IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

58 WRIT PETITION NO.11353 OF 2014
WITH
CA/2746/2022 IN WP/11353/2014

VRINDAVAN AMUSEMENT AND WATER PARK SAINANDANWAN,
CHAKUR, DIST. LATUR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
...
Advocate for Petitioners : Mr. Urgunde Suhas P.
AGP for Respondents : Mr. S G Sangle
...
CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.
Dated : April 03, 2023
...

PER COURT :-

1. Heard Mr. Urgunde, learned counsel for the petitioner.

2. The petitioner was served by the Respondent no.5/Tahsildar a demand notice on 18th November, 2014 directing him to deposit an amount of Rs.5,62,651/- towards the entertainment taxes. The aforesaid demand notice is based on the background that the petitioner, a registered partnership firm is in the business of running amusement and water park which was being operated on payment of Entry fees based on which petitioner is assessable to payment of entertainment duty.

3. According to the learned counsel for the petitioner, demand notice for payment of arrears of the entertainment tax is based on the

audit objection raised by the audit team. He would urge that before passing the order impugned, neither the petitioner was put to notice nor there is any order of adjudication of such liability against the petitioner. According to the learned counsel, unless an order of adjudication is passed after giving an opportunity of hearing to the petitioner, order impugned cannot be said to be sustainable in law.

4. Learned AGP would urge that the demand notice is based on the Auditor's report. According to him, demand is based in continuation of the earlier assessment and that being so, the petitioner was aware about the entire material. As such, there need not be a fresh notice and hearing to the petitioner before issuing the impugned communication.

5. We have appreciated the said submissions.

6. Even if the petitioner on earlier occasion has paid entertainment tax, the same is based on demand notice issued to the petitioner at the relevant time.

7. As far as present impugned notice dated 18th November, 2014 is concerned, the same is issued based on the audit objection raised by the Auditor. Even an Auditor has raised certain objections and called upon respondent authorities to comply with the audit objection, while doing so respondents cannot give go-by to the established procedure

of law viz. adjudication of the liability against the petitioner .

8. The fact remains that before levying entertainment tax, it was duty of respondent authority to issue show cause notice calling upon the petitioner to explain why aforesaid amount towards the entertainment duty shall not be recovered from him.

9. Even if it is presumed that such entertainment duty is in the form of arrears, respondents are unable to demonstrate from the record furnished, that it was pursuant to assessment of duty which was demanded earlier as reflected the impugned order.

10. Since the order impugned has an adverse civil consequence which is creating financial liability/burden on the petitioner, it was expected of the respondent not only to issue show cause notice but also to grant hearing to petitioner which respondents have failed to. In this view of the matter, the order impugned dated 18th November, 2014 passed by respondent no.5 is hereby quashed and set aside. We hereby permit the respondents to issue show cause notice to the petitioner based on the alleged audit objection and adjudicate the claim qua entertainment duty to be recovered from the petitioner in accordance with law. Petition stands partly allowed. The amount already deposited by the petitioner be taken into account and adjusted, in case, the petitioner is fastened with the liability.

11. Pending civil application also stands disposed off.

(S. G. CHAPALGAONKAR)
JUDGE

(NITIN W. SAMBRE)
JUDGE

...

aaa/-