IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.13433 to 13435 of 2011
and
W.M.P.Nos.1 to 1 of 2011

Kamala Theatre,Rep by its partner Coimbatore.T.Ganesh
No.156, Arcot Road,
Vadapalani,
Chennai - 600 026. ... Petitioner in W.P.Nos.13433 and 13434 of 2011

Kamala Cinemas Screen-2,
Rep by its Partner C.T.Ganesh,
No.156, Arcot Road,
Vadapalani,
Chennai - 600 026. ...Petitioner in W.P.No.13435 of 2011

Vs.

1. Tamil Nadu State,
   Rep by Secretary to Government,
   Commercial Tax and Registration Department,
   Fort St.George, Chennai - 9.

2. The Special Commissioner,
   Chepauk, Chennai - 5.

3. The Assistant Commissioner,
   Commercial Tax,
   Saligramam (Tax Circle),
   Chennai - 83.

4. The Entertainment Tax Officer,
   Saligramam Assessment Circle,
   Chennai - 83. ... Respondents in all W.Ps.

Common Prayer: Writ Petitions are filed under article 226 of the Constitution of India, writ of Certiorarified Mandamus, to call for the entire records relating to the Notice in Na.Ka.No.1905/2009/A1, dated 04.11.2010 passed by the 4th respondent herein and quash the same and consequently to exempt the tax.

For Petitioner : Mr.M.Kempraj
(in all W.Ps)

For Respondents : Mr.A.N.R.Jayaprathap
(in all W.Ps) Government Advocate

COMMON ORDER

Heard the learned counsel for the Petitioner and the learned counsel for the Respondents.

2.By this common order, all these three Writ Petitions have been disposed.

3.The petitioner has been issued with notices dated 04.11.2010 for their three Theaters. As per the said notice, the petitioner are entitled to exemption from payment of Entertainment Tax only from the date of exemption and not from the date of actual release of the movie in the theater. Therefore, the petitioner was liable to pay the differential tax for a sum of Rs.47,35,576, 59,51,224 and 25,99,503/-.

4.Under these circumstances, a reminder dated 18.12.2010 was sent to the petitioner. The petitioner had sent a representation dated 10.01.2011. In a letter dated 04.11.2010 it was stated the exemption will be available only from the date of exemption and not from the date of release of the movie was in correct.

5.Aggrieved by the same, the petitioner have filed the present Writ Petitions. At that time of admission of the Writ Petition, the petitioner was directed to deposit amounts. The petitioner has claimed to have deposited of the same pursuant to the directions of this Court and a copy of the proof of payment was forwarded to the Petitioners Counsel which was filed.

6.I have considered the arguments of the learned counsel for the petitioner and the learned counsel for the respondents.

7.It is evident that the impugned demand notices dated 04.11.2010 were issued without a proper issue of Show Cause Notice. The demand has been made without hearing the petitioner. Therefore, there is a manifest violations of the principles of natural justice.

8.Under these circumstances, the impugned demand notices dated 04.11.2010, and the reminder dated 18.10.2011, asking the petitioner to pay total amount of Rs.1,32,86,303/-(Rupees One

Crore Thirty Two Lakhs Eighty Six Thousand Three Hundred and Three) are liable to be quashed. However, these notices which have been quashed by this order shall be treated as Show Cause Notice. The respondent are at liberty to issue a corrigendum notices if any within a period of 30 days from the date of receipt of a copy of this order.

9.The petitioner shall thereafter if file reply to the respective notices within a period of 60 days from the date of receipt of a copy of this order. Irrespective of fact whether corrigendum notices are issued or not, the petitioner shall file its reply notices dated 04.11.2010 within a period of 60 days from the date of receipt of a copy of this order.

10.The 4th respondent shall pass appropriate order in accordance with law after hearing the petitioner within a period of 90 days from the date of receipt of a copy of this order. In case, the demands proposed are dropped, the amount paid by the petitioner shall be refunded to the petitioner.

11.Accordingly, the Writ Petition stands disposed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
   State of Tamil Nadu,
   Commercial Tax and Registration Department,
   Fort St.George, Chennai - 9.

2. The Special Commissioner,
   Chepauk, Chennai - 5.

3. The Assistant Commissioner,
   Commercial Tax,
   Saligramam (Tax Circle),
   Chennai - 83.

4. The Entertainment Tax Officer,
   Saligramam Assessment Circle,
   Chennai - 83.

+6ccs to Mr.M.Kempraj, Advocate, S.R.No.9067 to 9069
+1cc to Special Government Pleader, S.R.No.9592

W.P.Nos.13433 to 13435 of 2011
and
W.M.P.Nos.1 to 1 of 2011

KKV/12/06/2020