IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.5919 of 2011
and
M.P.Nos.1 & 2 of 2011

1. Aruna Theatres Enterprises Private Limited,
   Rep by its Receiver,
   Mr.Justice K.P.Sivasubramaniam (Retd),
   Office at No.3, Pillars Road,
   Ashok Nagar, Chennai - 600 083.

2. Aruna Theatre and Enterprises Private Ltd,
   Rep by its Director K.Shanmugasundram
   Having Office at No.3, Pillar Road,
   Ashok Nagar, Chennai - 600 083.
   (Impleaded as per order dated 21.12.2019
   made in M.P.No.1/2013 in
   W.P.No.5919/2011 By CSNJ) ... Petitioners

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 600 005.

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

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

Prayer: Writ Petition is filed under article 226 of the Constitution of India praying for the issuance of, writ of Certiorarified Mandamus to call for the entire records relating to the Notice in Na.Ka.No.1905/2009/A1, dated 18.12.2010 passed by the 4th Respondent herein and consequently to exempt the tax.

For Petitioners : Mr.S.Kasikumar
for P1
Mr.C.Umashankar
for P2

For Respondents : Mr.A.N.R.Jayaprathap
Government Advocate

O R D E R

Heard the learned counsel for the Petitioners and the learned counsel for the Respondent.

2.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/-.

3.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.

4.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 by the Petitioners Counsel which was filed.

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

6.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.

7.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.

8.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.

9.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.

10.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 600 005.

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

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

+1cc to Mr.S.Kasikumar, Advocate, S.R.No.9120
+3ccs to Mr.C.Umashankar, Advocate, S.R.No.9304
+1cc to the Government Pleader(Taxes), S.R.No.9592

W.P.No.5919 of 2011
and
W.M.P.Nos.1 & 2 of 2011

NRJK(CO)
KKV/12/06/2020