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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23521 of 2012
and
M.P.No.1 of 2012

M/s.India Cements Limited,
Represented by General Manager
(Franchise Holder of India Premier League)
No.827, Dhun Building, Anna Salai,
Chennai - 600 002. ... Petitioner

Vs

The Entertainment Tax Officer,
Anna Salai - III Assessment Circle,
Model School Road,
Chennai - 600 006. ... Respondent

Prayer :

Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records of the respondent in the impugned assessment order TNET/IPL/A.S.III/01/2012-13 dated 13.08.2012 imposing Entertainment Tax on the complementary tickets alleging that the petitioner has issued complementary ticket beyond prescribed limit, quash the same as it is violative of Section 3(10) and Section 4-J of the Tamil Nadu Entertainments Tax Act, 1939 and also violative of principles of natural justice.

For Petitioner : Mr.V.S.Manoj
For Mr.K.Vaitheeswaran

For Respondent : Mr.V.Veluchamy
Government Advocate

ORDER

The order dated 13.08.2012 passed by the original authority/first respondent with reference to the assessment for the year 2012-13 is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner mainly contended that no opportunity was provided to the writ petitioner to defend their case and therefore, the Principles of Natural Justice has been violated. This apart, the respondent has not followed the provisions of the Tamil Nadu Entertainment Tax Act, while making assessment and the respondent have committed patent irregularity in calculation of tax to be levied and thus, the impugned order is to be quashed.

3. The learned counsel for the petitioner relied on the judgment of the Hon'ble Division Bench of this Court in the case of Tvl.SRC Projects Private Limited Vs. The Commissioner of Commercial Taxes in W.P.Nos.893 & 894 of 2008 dated 08.09.2008, stating that existence of an alternative remedy does not oust the jurisdiction of a writ court under Article 226 of the Constitution and therefore, the present case, where there is violation of Principles of Natural Justice, the writ petition is to be entertained.

4. The learned Government counsel appearing on behalf of the respondent made a submission that the order impugned itself would reveal that the petitioner was permitted to prefer an appeal before the Deputy Commissioner (CT), Zone V, Chennai - 6, within a period of 30 days from the date of receipt of a copy of the impugned order and therefore, the petitioner has to exhaust the Appellate remedy before approaching this Court and on this ground, the writ petition is liable to be rejected.

5. As rightly pointed out by the learned counsel for the petitioner that mere existence of an alternate remedy ousted the jurisdiction of the writ Court under Article 226 of the Constitution of India. There cannot be any other opinion in respect of the legal proposition put forth by the petitioner. However, whether the point of jurisdiction is as such warranting an interference is to be gone into by the Courts. The practice of filing the writ petitions on the ground of jurisdiction and violation of Principles of Natural Justice is common one and in every writ petition, such ground is taken by the litigants. However, only if the adverse order is passed, assessing the tax without even issuing a notice or otherwise, the Court has to remand the matter back for fresh consideration. Regarding the jurisdictional aspect also, the grounds are taken based on certain facts and circumstances. It is to be borne in mind that such factual adjudications with reference to the jurisdictional ground raised, can be very well adjudicated before the Appellate authority. The Appellate authorities are exercising the quasi-judicial power and they are empowered to adjudicate both the mixed question of law and fact and all such grounds may be taken by the aggrieved person before the Appellate authority. Contrarily, the High Court cannot adjudicate such disputed

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facts, which is to be done with reference to the original documents and evidences. In the event of venturing into an adjudication of disputed facts, this Court is of an apprehension that there is a possibility of error of omission, commission and may lead to unjust advantage to any one of the parties to the lis. The adjudication of disputed facts cannot be done by the High Court, merely based on the affidavits filed by the parties. Beyond the affidavits, scrutinization of original documents and evidences, if required, examination of witnesses or otherwise are to be done in the manner known to law and such an exercise can be done only by the original authority or by the Appellate authority. The very legislative intention to provide an appeal under the Statute is to ensure that the aggrieved persons would get an opportunity for the redressal of their grievances and this apart, the Appellate authority is the final fact finding authority. The valuable right of appeal conferred to an aggrieved person under a Statute need not be deprived by unnecessarily entertaining a writ petition on disputed facts. Contrarily, the litigant would get an opportunity to adjudicate these disputed facts. This apart, the writ petitions are filed based on certain facts and circumstances and certain xerox copies of the chosen documents are filed. The entire documents in original are to be placed for complete adjudication.

6. This being the scope of the Appellate remedy, the importance of the Appellate remedy, at no circumstances, be undermined and the authorities, while exercising the quasi-judicial power, is expected to consider both the facts as well as the legal grounds raised by the respective parties to the appeal and pass an order on merits and in an unbiased manner.

7. This being the scope of the Appellate remedy, the petitioner is now raising certain facts, which all are relevant, were not considered. The relevancy or otherwise with reference to the tax regime is to be undertaken by the Appellate authority. Certain factual details as produced by the petitioner are to be considered with reference to the documents in original.

8. This being the factum, the petitioner is at liberty to approach the Appellate authority as mentioned in the order impugned, within a period of four weeks from the date of receipt of a copy of this order and in the event of receiving any such appeal, the Appellate authority shall entertain the same, condone the delay and adjudicate the issues on merits and in accordance with law and by affording opportunity to the writ petitioner and dispose of the same as expeditiously as possible.

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9. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
The Entertainment Tax Officer,
Anna Salai – III Assessment Circle,
Model School Road,
Chennai – 600 006.

+1cc to Mr.K.Vaitheeswaran, Advocate, S.R.No.36135
+1cc to the Government Pleader, S.R.No.36171

W.P.No.23521 of 2012

VG-II(CO)
CT(24/08/2021)

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