**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 23.10.2024**

**CORAM :**

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH**
**and**
**THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN**

**W.P.Nos.18794 & 18795 of 2014**
**and**
**M.P.Nos.1 & 1 of 2014**

**W.P.No.18794 of 2014**

Albert Theatre,
13/1, Whannels Road,
Egmore, Chennai – 600 010. .. petitioners

vs

1.The Special Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.

2.Entertainment Tax Officer,
Office of the Assistant Commissioner (CT),
Egmore II, Assessment Circle,
Chennai – 600 031. .. Respondents

**Prayer in W.P.No.18794 of 2014:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records and quash the Order bearing Ref No.Rc.243/2014-B1 dated 23/06/2014 passed by the 2nd respondent, Entertainment Tax Officer, Office of the Assistant Commissioner (CT), Egmore-II, Assessment Circle, Chennai – 600 031.

**AND**

**W.P.No.18795 of 2014**

Baby Albert Theatre,
13/1, Whannels Road,
Egmore, Chennai – 600 010. .. petitioners

vs

1.The Special Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.

2.Entertainment Tax Officer,
Office of the Assistant Commissioner (CT),
Egmore II, Assessment Circle,
Chennai – 600 031. .. Respondents

**Prayer in W.P.No.18795 of 2014:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records and quash the Order bearing Ref No.Rc.243/2014-B1 dated 24/06/2014 passed by the 2nd respondent, Entertainment Tax Officer, Office of the Assistant Commissioner (CT), Egmore-II, Assessment Circle, Chennai – 600 031.

(In both WPs)
For Petitioners : Mr.R.Sanjeev
for M/s.Gupta and Ravi
For Respondents: Mr.TNC Kaushik
Additional Government Pleader

**COMMON ORDER**

*(Order of the Court was made by Dr.ANITA SUMANTH.,J.)*

A common order is passed disposing these two writ petitions since the facts and legal position that arise for consideration are one and the same.

2.Though the assessees are different, both the petitioners are Theatres. They have suffered orders passed under the provisions of the Tamil Nadu Entertainments Tax Act, 1939 (Act). The basis of the impugned proceedings is that, in both, the petitioners had obtained exemption from Entertainment Tax in respect of the screening of the film 'Kochadaiyan' but had collected tax and had further not paid over the amount of tax so collected, to the Treasury.

3.Notices were issued by the respondents calling for an explanation but there was no reply to the pre-assessment proceedings as specifically noted in the impugned orders.

4.In light of the fact that there is no reply from the petitioners, the Assessing Authority has proceeded to confirm the proposals under the notice bringing to tax the gross collections for the period 23.05.2014 -

05.06.2014 (in the case of Albert Theatre, petitioner in WP.No.18794 of 2014) and 06.06.2014 to 22.06.2014 (in the case of Baby Albert Theatre, petitioner in WP.No.18795 of 2014).

5.Though learned counsel appearing for the petitioners Mr.R.Sanjeev would commence advancing submissions on the illegality of the orders per se, this is resisted by Mr.TNC.Kaushik, learned Additional Government Pleader appearing for the Commercial Taxes Department, who states that the petitioners had not co-operated in the assessment proceedings and hence are not entitled to the protection of the writ Court.

6.We agree. It would have been an entirely different matter, had the petitioners filed an explanation/reply to the notices issued by the Assessing Authority. However, as recorded categorically in the assessment order, which has not been denied in the writ affidavit, there has been no co-operation by the petitioners in the course of assessment. Hence, there would be no justification for intervention.

7.However, Mr.Kaushik would fairly accede to the position that the legal issue that has been raised by the petitioners must be looked into by the Authorities. In this regard, learned Additional Government Pleader would draw attention to Section 16 of the Act which vests in the State

Government, the power to frame Rules for securing payment of entertainment tax and generally carrying into effect the purposes of the Act.

8. Sub-section (2) of Section 16 adumbrates specific circumstances in which Rules may be framed in addition to the generality of the provisions and clause (k) refers to framing of Rules for the purposes of appeals and revisions in respect of proceedings under the Act.

9.This takes us to Rule 49 of the Tamil Nadu Entertainment Tax Rules, 1939 which, coming under Part IX entitled 'Administration', states that any person aggrieved by an order passed under the Rules by an Entertainment Tax Officer or by any other officer subordinate to the Assistant Commissioner, may, within thirty days from the date of such order, appeal to the Deputy Commissioner of Commercial Taxes.

10. We hence relegate the petitioners to statutory appeal condoning the intervening period when the writ petitions before were pending before this Court.

11. Hence, the petitioners are permitted to file statutory appeals and such appeals, if filed, within a period of four (4) weeks from date of receipt of a copy of this order, shall be entertained without reference to

limitation but subject to compliance of all other statutory conditions, including pre-deposit. If the petitioners fail to file appeals as above, they forfeit the liberty/benefit granted under this order and the impugned orders of assessment shall stand revived without further reference to the petitioners or to this Court.

12. Both writ petitions are disposed in terms of this order. No costs. Connected miscellaneous petitions are closed.

**[A.S.M., J] [G.A.M., J]**
**23.10.2024**

Index:Yes/No
Speaking order
Neutral Citation:Yes
vs

To

1.The Special Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.

2.Entertainment Tax Officer,
Office of the Assistant Commissioner (CT),
Egmore II, Assessment Circle,
Chennai – 600 031.

**DR. ANITA SUMANTH,J.**
**and**
**G. ARUL MURUGAN.,J**

vs

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