IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.12.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.A.Nos.1085 to 1088 OF 2020

Mayajaal Entertainment Limited,
No.34/1, East Coast Road,
Kanathur, Chennai 603 112. ... Appellant

Versus

Commercial Tax Officer,
Kelambakkam Assessment Circle,
Plot No.141, 3rd Floor Burma Colony,
1st Main Road, Perungudi,
Chennai 600 096. ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 28.2.2020 in W.P.Nos.37434 to 37437 of 2015 passed by this court.

For Appellant : Mr.Ravi

For Respondent : Mr.Mohammed Shaffiq,
Special Government Pleade

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COMMON JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The present Appeals are squarely covered by the decision of this Court in ***PVR Ltd. v. CTO (W.A.No.685, 694 to to 697 decided on 15.10.20020)*** which dealt with the question of taxability of the

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Entertainment Tax on the Online Booking Charges and this Court held that the same are not subject to tax under the provisions of the the Tamil Nadu Entertainment Tax Act, 1939.

2. The relevant portion of the said Judgemn dated15.10.2020 is quoted below for ready reference:

> *"21. In the case before us, the test for levy of Entertainment Taxis the entry into the entertainment and payment for that purpose. Entertainment Tax was a State subject and before the said levy of Entertainment Tax being subsumed under the GST Laws enforced in the country with effect from 1 July 2017, was the payment for admission, which as per the definition given in the Tamil Nadu Entertainment Tax Act, 1939, as amended from time to time in Section 3(7)(c) of the Act is that the payment should be necessary condition to be complied with for gaining entry into the place for entertainment. The payment made for any other purpose connected with such entertainment will be taxable under the said Act, only if the person concerned is required to make such payment as a condition for entry. Obviously, the online booking charges or internet handling charges, as the name given by some other cinema theater owners is not a mandatory*

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payment for gaining entry into the cinema hall. It is an additional payment for extra or other facility provided by the Cinema hall owner. With the advent of internet, much after the said enactment of 1939, even though amended from time to time, the said Act could not have provided for levy of tax on the service of internet provided by the cinema owner. The same could be a subject matter of levy of Service Tax by the Parliament in the erstwhile law regime, prior to GST, with effect from 1 July 2017. But the Entertainment Tax being a tax collected by State for the Local Administration or Municipal Administration, is leviable only on cost of ticket which entitles a person to gain entry into the cinema hall or theatre.

22. Therefore, there is considerable force in the submission made by Mr.Easwar, learned Senior counsel appearing on behalf of the Assessee. Unless such internet charges or online booking charges are uniformly charged from all the customers for having entry into the cinema hall, such extra service charges taken by the cinema owner to the extent of Rs.30/- per ticket could not be made subject matter of Entertainment Tax. Even though such payment along with the cost of ticket at the rate of

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*Rs.190.78 in particular illustration, was part of the overall cost to the customer. The test is attending the entertainment or continuing to attend the entertainment. The mandatory requirement to fall within Section 3(7)(c) of the Act is that a person is required to make, as a condition to attend or continue to attend the entertainment. There is no doubt that booking of a cinema ticket on online basis is not a mandatory condition for all cinema goers, and this is not only optional but altogether a separate facility provided to all on the Web portal of the cinema hall owners. Therefore, the words in the clause 3(7)(c) of the Act, **"any payment for any purpose whatsoever connected with an entertainment"**, in addition to the payment for any for admission to entertainment in clause "(c)", will have to be read in conjunction and not without the context of the words, **"which a person is required (mandatorily) to make as a condition of attending or continuing to attend the entertainment"**. These words are not superfluous or without meaning and in fact, they provide the bedrock condition for applying Section 3(7)(c) of the Act. Unless such a conditional payment for any purpose is integrally connected with the*

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"entertainment" is uniformly and mandatorily chargeable from all, who want to have entry in the place of cinema hall, in our opinion, Section 3(7)(c) cannot cover such payment made by the customer, for availing the facility of online booking of tickets.

23. The judgment in the case of ***Drive-in Theatre*** *(supra) relied upon by the learned counsel for the Revenue as well as the learned Single Judge is distinguishable on facts. While all persons going in their cars in the Drive-in Theatre were uniformly charged Rs.5/-, including Rs.2/- for taking their car inside and while those who did not take their car but just entered the auditorium separately erected to watch their movies on their seats in the auditorium, were two different classes of consumers. But they were not in the same premises or place for entertainment in that sense for enjoying the entertainment. While one class could enjoy the movie on the big screen while sitting in the comfort of their cars, the others had a restricted area of auditorium to view the movie from their seats, like any other usual cinema theatre. Therefore, Entertainment Tax on the full rate of tickets whether it was Rs.5/- for the car owners or Rs.3/-,*

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for the auditorium customers, was held to be justified. But that rationale cannot be imported and applied here. While the service of internet booking itself is not only outside the realm of Entertainment Tax Act as such, but is independent and optional service provided by the cinema owner. It is neither mandatory nor uniformly applicable to all. If one opts for the online booking, one will have to pay something extra. But that has nothing to do with the gaining of the entry into the cinema hall for which one separately pays Rs.190.78 like paid by all others who buy their tickets at the counter of the cinema hall. Therefore, the measure of taxation, viz., the ticket cost of Rs.190.78 for both the types of customers could only be held exigible to the Entertainment Tax. Rs.30/- separately paid for online booking facility, is not sine qua non for having entry in the cinema hall and therefore, falls outside the scope of the term, 'payment for admission', defined in Section 3(7)(c) of the Act.

24. The other case laws relied upon by the learned counsel for the Revenue are also of not great assistance to the Revenue in the present case. Actually, applying the 'pith and substance' theory as done by Hon'ble Supreme

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*Court in the case of **Drive-in Theatre** (supra) case, what cost is paid by customer for entry to attend the entertainment only can be taxed and not for an altogether different service of online booking of the tickets. Therefore, that judgment is more helpful to Assessee rather than Revenue. The decision of the Gujarat High Court in the case of lift charges of 10 paise per person in the case of **Ramanlal B. Jariwala** is also found to be very near to the controversy raised before us and therefore, separate payment for separate facility is not exigible to Entertainment Tax is the premise which we find quite forceful in the case of the Assessee before us.*

25. In the assessment order passed by the Assessing Authority in the present case on 21 September 2015, the learned Assessing Officer himself has taken note of the letter dated 19 June 2015 of the Assessee that levy of Service Tax and Entertainment Tax on online ticket booking charges are mutually exclusive but as the Assessee has not paid Service Tax for online ticket booking charges, therefore he is liable to pay Entertainment Tax on charges collected for online booking. From the para 24 of Written Submissions of Assessee, it is clear that Assessee

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*has paid Service Tax under Finance Act 1994 on such 'online booking charge' for the period from 01.07.2012. The Assessing Authority has also dealt with the definition of Section 3(7)(c) of the Act and has emphasized the words **"any payment for any purpose in addition to the payment for admission to the entertainment"**. The said reassessment order was passed exercising the powers under Section 7(2) of the Act 1939, and the Assessing Authority not only imposed tax at the rate of 30% on the online booking charges to the extent of Rs.41,96,277/- but imposed penalty @ 150% under Section 7(3) of the Act to the extent of Rs.62,94,416/- vide Assessment order dated 21 September 2015, for AY 2010-11.*

26. For the aforesaid reasons, the said reassessment orders for all the years in question for AY 2007-08 to 2014-15 (upto December 2014) cannot be sustained and are hereby quashed. Accordingly, we allow the present Writ Appeals filed by Assessee by setting aside the order of the learned Single Judge, dated 28 February 2020. No order as to costs. Consequently, C.M.P.Nos.9456, 9481, 9483, 9484 and 9546 of 2020 are also closed."

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3. Though the leaned Special Government Pleader Mr.Mohammed Shaffiq sought to raise certain issues before us alongwith a brief written submissions, we are not inclined to take a different view of the matter in the present appeals. We are of the opinion that these Appeals are squarely covered by the above judgment. Accordingly, the present Writ Appeals are allowed in the same terms. No order as to costs.

(V.K.,J.)(M.S.R.,J)
4.12.2020

Index:Yes
Internet:Yes
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To:

1. Commercial Tax Officer,
   Kelambakkam Assessment Circle,
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2. Mayajaal Entertainment Limited,
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AND
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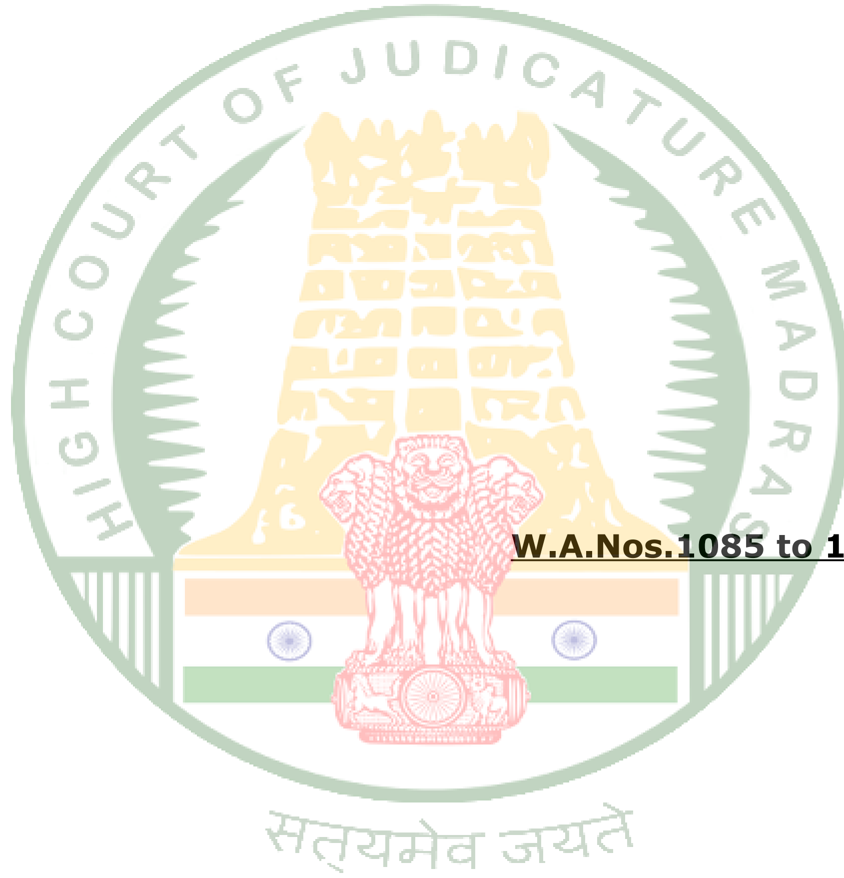

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