IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.02.2019
CORAM
THE HONOURABLE MR. JUSTICE M.S. RAMESH
W.P.No. 21397 of 2005
and
W.P.M.P.23323, 35213 and 35215 of 2005

Siruvani Fun World,
Amusement Park,
Rep. by its Partner,
Mr.D.Dinesh,
No.2/347, Siruvani Main Road,
Kalampalayam (P.O),
Coimbatore - 641 010. ..Petitioner

-Vs-

The Entertainment Tax Officer/
Deputy Commercial Tax Officer,
Perur Circle, Coimbatore. ..Respondent

PRAYER: Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records of the proceedings of the respondent dated 19.05.2005 relating to E.T. Assessment 1/2002-2003 and quash the same with directions to the respondent to furnish copies of Books marked A, H, I and file marked N recovered from the petitioner to submit objections.

For Petitioner : Mr.N.C.Ramesh, Senior Counsel
for Mr.T.Sivaprakasam

For Respondent : Mr.M.Hariharan, AGP (T)

O R D E R

This Writ Petition is filed to call to call for the records of the proceedings of the respondent dated 19.05.2005 relating to E.T. Assessment 1/2002-2003 and quash the same with a direction to the respondent to furnish copies of D7 records.

2. Pursuant to the surprise inspection on 17.08.2003, the respondent herein had seized D7 records from the petitioner's premises. Based on the inspection conducted, the respondent had determined the total taxable turnover of the petitioner's amusement park for the year 2002-03 together with penalty. The said determination order, dated 19.05.2005 is under challenge in the Writ Petition.

3. Though the petitioner had raised several grounds challenging the impugned order, dated 19.05.2005, the learned Senior Counsel appearing for the petitioner would submit that pursuant to the pre-assessment, notice dated 15.03.2005, the petitioner had sent letters dated 07.04.2005 and 17.05.2005 seeking for copies of D7 Records for the purpose of giving their objections. Since the said copies were not fully furnished to the petitioner and the impugned order came to be passed, the learned Senior Counsel would submit that the order is liable to be rejected on the ground of violation of principles of natural justice.

4. The learned Additional Government Pleader appearing for the respondent on the other hand would submit that the petitioner is bound to maintain all the D7 records and as such, they are not entitled to seek for copies of the same from the respondent herein. He would submit that even otherwise, the xerox copies of the records sought for is only to evade the remittance of the taxes determined and as such, he would seek for dismissal of the Writ Petition.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It is not in dispute that the petitioner herein had sent two letters on 07.04.2005 and 17.05.2005 pursuant to the pre-assessment notice, calling upon the respondent to furnish xerox copies of the D7 records for filing their objections. In fact, such a statement is also made in the counter affidavit by the respondent herein before this Court.

7. This Court, in the decision reported in 1990 (Vol.79) STC 378 (N.Iqbal vs. Deputy Commercial Tax Officer, Group I, Enforcement Wing I, Madras 6 and others), had held that when documents are seized from a person and that a request is made for furnishing the copies of the seized documents, it would be appropriate for the respondent to furnish those documents in order to give opportunity to them to explain the discrepancies, if any. The relevant portion of the said decision is extracted herein.

> "However, where the person from whom such documents have been seized, without disputing the power to retain them, contends that his defence is likely to suffer if he is not allowed at least to obtain photo copies / xerox copies of the seized documents, it would be reasonable that in such a situation he be provided with the opportunity to know the contents of the documents seized as well as an opportunity to explain the discrepancies, if any. That he can have only be either the return of

the documents or copies thereof provided to him, or in exceptional cases by permitting inspection of such seized documents."

8. In the light of the observations extracted above, this Court is also of the view that the petitioner would be entitled for the copies of the seized Documents in order to give an opportunity to put forth their objections. As such, the order dated 19.05.2005 passed by the respondent herein in E.T. Assessment 1/2002-2003 is set aside. Consequently, the respondent herein is called upon to furnish the copies of the D7 records seized by them from the petitioner's premises to the petitioner within a period of 30 days from the date of receipt of a copy of this order. On such furnishing of the documents, the petitioner shall be granted an opportunity to file their objections to the pre-assessment notice dated 15.03.2005, within a period of 30 days therefrom. In case, any such objections are given, the respondent shall consider the same on its own merits and pass appropriate orders in accordance with law.

9. The Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pvs

To

The Entertainment Tax Officer/
Deputy Commercial Tax Officer,
Perur Circle, Coimbatore.

+1cc to Mr.T.Sivaprakasam, Advocate sr.9594
+1cc to Special Government Pleader(Taxes) sr.no.9866

W.P.No. 21397 of 2005

nr 18/03/2019