

In the High Court of Judicature at Madras

Dated : 09.09.2019

Coram :

The Honourable Dr.Justice ANITA SUMANTH

Writ Petition No.2644 of 2009

M.Lakshmanan

.... Petitioner

Vs

The Entertainment Tax Officer,
Polur, Tiruvannamalai District.

..... Respondent

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the respondent in his proceedings in RCB2/3546/2001 dated 31.12.2008 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
For Respondents : Mr.Mohammed Shaffiq,
Spl.G.P.(T)

O R D E R

A single order of assessment has been passed in relation to sixteen (16) assessment periods viz., 1989-90 to 2004-05 in terms of the provisions of the Tamil Nadu Entertainment Tax Act, 1939 (in short 'Act').

2. The petitioner runs a theatre by name Srinivasa Theatre in Thiruvannamalai. For the periods in question, notice dated 30.09.2008 for revision of assessment was issued to the petitioner proposing to assess the theatre to entertainment tax on the ground that the fixation of seats by the District Collector, Thiruvannamalai District was at 510 from the year 1984 to 09.05.2006 by proceedings of the Collector, Thiruvannamalai District dated 10.05.2006. Thus according to the Assessing Officer, the rate of tax, which is based on the seating capacity would be more than what has been adopted by the petitioner for computing tax liability, which was 251 seats. The notice also refers to a physical inspection by the Revenue Department officials on 22.12.2004 in relation to the fixation of seating capacity of the theatre and states that the inspection revealed that there were no preventive measures taken to prevent positioning of seats in the available empty spaces. Thus, in summary, the allegation referred to is to the effect

that the seating capacity of the theatre in question should be taken to be 510 for the computation of entertainment tax.

3. The petitioner had filed a reply to the re-assessment notice. Thereafter, the Assessing Authority has proceeded to pass a single order in relation to sixteen (16) years which is procedurally impermissible as the Act provides, in terms of section 7 B (3-A), for a combined order of assessment to be passed only in respect of one financial year or any part thereof. Thus the Statute does not envisage a situation when a single order be passed in respect of several years, sixteen as in the present case.

4. The provisions of Section 7 B (3-A) reads as follows:
(3-A) Notwithstanding anything contained in sub-section (1) or sub-section (2), in making an assessment or re-assessment under sub-section (1) or sub-section (2), as the case may be, the authority prescribed under sub-section (1) of Section 7-A may pass a single order in respect of a financial year or any part thereof.

5. The statute envisages that normally, an order of assessment be passed in respect of each return filed by the assessee on weekly basis. This is borne out by weekly assessments passed in the petitioners' case itself, that are available on record. The provisions of 7B(3-A) only extends the benefit of consolidating the returns for one financial year or part thereof for the purposes of assessment. This is by way of an exception and if need be, for the sake of convenience. The provisions of Section 7B(3-A) cannot be stretched to facilitate or sanction a common order for 16 years as has been done in this case. This is a substantive error and not just a technical default. The impugned order is thus set aside.

6. Moreover, and coming to the levy of penalty, one of the objections raised is in relation to the bar of limitation, in so far as the notice has been issued beyond the time limit of five years prescribed under the Act. A working sheet to support the aforesaid position has been filed.

7. The impugned order however, passed as a common order in relation to 16 years, does not even advert to the aforesaid preliminary submission, let alone adjudicate upon the same.

8. The provisions of section 7-B of the Act reads thus:

'7-B. Payment for admission, etc., escaping assessment: (1) Where, for any reason any payment for admission to any entertainment or any amount collected for television exhibition or any charges received for direct to home service has escaped assessment to tax under Section 4, 4E or 4-F or 4G or 4-I or 4-J as the

case may be, the authority prescribed under sub-section (1) of Section 7-A may, subject to the provisions of sub-section (3) and at any time within such period as may be prescribed, assess to the best of its judgment the tax due on such payment or exhibition under Section 4 or on such payment collected for television exhibition under Section 4-E or on such payment under Section 4-F, or on such payment for recreation parlour under Section 4-G or on such charges received for direct to home service under Section 4-I or on such payment for admission to a cricket tournament under Section 4-J as the case may be, after making such enquiry as it may consider necessary and after giving the proprietor a reasonable opportunity to show cause against such assessment.

(2) Where, for any reason, any payment for admission to any entertainment or any cinematograph exhibition or any amount collected for television exhibition or any charges received for direct to home service has been assessed at a rate lower than the rate at which it is assessable under Section 4, 4E, or 4-F or 4G or 4-I or 4-J as the case may be the authority prescribed under sub-section (1) of Section 7-A may, subject to the provisions of sub-section (3) and at any time within such period as may be prescribed, reassess the tax due on such payment or exhibition under Section 4 or on such amount collected for television exhibition under Section 4-E, or on such payment under Section 4-F, or on such payment for recreation parlor under Section 4-G or on such charges received for direct to home service under Section 4-I or on such payment for admission to a cricket tournament under Section 4-J as the case may be, after making such enquiry as it may consider necessary and after giving the proprietor a reasonable opportunity to show cause against such reassessment.

(3) In making an assessment or reassessment under sub-section(1) or sub-section (2) as the case may be, the authority prescribed under sub-section(1) of Section 7-A may, if it is satisfied that due to willful mis-statement or suppression of facts by the proprietor, the tax has not been levied or has been levied at a rate lower than the rate at which it is leviable, direct the proprietor to pay by way of penalty in addition to the tax assessed or reassessed under sub-section(I) or sub-section (2), as the case may be , a sum which shall be,-

(a) fifty percent of tax assessed, or reassessed, if the tax paid as per return, falls short of the assessed or reassessed by not more than ten per cent.

(b) One hundred per cent of tax assessed or reassessed, if the tax paid as per return, falls short of the tax assessed or reassessed by more than ten per cent but not more than fifty per cent;

(c) One hundred and fifty per cent of tax assessed or reassessed, if the tax paid as per the return falls short of the tax assessed or reassessed by more than fifty per cent;

Provided that no penalty under this sub-section shall be imposed unless the proprietor affected has had a reasonable opportunity of showing cause against such imposition.

(3-A) Notwithstanding anything contained in sub-section (1) or sub-section (2), in making an assessment or re-assessment under sub-section (1) or sub-section (2), as the case may be, the authority prescribed under sub-section (1) of Section 7-A may pass a single order in respect of a financial year or any part thereof.

(4) The powers under sub-section (1) or sub-section (2) may be exercised by the authority prescribed under sub-section (1) of Section 7-A even though the original order of assessment, if any, passed in the matter has been the subject-matter of an appeal or revision.

(5) In computing the period of limitation for assessment or reassessment under this Section, the time during which the proceedings for assessment or re-assessment remained stayed under the orders of a Civil Court or other competent authority shall be excluded'.

9. Section 7B, providing for assessment of escaped entertainment tax refers to Rule 43E of the Tamil Nadu Entertainment Tax Rules, 1939 which sets out the prescription in relation to the limitation provided. In terms of Rule 43E, the Entertainment Tax Officer is permitted to, within five years from the expiry of the period to which the tax relates, bring to tax Entertainment Tax that has escaped assessment. Thus the notice to re-assess in terms of section 7B read with Rule 43E has to be issued within five years from the end of the relevant period of assessment. Rule 43E is extracted below:

'43-E.(1) Where for any reason any payment for admission to any entertainment has escaped assessment to tax under Section 4 of the Act or any amount collected for television exhibition has escaped assessment to tax under Section 4-E of the Act or payment to any amusement 6 [or recreation parlour] has escaped assessment tax under Section 4-F 2 [or Section 4-G] of the Act 7 [or any amount collected for providing direct to home service has escaped assessment to tax under Section 4-I of the Act or any amount collected for admission to any cricket tournament

conducted by the Indian Premier League 8 [or Board of Control for Cricket in India conducting the Champion League Twenty20 cricket tournament] has escaped assessment to tax under Section 4-J of the Act] the Entertainments Tax Officer may, within a period of five years from the expiry of the period to which the tax relates, take action under sub-section(1) of Section 7-B of the Act

(2) Where for any reason any payment for admission to any entertainment or cinematograph exhibition or any amount collected for television exhibition or amusement 1 [or recreation parlour] 2 [or direct to home service or any cricket tournament conducted by the Indian Premier League] 3 [or Board of Control for Cricket in India conducting the Champion League Twenty20 cricket tournament] has been assessed to tax at a rebate lower than the rate at which it is assessable under Section 4 or 4-D or 3-E or 4-F 2 [or 4-G] or 2 [4-I or 4-J] of the Act, as the case may be, the Entertainments Tax Officer may within a period of five years from the expiry or the period to which the tax relates, take action under sub-section(2) of Section 7-A of the Act.

10. In the present case, the petitioner had approached this Court challenging the proceedings initiated by the District Collector for fixation of seating capacity of the theatre and as such the learned counsel for the petitioner fairly states that the period during which the fixation of seating capacity and consequent cancellation of cinema licence was pending before the High Court under an order of Stay shall stand excluded from the computation of limitation under the Entertainment Tax Act as well.

11. The relevant dates in this regard are as follows:

Year of Assessment	Period of stay granted by High Court	Calculation of 5 years period excluding stay period	Date of expiry of 5 years period	Date of issue of revision notice
1989-90	30.9.92 to 26.4.01 06.04.2004 to 21.9.2004	Y M D 1.4.90 to 29.9.92 - 2 - 5 -21 27.4.01 to 27.10.03 - 2 - 6 -01	27.10.03	30.9.08

Year of Assessment	Period of stay granted by High Court	Calculation of 5 years period excluding stay period	Date of expiry of 5 years period	Date of issue of revision notice
1990-91	-do-	1.4.91 to 29.9.92 - 1 - 5 -29 27.4.01 to 5.4.04 - 2 - 11-09 22.9.04 to 13.4.05 - 0 - 06-22	13.04.05	30.9.08
1991-92	-do-	1.4.92 to 29.9.92 - 0 - 5 -29 27.4.01 to 5.4.04 - 2 - 11-09 22.9.04 to 13.4.06 - 1 - 06-22	13.04.06	30.9.08
1992-93	-do-	27.4.01 to 5.4.04 - 2 - 11-09 22.9.04 to 12.10.06 - 2 - 0 -21	12.10.06	30.9.08
1993-94	-do-	27.4.01 to 5.4.04 - 2 - 11-09 22.9.04 to 12.10.06 - 2 - 00 -01	12.10.06	30.9.08
1994-95	-do-	27.4.01 to 5.4.04 - 2 - 11-09 22.9.04 to 12.10.06 - 2 - 0 -21	12.10.06	30.9.08
1995-96	-do-	27.4.01 to 5.4.04 - 2 - 11-09 22.9.04 to 12.10.06 - 2 - 0 -21	12.10.06	30.9.08
1996-97	-do-	27.4.01 to 5.4.04 - 2 - 11-09 22.9.04 to 12.10.06 - 2 - 0 -21	12.10.06	30.9.08
1997-98	30.9.92 to 26.4.01 6.4.04 to 21.9.04	27.4.01 to 5.4.04 - 2 - 11-09 22.9.04 to 12.10.06 - 2 - 0 -21	12.10.06	30.9.08
1998-99	-do-	27.4.01 to 5.4.04 - 2 - 11-09 22.9.04 to 12.10.06 - 2 - 0 -21	12.10.06	30.9.08

Year of Assessment	Period of stay granted by High Court	Calculation of 5 years period excluding stay period	Date of expiry of 5 years period	Date of issue of revision notice
1999-2000	-do-	27.4.01 to 5.4.04 - 2 - 11-09 22.9.04 to 12.10.06 - 2 - 0 -21	12.10.06	30.9.08
2000-01	-do-	27.4.01 to 5.4.04 - 2 - 11-09 22.9.04 to 12.10.06 - 2 - 0 -21	12.10.06	30.9.08
2001-02	-do-	1.4.02 to 5.4.04 - 2 - 0- 5 22.9.04 to 16.9.07 - 2 - 11-25	16.9.07	30.9.08
2002-03	-do-	1.4.03 to 5.4.04 - 1 - 0- 5 22.9.04 to 16.9.08 - 3 - 11-25	16.9.08	30.9.08
2003-04	-do-	1.4.04 to 5.4.04 - 0 - 0- 5 22.9.04 to 16.9.09 - 4 - 11-25	16.9.09	30.9.08
2004-05	-do-	1.4.05 to 31.3.2000 - 5 - 0- 0	31.3.10	30.9.08

12. No factual dispute is raised by the respondent counsel. A perusal of the aforesaid chart would show that notices for revision have been issued much after the expiry of limitation for the periods from 1989-90 to 2001-02. This chart is also available as part of the records having accompanied the response/objections filed by the petitioner to the re-assessment notice. However, the Assessing Authority has not thought it fit to refer to the same and has clearly ignored this submission made by the assessee.

13. No counter has been filed despite several opportunities having been extended to the respondent including a final opportunity. Thus the facts, sequence of dates and events as noticed by me aforesaid have not been controverted and have attained finality. In the light of the discussion above, there is no justification in law for the imposition of penalty and the same is set aside.

14.In fine, this Writ Petition is allowed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

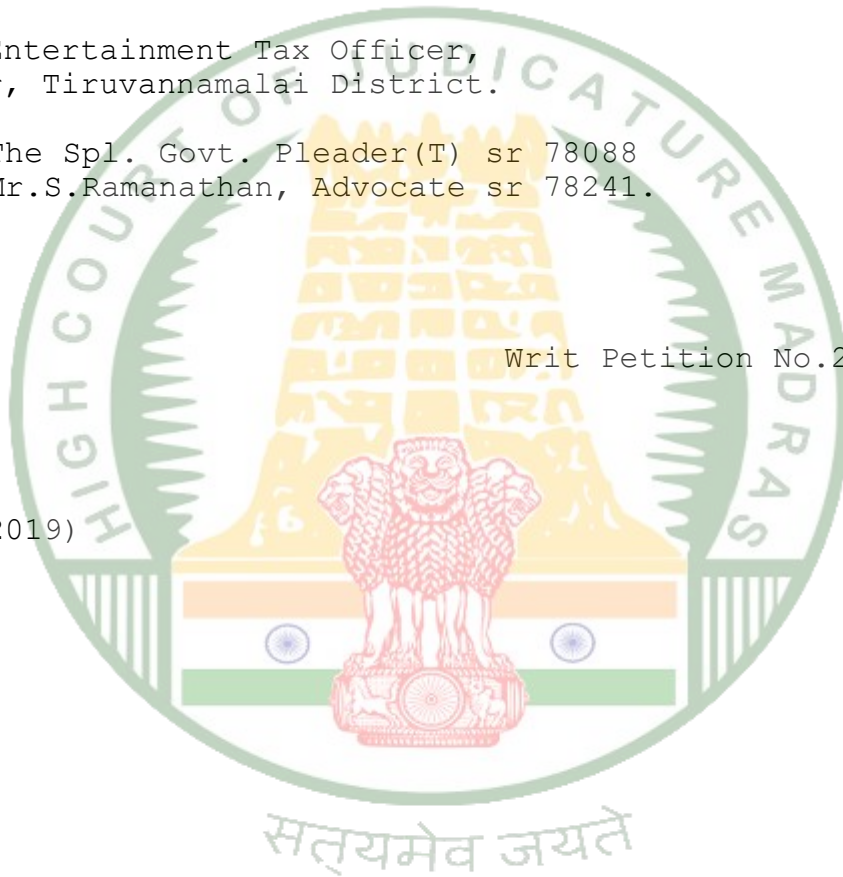
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To

The Entertainment Tax Officer,
Polur, Tiruvannamalai District.

+1 CC to The Spl. Govt. Pleader(T) sr 78088
+1 CC to Mr.S.Ramanathan, Advocate sr 78241.

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