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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1440 OF 2016

Movietime Cineplex Pvt. Ltd. and Anr. … Petitioners

V/s.

Deputy Collector and District Magistrate,
Mumbai City and Anr. ... Respondents

Mr. Vishal Talsania a/w. Mr. Naserali Rizvi and Mr. Deeshank Doshi i/b. Thakore Jariwala & Associates for the Petitioner
Mr. Milind More, AGP a/w. Mr. Himanshu Takke, AGP for the Respondent – State

CORAM : S.V. GANGAPURWALA &
M.G. SEWLIKAR, JJ.

DATE : 25 APRIL 2022

P.C. **:-**

We have heard the learned Counsel for the Petitioners and the learned AGP for the Respondent – State.

2. It is the contention of the Petitioners that the Respondents do not have any authority and/or jurisdiction to levy entertainment tax on the sale of 3-D glasses by the theatre owner. The learned Counsel for the Petitioners submits that the Petitioner No.2 has already paid value added tax on the sale of the 3-D glasses.

The purchase of 3-D glasses was not compulsory upon the customers. They can bring their own 3-D glasses to view the cinema. It was the facility provided by the theatre owner to the customers. According to the learned Counsel the show cause notice was issued to the Petitioner No.2. The Petitioner No.2 filed reply to it. The Petitioner No.2 was also called for hearing. The Petitioner No.2 remained present on the appointed day. However, no officer of the Respondents was present. The hearing did not take place and abruptly the Petitioner was issued with the demand notice. The written say filed by the Petitioner was also not considered by the Respondents.

3. The learned AGP submits that in view of the provisions of the Entertainment Act, the entertainment tax has been rightly levied against the Petitioners. The same is perfectly justifiable in view of the provisions of Section 2(b)(iii-a) of the Maharashtra Entertainment Duty Act, 1923.

4. It would appear that show cause notice was issued to the Petitioner on or about 11.06.2015 as to why entertainment duty should not be paid by the Petitioner on the sale of 3-D spectacles. The Petitioner filed a detailed reply to said show cause notice on 8.07.2015.

5. The Petitioner specifically contended that the Petitioner remained present for the hearing but no hearing took place. The

said averments of the Petitioner has not been denied by the Respondents in affidavit-in-reply.

6. We also perused the impugned demand notice. The impugned demand notice is bereft of reasons. The detailed say filed by the Petitioner also does not seem to have considered while issuing the impugned demand notice. Reasons now are considered to be part of the principles of natural justice and order/judgment bereft of reasons cannot be sustained.

7. In light of the above, the impugned demand notice is hereby quashed and set aside.

8. The Petitioner No.2 shall appear before the Respondent – Authority on 5th May 2022. The Respondent – Authority shall hear the Petitioner and decide the show cause notice issued by it afresh on its own merits in accordance with law and policy, so also consider the stand of the Petitioner. The said decision shall be taken expeditiously preferably within four weeks from the date of appearance before the Authority.

9. It is made clear as matter is remitted back, we have not considered the challenge to the statutory provision. The same is kept open.

10. The Writ Petition is disposed of. No costs.

(M.G. SEWLIKAR, J.) *(S.V. GANGAPURWALA, J.)*