IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. NOS.34216 TO 34220, 37108, 37109, 37434 TO 37437 OF 2015
AND
M.P. NOS.1,1,1,1,1,1,1,1,1,1 & 1 OF 2015

W.P. Nos.34216 to 34220 of 2015:

SPI Cinemas Private Limited,
Represented by its Director,
K.Niranjan Reddy ...Petitioner in all the Petitioners

Vs

Commercial Tax Officer,
Royapettah Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. ...Respondent in all the Petitioners

WP Nos 37108 & 37109/15 and 37434 to 37437/15

AGS Cinemas Private Limited
Repd. by its Director R.Rangarajan No. 81/1A 5th OMR Road Navalur Chennai-603 103. } Petitioner in WPs 37108 & 37109/15

Mayajaal Entertainment Limited,
No.34/1, East Coast Road,
Kanathur, Chennai-603112 } Petitioner in WPs 37434 to 37437/15

Vs

Commercial Tax Officer
Kelambakkam Assessment Circle Plot No.141 Burma Colony 1st Main Road Perungudi Chennai-600 096. } Respondent in all the Petitioners

Prayer in WP 34216 to 34220/2015:

Petitions filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, to call for records of the impugned proceedings of the Respondent passed in RC No.182/2015 dated 21.09.2015 for the year 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, respectively and quash the same as the respondent has no jurisdiction to treat the charges collected for "online ticket bookings" as amounting to "payment for admission" and thereby to levy Entertainment Tax on the same.

Prayer in WPs 37108 & 37109/15

Petitions presented under Article 226 of the Constitution of India to issue Writs of Certiorari calling for the records of the impugned proceedings of the Respondent passed in (i) TIN: TNET.01/2013-14(E.T.) and (ii) TIN: TNET.01/2014-15(E.T.) respectively dated 10.09.2015 and quash the same as the respondent has no jurisdiction to treat the charges collected for'' Web sale income or online ticket bookings'' and thereby to levy Entertainment Tax on the same.

Prayer in WPs 37434 to 37437 of 2015

Petitions presented under Article 226 of the Constitution of India to issue Writs of Certiorari calling for the records and quash the order bearing reference Nos

TIN : 33351602436/2011-12(E.T)

TIN : 33351602436/2012-13(E.T)

TIN : 33351602436/2013-14(E.T)

TIN : 33351602436/2014-15(E.T)

respectively dated 10.09.2015 on the file of the Respondent Commercial Tax Officer Kanathur Assessment Circle Plot No. 141 3rd Floor Burma Colony 1st Main Road Perunguid Chennai-600 096.

For Petitioner in W.P. Nos.34216 to 34220, and 37108 & 37109 of 2015 : Mr.R.Venkatavaradan, asst by Mr.N.Murali

For Petitioner in W.P. No.37434 to 37437 of 2015 : Mr.S.Ravi for M/s.Gupta & Ravi

For Respondents in all WPs : Mr.Mohammed Shaffiq, SpecialGovernment Pleader assisted by

Mr.G.Dhanamadhiri,Government Advocate

C O M M O N O R D E R

The petitioners in this batch of Writ Petitions are engaged in the business of operating multiplexes in the State of Tamil Nadu. The multiplexes, in addition to theatres, contain various other facilities for the benefit and utility of the public. Such facilities include restaurants, gaming arcades, enclosed play areas, kids care centre, lobby and parking area among others.

2. As far as theatres are concerned, the ticketing is said to be computerized and this facility is available, both at the counter as well as over the internet. In the case of a person/customer opting for the latter, the facility of door delivery of tickets is also offered. The facility of online booking as well as door delivery, are offered at cost to the customer.

3. There was an inspection by the Enforcement Wing of the Commercial Taxes Department in the petitioners' places of business and the activities carried on in the multiplexes came under scrutiny. Based on the inspection, pre-assessment proposals were issued proposing to bring to tax online booking charges in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') and on the basis that the Entertainment Tax in terms of Section 3(7) (c) of the Tamil Nadu Entertainment Tax Act, 1939 (in short 'TNET Act') had not been remitted in respect of internet booking charges for various assessment periods.

4. The Assessing Officer notes that the ticket fare as fixed by the Government of Tamil Nadu was Rs.120/- and Rs.100/- in respect of two classes of seats. However, the petitioner had also charged a sum of Rs.30/- per ticket as internet booking charges in cases where the booking had been made over the internet, which ought to have been offered to tax as well. In addition, charges had been levied for leasing of 3D glasses used for viewing movies in three dimension technology, and as such tax in terms of Section 4 of the TNVAT Act, dealing with the 'right to use goods' also remained to be paid.

5. The petitioner replied objecting to the proposals and stating that only such payments that were relatable to the entertainment per se, and that were remitted as consideration or a condition for entertainment, would be liable to tax. They relied on various provisions of the TNET Act, in support of their case. Though submissions were also advanced as regards the levy of TNVAT on usage of 3D glasses, the present impugned

orders have been passed in terms of the Entertainment Tax Act alone, reserving the officers' right to deal with the issue under the TNVAT Act, separately. The challenge before me is thus restricted only to the levy of Entertainment Tax on online booking charges.

6. Since the petitioner had not, according to it, consciously avoided the payment of entertainment tax, reliance was placed on the decisions of this Court in re T.N.K.Govindarajulu Chetty ((1951) 2 STC 26); Deputy Commissioner of Commercial Taxes V. Adam & Co. ((1970) 43 STC 508 and R.Abdul Aziz V. State of Tamil Nadu ((1987) 67 STC 273) to the effect that willful default should be established by the Revenue prior to the levy of penalty.

7. Notwithstanding the objections raised, the impugned orders have come to be passed confirming the pre-assessment proposals as against which the present writ petitions have been filed.

8. Heard Mr.R.Venkatavaradhan, learned counsel assisted by Mr.N.Murali, learned counsel for the petitioner in W.P.Nos.34216 to 34220, 37108 and 37109 of 2015, Mr.S.Ravi, learned counsel for W.P.Nos.37434 to 37437 of 2015 and Mr.Mohammed Shaffiq, learned Special Government Pleader assisted by Ms.G.Dhanamadhiri, learned Government Advocate for the respondent.

9. The petitioners were specifically asked to confirm the procedure followed for online ticket booking. Upon confirmation that the procedure followed by all petitioners is the same, the terms and conditions contained on the website of one of the petitioners (SPI Cinemas) in regard to the booking of movie tickets is extracted below:

> 'MOVIE TICKETS
>
> Movie tickets purchased via this website can be collected.
>
> 1. By presenting the booking confirmation number for the transaction at the ticket counter or the ticket dispensing kiosk at the respective location (wherever available)

2. By printing the ticket at home and presenting the print out at the ticket tearing point to gain admission to the selected movie session. The unique barcode on the ticket can only by used once.

3. Movie tickets purchased via this website are nonrefundable and are not available for exchange, unless required by law.

4. Where allocated seating applies to a session you have the choice of choosing your own seat on the website. Otherwise seat allocation for movie tickets purchased via this website is on a 'best available' basis and is carried out by a prescribed computed program. By purchasing movie tickets via this website you agree that:'

10. When a consumer accesses the website of SPI Cinemas and accepts the above conditions, the portal presents to him the available options for films and seating. Upon the making a choice, a ticket is issued, wherein the ticket amount is stated as either Rs.100/- or Rs.120/- as per the norms issued by the State Government in this regard. In addition, a ticket booking charge of Rs.30/- per ticket is also reflected. There are also provisions for a fee for 3D glasses usage, if applicable to the relevant film, any food items ordered, a donation, if the consumers so desires, and a provision for discount. The total amount is then displayed with the payment modes stipulated.

11. The petitioners state that they have adhered to the norms issued by the State Government for seat booking charges on the basis of which a consumer is admitted inside the Theatre. The phrase 'admission to an entertainment' is defined in Section 3(2) of the TNET Act and includes admission to any venue for entertainment. Section 3(7)(c) of the Act deals with 'payment for admission' in the following terms'

3. Definitions:

(7) "Payment for admission" includes –

(a) …….

(b) ……

(c) any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment;

(d)….

12. The Tamil Nadu Entertainment Tax Rules, 1939 in Rule 4 defines 'Admission to an entertainment' in the following terms:

> 4. In these rules, "Admission to an entertainment" and all cognate expressions shall include admission on any payment deemed to have been made under sub-section (1-A) of Section 4 of the Act and the admission on payment of a person admitted to one part of a place of an entertainment to - (a) another part thereof subsequently; and (b) any seat or other accommodation in the place of entertainment.

13. Rule 20 in part III of the Rules details the procedure for payment of tax on the basis of returns. As per the procedure, any proprietor wishing to enter into an arrangement for payment of tax on the basis of the returns should apply to the Entertainment Tax Officer (ETO) at least three days before the entertainment, in a prescribed form furnishing details as to the place, date, time and nature of entertainment as well as the rates of payment for admission. Rule 20 then goes to detail the specific procedure for printing the tickets, size and format thereof and the material particulars to be set out therein. Thus the phrase 'payment for admission' figures in Rule 20 as well and consequently this forms the basis for computation of the quantum upon which tax would ultimately be remitted by an assessee.

14. The question before me is thus simply whether the online ticketing charges quoted by the petitioners would have to be included in the 'payment for admission' liable to tax.

15. According to the petitioners, it is only those charges that are intrinsically connected with the entertainment itself that are liable to tax. In the present case, the charge has a nexus with the facility of 'booking' and not with the entertainment provided. They point out that online booking is only one of the available modes by which a consumer may make a booking apart from booking counters located in multiplexes. If these were availed, then the question of online booking charges would not come into the picture at all. Thus the petitioners levy an additional charge upon a consumer only when he opts for the online facility and these charges are necessary to defray the expenses incurred by the petitioner for offering this facility to a consumer. They point out that the online booking facility is hosted by third party service providers, such as, BookMyShow and other similar portals, which charge the

petitioners a fee for hosting the booking portal. This has to be re-compensated and hence the online booking charge.

16. They rely on Rule 83(1A)(a) of the Cinema Regulation Rules 1957, that states that the licensing authority shall fix the actual rates of admission to each class of accommodation provided in the auditorium after taking into account the proposals of the licensee, the amenities provided in the theatre, the prevailing rates of admission in similar theatres in similar localities within his jurisdiction and any other relevant factor. Moreover, Condition No.6 contained in Form C to the Rules stipulates the actual rates of payment for admission to the different classes in the licensed premises and mandates that these rates shall not be altered during currency of the licence without an order in writing by the licensing authority permitting such alteration.

17. The petitioners agree that the ticket charges encompass three situations; (i) payment for a specific class of entertainment (general/premium/others) (ii) seating for events held in a movie theatre such as a movie or audio launch) (iii) payment in connection with an entertainment event conditional upon which entry is granted for the event. They argue that booking charges stand outside the purview of 'entertainment' as such charges constitute a separate contract between the theatre and the consumer. Only those charges that are directly connected to the event of entertainment itself would be encompassed within the charge. If the argument of the revenue were to be accepted, then all charges, even car/vehicle parking charges would be included, which cannot be the intention of the enactment.

18. Reliance is placed upon the judgment of the Gujarat High Court in Fun World and Tourism Development Ltd. V. State of Gujarat and others ((2013) 59 VST 306), wherein the Gujarat High Court at placitum 37 (page 328 of the report) has held as follows:

> Both the aforesaid decisions reinforce the view taken by this Court that the taxing event is the entertainment, and if there is no entertainment at all, the question of levying entertainment tax does not arise at all. Accordingly, considering the nature of entertainment provided by the petitioner, mere entry into the amusement park does not provide any kind of amusement to the visitor and, therefore, is not chargeable to entertainment tax. Under the circumstances, it is not permissible for the respondents to take into consideration the amount collected by way of entry fee for the purpose of assessment of entertainment tax under the provisions of the Act. Moreover, for the reasons stated hereinabove,

> it is not permissible for the respondents to club the price of tickets for each individual ride together for the purpose of computing the entitlement of the petitioner for availing of the benefit of the notification dated 4th September, 1992 issued in exercise of powers under Section 29(1) of the Act whereby entertainment is exempt from the purview of the Act if the admission rates for such entertainment does not exceed Rs. 6/-. In the facts of the case, when the admission rates for each individual ride did not exceed Rs. 6/-the petitioner could not have been denied the benefit of the said notification by resorting to an artificial method of computing the admission rate by taking into consideration the total income derived by the petitioner from the said amusement park, inclusive of admission tickets and dividing the same by the number of visitors and taking such figure to be the admission rate. In the opinion of this Court, there is no legal basis for such computation.

19. The above decision is irrelevant in the facts and circumstances of the present case insofar as the Division Bench in Gujarat was concerned with the levy of entertainment tax on an amusement park and the rides contained therein and not online booking charges levied by a multiplex in regard to a theatre contained therein. The Bench was concerned with the whether the receipts from entry tickets to the amusement park that housed various 'rides', each ride being ticketed separately, was chargeable to tax under the provisions of the Gujarat Entertainments Act 1977.

20. The distinction between the present case and the case of Funworld (supra) is this - in the case of the latter, there was a two tiered levy - one at the time of admission of the consumer into the park ('park admission fee') and the second, for the ride itself ('ride fee') and it was the chargeability of the admission fee to entertainment tax that was under challenge. In the present case, the entry to the malls housing the theatres is free and the levy in question is only on the admission fee to the theatres housed within the malls that, undoubtedly, constitute 'entertainment'. The provisions of Section 3 of the Gujarat Entertainment Tax Act provide for a levy upon all payments for admissions to entertainments much like the provisions of Section 3 of the Tamil Nadu Act.

21. Appreciating the difference between admission to an arena that houses avenues for entertainment that are ticketed

separately, and admissions to the entertainment itself, the Bench, at paragraph stated thus:

> 28. On a plain reading of Section 3 of the Act, it is amply clear that the chargeable event is the admission to an entertainment. Thus, if in the case of individual owners of rides, each ride is considered as a separate entertainment, merely because the owner of all the rides is the same, the charging event would not change. The charge is on admission to an entertainment, thus if each ride constitutes an entertainment, the tax is to be levied accordingly. In the present case there is no dispute that the fee for each ride is less than rupees six. In a given case a person may opt for only one ride, in another a person may opt for any number of rides. Thus, entertainment tax cannot be levied in such a case on the basis of the number of persons who have entered the amusement park. It is not the case of the respondents that the amusement park provides for amusements other than rides, viz., magic shows, and other kinds of entertainment which a person would be entitled to take the benefit of merely by entering the amusement park. Under the circumstances, by entering the amusement park simpliciter without enjoying of any of the rides, the concerned visitor does not get any entertainment. The amusement park per se is not a place of entertainment, like a cinema hall or a theatre where any person who enters the cinema hall or theatre gets to watch the film or the play. In a case like the present one, a person who pays for an entry ticket thereby is not entitled to avail of the benefit of any ride, he only avails of the facilities provided at the amusement park. For getting entertainment, viz. rides, the visitor is required to purchase a separate ticket. Moreover for every ride, be it of the same kind or a different one, a different ticket is required to be purchased. Thus a ticket for a ride is more or less akin to a cinema ticket on the basis of which one can watch one film only. If one wants to watch another film or the same film again, a separate ticket would be required to be purchased. Purchase of a ticket for mere entry into an amusement park, like in the present case, without getting any kind entertainment on the basis thereof, not being a payment for admission to an entertainment would not be exigible to entertainment tax. Under the circumstances, when payment made for entry is not payment for admission to an entertainment the question of clubbing the same with tickets for rides does not arise, inasmuch as unless Section 3 is applicable no entertainment tax can be levied.

This decision is, thus, of no assistance to the petitioners.

22. Per contra, I find merit in the reliance placed by the Revenue on the judgements of the Supreme Court in the cases of Sunrise Associates V. Govt. of NCT of Delhi and others ((2006) 5 SCC 603) and M/s.Doypack Systems Pvt. Ltd. V. Union of India and others ((1988) 2 SCC 299).

23. In Sunrise Associates (supra) a Constitution Bench of the Supreme Court was concerned with the liability of lottery to sales tax. The Court held that though a lottery is an actionable claim which, generally speaking, would constitute goods or movable property. Since there was a specific exclusion of the same from the definition of goods under the erstwhile Tamil Nadu General Sales Tax Act, 1959, there would be no liability.

24. A distinction was made by the petitioner therein between the right to participate in the draw and the chance of winning in a lottery. The Bench viewed this distinction as being artificial and an unwarranted one. At paragraph 45, the Bench states as follows:

> 44. The question is, what is this right which the ticket represents? There can be no doubt that on purchasing a lottery ticket, the purchaser would have a claim to a conditional interest in the prize money which is not in the purchaser's possession. The right would fall squarely within the definition of an actionable claim and would therefore be excluded from the definition of "goods" under the Sale of Goods Act and the sales tax statutes. This was also accepted in H. Anraj [(1986) 1 SCC 414 : 1986 SCC (Tax) 190] when the Court said that to the extent that the sale of a lottery ticket involved a transfer of the right to claim a prize depending on chance, it was an assignment of an actionable claim. Significantly in B.R. Enterprises v. State of U.P. [(1999) 9 SCC 700] construing H. Anraj [(1986) 1 SCC 414 : 1986 SCC (Tax) 190] the Court said: (SCC p. 746, para 52)
>
> > "52. So, we find three ingredients in the sale of lottery tickets, namely, (i) prize, (ii) chance, and (iii) consideration. So, when one purchases a lottery ticket, he purchases for a prize, which is by chance and the consideration is the price of the ticket."

> 45. The further distinction sought to be drawn in H. Anraj between the chance to win and the right to participate in the draw was in our opinion unwarranted. A lottery having been held to be in essence a chance for a prize, the sale of a lottery ticket can only be a sale of that chance. There is no other element. Every right can be sub-divided into lesser rights. When these lesser rights culminate in a legally recognizable right, it is the latter which defines the right. The right to participate in the draw is a part of the composite right of the chance to win and it does not feature separately in the definition of the word "lottery". It is an implicit part of the chance to win. It is not a different right. The separation is specious since neither of the rights can stand without the other. A draw without a chance to win is meaningless and one cannot claim a prize without participating in the draw. In fact the transfer of the chance to win assumes participation in the draw.
>
> 46. There is no value in the mere right to participate in the draw and the purchaser does not pay for the right to participate. The consideration is paid for the chance to win. There is therefore no distinction between the two rights. The right to participate being an inseparable part of the chance to win is therefore part of an actionable claim.

25. The distinction sought to be made came to be rejected, the Bench being of the view that both the events, that is, the right to participate in the draw as well as the chance/possibility of winning, are part of the same event - lottery. Each will be rendered meaningless without the other and thus it is only the two events together that render the lottery composite and whole. Applied in the context of the present case, the distinction sought to be made by the petitioner between seating charge and online booking charge is clearly artificial and a distinction without a difference. By purchase of a ticket online the petitioner obtains only a single vested right - that of entry to the theatre and the amounts collected from the petitioners, the seating and booking charges are both relatable to the same entertainment event.

26. The petitioners argue that the phrase used in Section 3 (7)(c) was 'connected with' and not 'in relation to' and thus, even if the payment for booking were held to be 'in connection with' the entertainment, it cannot be said to be 'in relation to' the entertainment. In this context, the revenue presses into service the judgment of the Supreme Court in Doypack Systems (supra). At paragraph 50, the Bench equates various phrases,

such as ‘in relation to’, ‘in connection with’ as being synonymous. The paragraph is extracted below:

> 50. The expression "in relation to" (so also "pertaining to"), is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, see State Wakf Board v. Abdul Aziz AIR1968Mad79 , following and approving Nitai Charan Bagchi v. Suresh Chandra Paul 66 C.W.N. 767, Shyam Lal v. M. Shyamial AIR1933All649 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 521 where it is stated that the term 'relate" is also defined as meaning to ring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction’.

27. In the light of the above judgement, these arguments of the petitioners are rejected. Reliance upon the provisions of the Cinema Regulation Rules and the connected Forms also does not impress as it is nobody’s case that the ticket price has been tampered with or modified. Admittedly, the ticket rate remains as fixed by the State. The challenge is only to the inclusion of the ‘online booking charges’ to the rate for admission. The phrase ‘payment for admission’ by definition includes (i) any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment and in addition thereto, (ii) payment, if any, for admission to the entertainment. The ticket rate fixed by the State falls within item (ii) as aforesaid and remains un-impacted by virtue of the issue under consideration, that falls within the ambit of item (i) aforesaid.

28. The Bhramastra of the Revenue is a judgment of the Supreme Court in the case of State of Karnataka V. Drive-in-Enterprises ((2001) 4 SCC 60), wherein the Bench considered the provisions of the Karnataka Entertainment Tax Act, 1958 and the effect of the amendment to Sections 4A and 6 thereof levying tax on admission of cars into drive-in theatres. The effect of the

provisions newly inserted was that the admission fee levied on the entry of cars into drive-in theatres would also become taxable and the provisions were challenged on the ground that the State Legislature in terms of Entry 62 List II of the VII Schedule that empowers the State to tax on luxurious and entertainments can only levy tax on persons and not on vehicles. The Bench held that, in considering the validity or otherwise of a provision or enactment, the Court is required to ascertain the true nature and character of such enactment with respect to the power of the Legislature to enact the said law.

29. The decision of the Privy Council in (Morris) Leventhal V. David Jones Ltd. (AIR 1930 PC 129) in the context of whether the Legislature may impose a bridge tax when the power to legislate was in respect of tax on land have been considered as follows:

> 9. In (Morris) Leventhal v. David Jones Ltd. [AIR 1930 PC 129] the question arose as to whether the legislature can impose bridge tax when the power to legislate was really in respect of "tax on land". The levy of bridge tax was held valid under legislative power of tax on land. It was held as thus: (AIR p. 133)
>
> "'The appellants' contention that though directly imposed by the legislature, the bridge tax is not a land tax, was supported by argument founded in particular on two manifest facts. The bridge tax does not extend to land generally throughout New South Wales, but to a limited area comprising the City of Sydney and certain specified shires, and the purpose of the tax is not that of providing the public revenue for the common purposes of the State but of providing funds for a particular scheme of betterment. No authority was vouched for the proposition that an impost laid by statute upon property within a defined area, or upon specified classes of property, or upon specified classes of persons, is not within the true significance of the term a tax. Nor so far as appears has it even been successfully contended that revenue raised by statutory imposts for specific purposes is not taxation."
>
> (emphasis supplied)
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> 10. In Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [AIR 1962 All 83 : 1961 All LJ 976] which was subsequently approved in Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [AIR 1965 SC 895 : (1965) 1 SCR 970] the question arose as to whether the Municipal Board can levy water tax when the power to

legislate was in respect of the land and building. The High Court held that in pith and substance water tax is not on water but it is a levy on land and building.

30. The Division Bench expressed its full agreement with the conclusions as above holding that it was not the nomenclature employed that was decisive, but the nature, character and purpose of the enactment that would decide the competence of the Legislature to legislate upon a particular subject. Thus the imposition of a bridge tax was held to be encompassed within the legislative power to tax land.

31. At paragraph 12, the relevant provisions of the Karnataka Entertainments Act 1958, Section 2(i) that defined 'payment for admission', Section 3 that dealt with ´Tax on payment for admission to entertainments' and Section 6 dealing with manner of 'payment of tax' were extracted as under:

> 12. Section 2(i) defines 'payment for admission' which runs as under:
>
> i) any payment made by a person who having been admitted to one part of a place of entertainment is subsequently admitted to another part thereof for admission to which a payment involving a tax or a higher tax is required.
>
> ii)x x x
>
> iii)x x x
>
> iv)x x x
>
> v) any payment for admission of a motor vehicle into the auditorium of a cinema known as drive-in-theatre."
>
> (emphasis supplied)
>
> Section 3 is a charging section. The relevant provisions run as under:
>
> "3. Tax on payments for admission to entertainments. - (1) There shall be levied and paid to the State Government on each payments for admission (excluding the amount of tax) to an entertainment, [other than the entertainment referred to in sub-clause (iii) of clause (e) of Section 2), entertainment tax at 70 per cent of such payment].
>
> (2) Notwithstanding anything contained in sub-section (1) there shall be levied and paid to the State Government (except as otherwise expressly provided in this Act) on every complimentary ticket issued by the proprietor of an entertainment, the entertainments tax at the appropriate rate specified in sub-section (1) in respect of such entertainment, as if full payment had been made for admission to the entertainment according to the class of seat or accommodation which the holder of such ticket is entitled to occupy or use; and for the purpose of this

Act, the holder of such ticket shall be deemed to have been admitted on payment."

Sub-Section (1) of Section 6 runs as under:

"6. Manner of payment of tax. (1) [Save as otherwise provided in Section 4A or 4B, the entertainments tax shall be levied in respect of each payment for admission or each admission] on a complimentary ticket and shall be calculated and paid on the number of admissions."

32. The challenge was rejected in conclusion at paragraph 13 in the following terms:

13. Entry 62 of List II of Seventh Schedule empowers the State Legislature to levy tax on luxuries, entertainment, amusements, betting and gambling. Under Entry 62, the State Legislature is competent to enact law to levy tax on luxuries and entertainment. The incidence of tax is on entertainment. Since entertainment necessarily implies the persons entertained, therefore, the incidence of tax is on the person entertained. Coming to the question whether the State Legislature is competent to levy tax on admission of cars/motor vehicles inside the Drive-in-Theatre especially when it is argued that cars/motor vehicles are not the persons entertained. Section 3 which is charging provision, provides for levy of tax on each payment of admission. Thus, under the Act, the State is competent to levy tax on each admission inside the Drive-in-Theatre. The challenge to the levy is on the ground that the vehicle is not a person entertained and, therefore, the levy is ultra vires. It cannot be disputed that the car or motor vehicle does not go inside the Drive-in-Theatre of its own. It is driven inside the Theatre by the person entertained. In other words the person entertained is admitted inside the Drive-in Theatre along with the car/motor vehicle. Thereafter the person entertained while sitting in his car inside the auditorium views the film exhibited therein. This shows that the person entertained is admitted inside the Drive-in Theatre along with the car/motor vehicle. This further shows that the person entertained carries his car inside the Drive-in-Theatre in order to have better quality of entertainment. The quality of entertainment also depends on with what comfort the person entertained has viewed the cinema films. Thus, the quality of entertainment obtained by a person sitting in his car would be different from a squatter viewing the film show. The levy on entertainment varies with the quality of comfort with which a person enjoys the entertainment inside the

> Drive-in-Theatre. In the present case, a person sitting in his car or motor vehicle has luxury of viewing cinema films in the auditorium. It is the variation in the comfort offered to the person entertained for which the State Government has levied entertainment tax on the person entertained. The real nature and character of impugned levy is not on the admission of cars or motor vehicles, but the levy is on the person entertained who takes the car inside the theatre and watches the film while sitting in his car. We are, therefore, of the view that in pith and substance the levy is on the person who is entertained. Whatever be the nomenclature of levy, in substance, the levy under heading "admission of vehicle" is a levy on entertainment and not on admission of vehicle inside the Drive-in-Theatre. As long as in pith and substance the levy satisfies the character of levy, i.e. "entertainment", it is wholly immaterial in what name and form it is imposed. The word "entertainment" is wide enough to comprehend in it, the luxury or comfort with which a person entertains himself. Once it is found there is a nexus between the legislative competence and subject of taxation, the levy is justified and valid. We, therefore, find that the State Legislature was competent to enact sub-clause (v) of clause (i) of Section 2 of the Act. We accordingly hold that the impugned levy is valid.

33. In my view, the judgment in Drive-In Enterprises (Supra) would be on point as far as the issue before me is concerned. The observations of the Bench that the levy of entertainment tax is, in pith and substance, on the 'person entertained' and this would be sufficient to resolve the present lis. The levy would thus encompass the special benefits and facilities enjoyed by a customer. In the case of the Drive-In Enterprises (Supra), the charge was extended to cover the vehicle carrying the consumer into the drive-in theatre. The argument that the vehicle did not derive the pleasures of the entertainment but was only a medium to carry the customers inside the theatre and thus, should stand excluded while computing the tax to be levied was rejected.

34. A vehicle is part of the facilities offered and serves to improve or enhance the experience of the entertainment provided as compared to a squatter who could well walk into a drive-in theatre and sit on the seating provided to watch the film. The experience is rendered more pleasurable and the facility offered becomes intrinsic to the process of watching the film itself. Thus, the receipts from such additional facility/benefit should stand encompassed within the charge.

35. Extending this reasoning to the case before me, the access to online booking again indisputably facilitates and smoothens the access to the entertainment. Though there are other modes of booking available, a customer, when he opts for the online booking facility makes a conscious choice as opposed to standing in a queue before a booking counter or deputing another who would purchase the tickets on his behalf. The facility of booking a ticket with the click of a button, seated in the comfort of one's home is a conscious choice that comes at a cost and without doubt, enhances the experience of watching a film.

36. The petitioners have also pointed out that the internet and online facility of booking could not have been envisaged in 1939 when the Tamil Nadu Entertainment Tax Act was enacted as a result that a charge in this regard will necessarily stand outside the ambit of 'entertainment'. In this context, the observations of a three Judge Bench of the Supreme Court in Senior Electric Inspector and Others V. Laxminarayan Chopra and another ((1962) 3 SCR 146) are apposite. Rendered in the context of the Telegraph Act, the Bench enunciates that 'in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity.' The Bench concluded saying that unless a contrary intention appears, the interpretation that should be given to words used in an enactment should be one that should taken into account new facts and situations, if such words were capable of comprehending, absorbing and reflecting the same.

37. If the argument of the petitioners were to be accepted, then the Entertainment tax Act will have to be seen as a static piece of legislation unable to cope with and address changing requirements of time. On the contrary, the enactment provides for the State to levy a tax on entertainment and such an enactment is expected to be dynamic and take within its stride all progress in avenues of entertainment including facilities incidental and ancillary thereto, such as, in the present case, ticketing and booking facilities.

38. The impugned orders are confirmed and these Writ Petitions are dismissed. No costs. Connected Miscellaneous Petitions are dismissed.

39. After order is pronounced, learned counsel for the petitioner seeks some time to avail statutory remedy. Seeing as

the Writ Petition has been filed within the period of limitation and the petitioner is also enjoying an order of stay till date, this request is accepted. The impugned order will be returned along with the original copy of this order and the petitioner is permitted to file a statutory appeal within a period of two (2) weeks from date of receipt of the same in accordance with law.

Sd/-

Assistant Registrar(AD I)

//True Copy//

Sub Assistant Registrar

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To

1.Commercial Tax Officer,
Royapettah Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

2.Commercial Tax Officer
Kelambakkam Assessment Circle Plot No.141
Burma Colony 1st Main Road Perungudi
Chennai-600 096.

+9cc to Mr.N.Murali, Advocate, S.R.No.17989
+1cc to Special Government Pleader, S.R.No.18551

W.P. Nos.34216 to 34220, 37108, 37109, 37434 to 37437 of 2015

and

M.P. Nos.1,1,1,1,1,1,1,1,1,1 & 1 of 2015

JP(CO)

KKV/01/09/2020