IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1218 OF 2018

M/S CRESCENT ENTERTAINMENT
AND TOURISM LTD THROUGH ITS
MANAGER MANOJ RAMNARAYAN M ...PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Mr. S.S. Bora, Advocate for Petitioner
Mr. K.B. Jadhavar, AGP for Respondent-State
Mr. K.M. Ashok, Advocate for Respondent No. 2

CORAM : S.V. GANGAPURWALA AND ANIL S. KILOR, JJ.

DATE : 26th AUGUST, 2019

ORAL ORDER:

1. Mr. Bora, the learned Counsel for the petitioner submits that the respondent No. 1- Entertainment Duty Officer be directed to refund the entertainment tax of Rs. 85, 81,071/- along with interest collected from the petitioner for the period 01.01.2015 to 30th November, 2015. The learned Counsel submits that as per the eligibility certificate issued to the petitioner, petitioner is entitled for the entertainment duty waiver. However, the respondents have collected the entertainment duty for the said period. After 30th November, 2015, the exemption has been granted by the respondents. Only for the period 01.01.2015 to 30.11.2015, the

benefit is not accorded. The initial order cancelling the eligibility certificate has been set aside by this Court in Writ Petition No. 6463/2015 under order dated 20th July, 2016. Subsequently also they had cancelled the eligibility certificate. The learned Single Judge of this Court in Writ Petition No. 9277/2019 under order dated 30th July, 2019 stayed the said order. Subsequently, the Government also under its letter dated 08.08.2019 has stayed the order cancelling the eligibility.

2. Mr. Jadhavar, the learned Assistant Government Pleader submits that it was because the project of the petitioner was not complete in terms of the eligibility certificate, the benefit was not given to the petitioner.

3. According to the learned Assistant Government Pleader, the details for the cancellation of eligibility certificate are given in the order dated 29.05.2019 of the Director of Tourism. The Petitioner does not have any right as the said certificate itself is cancelled.

4. We have considered the submissions. It is not disputed. As per the eligibility certificate, the petitioner shall be entitled for the entertainment duty waiver and other incentives as detailed under the eligibility certificate dated 07.01.2015. It also appears that the show cause notice was issued to the petitioner as to why the eligibility certificate should not be cancelled. The said show cause notice was

set aside under order dated 20th July, 2016 in Writ Petition No. 6463/2015. It was observed by the Division Bench of this Court that the respondent No. 2 therein shall be entitled to entertainment duty waiver/other incentives as per the scheme applicable to the petitioner for which eligibility certificate dated 07.01.2015 has been issued to him. We have directed the petitioner to maintain separate account of the said entertainment duty waiver/other incentives.

5. It appears that subsequently again said eligibility certificate was cancelled. The petitioner filed Writ Petition No. 9277/2019. The learned Single Judge of this Court under order dated 30th July, 2019 stayed the order cancelling the eligibility certificate. It also appears that the State Government in its letter dated 8th August, 2019, has stayed the order dated 29th May, 2019.

6. It also is not disputed that the petitioner is given the benefit of entertainment duty waiver after 30th November, 2015. It is only for the period 01.01.2015 to 30th November, 2015. The said benefit was not accorded.

7. In fact, the respondents were bound by the order passed by this Court and in force. The eligibility certificate dated 07.01.2015 is in force. The same was cancelled for the first time under order dated 29.05.2019. The said order is also stayed.

8. In light of the above, there was no impediment for the respondents to accord the benefit of entertainment duty waiver/incentives in terms of the eligibility certificate dated 07.01.2015.

9. In light of the above, we direct the respondent No. 1 to refund the amount of entertainment duty collected from the petitioner for the period 01.01.2015 to 30^{th} November, 2015 after verifying the statements. The said exercise shall be done within a period of three months from today.

10. The Writ Petition is accordingly disposed of. No costs.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

mta