IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 15564 of 2014
and
M.P. No. 2 of 2014

M/s. Black and White Media India
No.3 (Old No.1B), Chinnammal Street
K.K.Pudur Post
Saibaba Colony
Coimbatore - 641 038. ...Petitioner
Rep by its Proprietrix
Mrs.Haripriya Arunkumar

Vs.

1. The Principal Secretary and
Commissioner of Commercial Taxes
Chepauk, Chennai - 600 005.

2. The Assistant Commissioner of
Commercial Taxes
Saibaba Colony Circle
Coimbatore. ...Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the First Respondent in letter No. Acts Cell IV/8807/2014 dated 25.03.2014 and quash the same.

For Petitioner : Mr. AR.L.Sundaresan
Senior Counsel
For Mrs. AL.Ganthimathi

For Respondents : Mr. V.Veluchamy
Government Advocate (For R1&R2)

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ORDER

The Writ on hand is filed questioning the clarificatory order passed by the First Respondent in proceedings dated 25.03.2014. The clarificatory order impugned was passed based on the petition filed by the Writ Petitioner on 25.03.2014, wherein the Petitioner sought for a clarification, whether the western classical music concert by the legendary Mr.Yanni proposed to be conducted on 14.04.2014 and 15.04.2014 will attract Entertainment Tax or not.

2. However, it is admitted that in view of the fact that the Petitioner has challenged the clarificatory order, the assessment has not been made sofar.

3. Learned Counsel for the Petitioner made a submission that the Petitioner had conducted a Live Music Concert under the name 'Yanni Concert' on 14.04.2014 at Jawaharlal Nehru Indoor Stadium, Moore Market, Chennai - 600 003. It is contended that such a concert does not fall within the ambit of the Tamil Nadu Entertainment Tax Act and no tax is leviable under the same by the authorities nor payable by the Petitioner.

4. Learned Counsel for the Petitioner relyied on the definition of Entertainment and Amusement under Sections 3(4) and 3(2-A) of the Tamil Nadu Entertainment Tax Act and contended that the live concert would not be taxable and is not in violation under the provisions of the Act.

5. Learned Government Advocate appearing for the Respondents made a submission that the clarificatory order, which is impugned in the Writ Petition is a self speaking order and the definitions under the Act are categorically enumerated and clarified by the First Respondent and therefore, the Writ petition is to be rejected.

6. Sections 3 (4) and 3 (2) of the Act read as follows:-

> "Section 3(4) - 'Entertainment' means a horse race or cinematograph exhibition to which persons are admitted on payment of Television exhibition for which persons are required to make payment by way of contribution, or subscription or installation or connection charges or any other charges collected in any manner whatsoever or an amusement or a recreation parlour where a game such as blowing, billiards, snooker or the like is provided.
>
> Section 3(2) - 'Admission to an entertainment' includes admission to any place in which an entertainment is held."

The word 'amusement' was added by Amendment Act No.32 of 1998, from 1st April 1998. The definition was provided for the term 'amusement' under Section 3(2-A), which reads as follows:-

> "Section 3(2-A) – 'Amusement' means any amusement, for which persons are required to make payment for admission to any amusement arcade or amusement park or theme park or the like by whatever name called."

It is stated that 'amusement' means any amusement, for which the persons are required to make payment for admission to any amusement arcade or amusement park or theme park or the like by whatever name called. Thus, whether it is a music concert or dancing and other amusement held for public on payment of ticket or any other form of entertainment would fall under the definition so as to impose entertainment tax under the provisions of the Act. Section 4(F) of the Act stipulates the tax to be levied on amusement, which reads as follows:-

> Section 4(F) – Tax on amusement :-
> (1) Notwithstanding anything contained in Section 7, there shall be levied and paid to the State Government a tax (hereinafter referred to as the entertainments tax), calculated at ten per cent on each payment for admission to an amusement.
>
> (2) The tax levied under sub-section (1) shall be recoverable form the proprietor.
>
> (3) The provisions of thisAct [other than Sections 4, 4-B, 4-D, [***], 5-F, 5-G, 6(1) and 7] and the rules made thereunder shall, so far may be, apply in relation to the tax payable under sub-section (1).

Therefore, once the live music concert falling under the definition of amusement under Section 3(2-A) and an entertainment tax on such amusement is to be levied under Section 4(F) of the Act, the clarificatory order impugned would reveal that the definition provided under the Act as well as the entertainment defined are considered by the First Respondent and accordingly, it was clarified that the legendary Thiru Yanni Live Concert conducted on 14.04.2014 and 15.04.2014 at Nehru Indoor Stadium would fall within the meaning of amusement and an entertainment tax shall be levied and paid to the State Government at the rate of ten percent on each payment for admission to the live concert on the said dates.

7. In view of the fact that there is no ambiguity in respect of the provisions of the Tamil Nadu Entertainment Tax Act 1939, the Petitioner is liable to pay the entertainment tax and the impugned clarificatory order is also in consonance with the

provisions of the Act and there is no infirmity as such. Thus the Respondents are directed to proceed with the case of the Petitioner by following procedure as contemplated under the Act.

8. In view of the above, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Principal Secretary and
   Commissioner of Commercial Taxes
   Chepauk, Chennai - 600 005.

2. The Assistant Commissioner of
   Commercial Taxes
   Saibaba Colony Circle
   Coimbatore.

+1cc to M/s.A.L.Ganthimathi, Advocate, S.R.No.44364

+1cc to Spl. Government Pleader (Taxes), S.R.No.44954

W.P. No. 15564 of 2014

KSM(CO)
RGA(01/10/2021)