of the Excise Act.

8. Consequent thereto, the Entertainment Tax Officer had issued notice dated 11th December, 2012, calling upon the petitioner to furnish documents including books of accounts, details of income and expenditure, bank account etc. and why 'No Objection Certificate' dated 30th October, 2012, should not be withdrawn for furnishing false information and assessment under Section 15 of the Act should not be made.

9. The petitioner vide reply dated 18th December, 2012 had furnished income and expense report, details of income, copy of some donation receipts and bank statements.

10. Thereafter, vide another reply dated 19th December, 2012, petitioner society had stated that the food and beverages were not arranged for by them and they did not have any commercial profit sharing in the same. This letter acknowledges that people had given donations at the entry gate and receipts for the same were submitted. It was also acknowledged that the petitioner society had made efforts and collected temporary membership/donations for the said musical festival.

11. Order dated 31st January, 2013 holds that there were about 250 persons present in the said event. Relying upon the agreement furnished by the petitioner, it was held that Rs.1500/-, Rs.2500/- 5,000/- and 6,000/- were charged for tickets for entry to the event. On the basis of the agreement the Entertainment Tax Officer in absence of details, bifurcated the entry ticket amounts amongst 250 persons who were present and held that Entertainment Tax of Rs.1,07,700/- was chargeable on the said tickets. On the basis of documents submitted by the petitioner, he came to the conclusion that Rs.5,36,847/- was received as donation. As noted above, the petitioner has given up challenge to the aforesaid amounts.

12. The Entertainment Tax Officer thereafter held that the petitioner must have received sponsorship of Rs.10,00,000/-. Sub paragraph 3 of the said order dealing with the aspect reads as under:

> "3. Entertainment Tax on sponsorship are calculated as under:-
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> The applicant failed to submit details of sponsorship. However, there is one clause in the said agreements regarding sponsorship, therefore, the undersigned takes the value of sponsorship as RS. 10,00,000/- on which 15% Entertainment Tax is charged which comes to Rs. 1,50,000/-.
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> Further interest is also levied as per section 40 of the Act which comes to Rs. 11,838/- (Rs. Eleven thousand eight hundred and thirty eight only). In addition to above a penalty equivalent to two times of due tax which comes to Rs. 6,76,454/- (Rs. Six lacs seventy six thousand four hundred and fifty four) is also imposed upon the assesse, as per section 15 of the Act.
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> Since M/s Amarrass Society For Performing Arts and Zobra Entertainment Pvt. Ltd were co-proprietor of the said event, therefore, both Amarrass Society For Performing Arts and Zobra Entertainment Pvt. Ltd. shall be held liable to pay the aforesaid tax including interest and penalty jointly.
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> Now therefore Amarrass Society For Performing Arts and Zobra Entertainment Pvt. Ltd. are directed to pay a total amount of Rs. 10,26,519F/- (Rs. Ten lacs twenty six thousand five hundred and nineteen only) as Entertainment Tax including interest and penalty for the aforesaid event within 15 days from the date of receipt of this order failing which action shall be initiated as per law for recovery of the Government revenue."

13. Other than aforesaid quotation, there is no other discussion in the order dated 31st January, 2013 relating to the sponsorship money. No document or any other material, to show that any sponsorship money was received, has been adverted to and relied.

14. We have also examined the appellate orders and find that there is no discussion on the aforesaid aspect and evidence in support of the said finding.

15. Counsel for the petitioner has rightly urged that the petitioner had never accepted or admitted having received any sponsorship money. The petitioner had given full details of the donations received and furnished a copy of their bank accounts. It is not the case that figure of Rs.10,00,000/- was reflected in the books of account or bank statement. There is no evidence to show that the event was sponsored by any organization or corporate house. No details of sponsorship stand noticed or adverted to in the assessment order and the appellate orders. The FIR and the report of the raiding team does not refer to sponsorship or any evidence. As noticed above, the petitioner had admitted that they had received donations of Rs.5,36,847/-.

16. Thus, the orders passed by the Entertainment Tax Officer or the appellate authorities proceed on surmises and conjecture that sponsorship money of Rs.10,00,000/- must have been received. In the absence of any such evidence or material, we do not think that the Entertainment Tax Officer could have made any assumption and arrived at a finding. The said finding of the Entertainment Tax Officer, we accordingly hold, is without evidence and contrary to law. It would merit interference in the exercise of writ jurisdiction and power of judicial review. Accordingly, we partly modify the assessment order and the appellate orders to the extent that the petitioner had been asked to pay entertainment tax, penalty and interest on sponsorship fee of Rs.10,00,000/-. The respondents would accordingly re-

compute of entertainment tax, penalty and interest. We clarify that we have not interfered with the quantum/percentage of penalty which has been imposed.

16. The petitioners/society has deposited an amount of Rs.3,00,000/- with the respondents. The said amount would be adjusted. The balance amount due and payable in terms of this order would be communicated to the petitioner society within three weeks from the date copy of this order is received.

17. As we have modified the order passed by the Entertainment Tax Officer/Assessing Officer, interest would be chargeable @ 18% i.e. 1.5% per month and not 2% per month till the date of this order, and in case of default, interest would increase to 2% per month.

18. The writ petition is accordingly partly allowed without any order as to costs.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

DECEMBER 15, 2017
MR/NA/ssn