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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.10.2020

PRONOUNCED ON: 15.10.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE M.S.RAMESH

Writ Appeal Nos. 685, 694, 695, 696 and 697 of 2020

PVR Ltd.,
(formerly known as SPI Cinemas Pvt. Ltd.)
No.61, Basant lok, Vasant Vihar,
New Delhi 110 557 ... Appellant

vs.

Commercial Tax Officer,
Royapettah Assessment Circle,
No.46, Greenways Road,
Chennai 600 028 ... Respondent

सत्यमेव जयते

Writ Appeals filed against the order of this Court in W.P.Nos.34217, 34218, 34219, 34220, 34216 of 2015 dated 28.02.2020.

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For Appellant : Mr.R.V.Easwar,
Senior Advocate
for Mr.N.Murali

For respondent : Mr.Mohammed Shaffiq,
Special Government Pleader (Taxes)

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COMMON JUDGMENT

DR.VINEET KOTHARI, J.

Whether the "online booking charges" charged by a Cinema Hall Owner besides the "cost of ticket" for entry into the cinema hall and enjoy the entertainment in the form of a movie, is a part of taxable receipt by the Cinema Owner for the purposes of the Tamil Nadu Entertainment Tax Act, 1939, is the question which arises for our consideration in the present intra court appeals, filed against the order of the learned Single Judge dated 28 February 2020, by which the learned Single Judge was pleased to dismiss the Writ Petitions of the Cinema Owner, M/s.SPI Cinemas Pvt. Ltd., popularly known as 'PVR Cinemas', and hold that the entire price of the ticket when booked online through the Web Portal of the cinema owner by the customer would be exigible to the Entertainment Tax under the provisions of the Tamil Nadu Entertainment Tax Act.

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2. The Tamil Nadu Entertainment Tax Act, 1939, is a pre-Independence Legislation, enacted at the point of time in the history when nobody had even conceived the idea of Internet, Web Portal or concepts like online bookings of cinemas. The Preamble to the said Act published in the Fort St.George Gazette on 20 June 1939 states, ' **it is**

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expedient to provide for the levy by the Government of taxes on entertainment and to repeal the Madras Local Authorities Entertainments Tax Act, 1926, and to provide for the payment of compensation to the local authorities now levying a tax under the Act aforesaid'. After Independence, the relevant words were substituted in the said Act of 1939 which continued to operate even after Independence, to introduce words "**State of Tamil Nadu**" at the appropriate places. Certain definitions to give perspective to this enactments after the advent of Internet etc. were added by the Amendment Act of 1998, and the definitions of 'Amusement', 'Antenna', 'Cable Television', etc. were introduced in the said enactment. Sub Section (4) of Section 3, which defined the term "**Entertainment**" as substituted by Act V of 1958 stipulated that "Entertainment" means **"a horse-race or cinematograph exhibition to which persons are admitted on payment or 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 ...".**

3. The most relevant provisions, which we are called upon to interpret is the definition given in Section 3(7) of the Act read with the charging provision contained in Section 4 of the Act, which are quoted

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below for ready reference :-

*(7) **"Payment for admission"** includes -*

(a) any payment made by a person who, having been admitted to one part of a place of entertainment, is subsequently admitted to another part thereof, for admission to which a payment involving a tax or a higher tax is required;

(b) any payment for seats or other accommodation in a place of entertainment [***];

*(c) any payment for **any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment**; [and]*

[(d) any payment deemed to have been made under sub-section (1-A) of section 4 in respect of any taxable complimentary ticket,

But shall not include such maintenance charge which the licencee of cinematograph exhibition is permitted to collect, by order of the Government, from time to time, under the Tamil Nadu Cinemas Regulation Act, 1955 (Tamil Nadu Act IX of 1955) and collected by the said licencee;

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4. Section 4, the charging provision in the said Act refers to the term defined above in Section 3(7) of the Act in the heading itself and the Section provides for **tax on payment for admission to entertainments.**

Section 4 is quoted below for ready reference :-

> ***4. Tax on payment for admission to entertainments***. -
>
> *[(1) There shall be levied and paid to the State Government, a tax (hereinafter referred to as the entertainments tax) calculated at the following rates, namely: -]*
>
> *[(a) on **each payment for admission to any cinematograph** exhibition in the theatres located, -*
>
> *(i) within the limits of the areas of the Municipal Corporations, Municipalities, Special Grade and in the theatres, whether permanent or semi-permanent, within five kilometres from the outer peripheral limits of such areas of the Municipal Corporations and Municipalities, Special Grade, -*
>
> *(A) at the rate of [thirty per cent] of the gross payment for admission inclusive of the amount of the tax for new film; and*
>
> *(B) at the rate of [twenty per cent] of the gross payment for admission inclusive of the amount of the tax for old film;*

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(ii) in the areas other than those specified in sub-clause (i), at the rate of [twenty per cent] of the gross payment for admission inclusive of the amount of the tax for new or old film.]

5. Mr.R.V.Easwar, learned Senior Counsel appearing on behalf of the Appellant/Assessee submitted that clause "(c)" of the definition ***"Payment for admission"*** as defined in Section 3(7) of the Act has to be read as a whole composite definition and each part of it has to be satisfied to levy the charge of Entertainment Tax and therefore, any payment for any purpose whatsoever connected with an entertainment, which a person is required to make though terms of wider connotation, are bound by the words following in the same clause viz., **"as a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment".** The learned Senior Counsel emphasized that the online booking charges, additionally paid by the consumer over and above the cost of ticket for booking the cinema tickets through Web portal of the Assessee, sitting in the comfort of his home or office, which is Rs.30/- additionally charged during the contemporary period is in addition to the cost of ticket which ticket cost only entitles a person to enter the cinema hall for watching the movie and that payment for

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providing Internet booking facility to the consumer even though might be said to be remotely connected to the ticket for entry in the cinema hall for entertainment, but it cannot be said to be a condition of attending or continuing to attend the entertainment because such a condition is not uniformly applicable to all the persons entering the cinema hall and unless a payment as a condition for entry into a place of entertainment is uniformly applicable to all and has to be mandatorily paid by all, the same cannot be said to be **"Payment for admission"** as defined in the Act and therefore, to the extent of Rs.30/- per ticket paid additionally by the persons who book such cinema tickets for availing the facility of online booking on the Web portal of the Assessee, cannot be made subject to the payment of Entertainment Tax at the rates prescribed under Section 4 of the Act.

6. Drawing our attention to the two types of sample tickets produced before us of the said Assessee cinema, he submitted that for an online booked ticket, there are two parts of the ticket and while 'ticket booking charges' or 'online booking charges' of Rs.30/- per ticket is separately shown, the ticket amount for entry into the cinema hall is separately shown at Rs.190.78, whereas if another person had booked and purchased the ticket physically at the counter of the

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cinema hall, he was required to pay only Rs.190.78 per person, giving both persons the same entitlement of entry in the cinema hall and watching the entertainment in the form of movie. He said that in the first case, not the entire amount of Rs.220.78 can be made liable to bear the Entertainment Tax at the rate given but only Rs.190.78 uniformly charged from both types of customers can be subject of the Entertainment Tax. He submitted that therefore the Department has wrongly called upon the Assessee to pay Entertainment Tax on the said internet or online booking charges paid by the person for availing the facility of internet booking or online booking of the tickets from the comfort of his home without waiting in the queue at the cinema hall counter, is a charge for such independent facility provided to the customers through the Web portal, which is not integrally connected with the entry into the cinema hall for watching the movie or entertainment and therefore that part of the cost to the customer cannot be subject of levy of Entertainment Tax. He therefore submitted that the learned Single Judge has erred in dismissing the Writ Petitions of the Assessee and the said order is required to be interfered with in the present intra court appeals.

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7. Mr.Easwar, the learned Senior Counsel heavily relied upon the Division Bench decision of the Gujarat High Court in the case of ***Ramanlal B. Jariwala vs District Magistrate, Surat (AIR 1992 Gujarat 38)*** where the Assessee having a double decker cinema theatre viz., Rupam Talkies on the ground floor and Ratan Talkies on the first floor in Shalabatpura Locality of Surat City, provided the facility of using lift on a nominal charge of 10 paise per passenger per upward trip from ground floor to first floor besides the cost of cinema ticket, as the first floor was at the height of 35 feet from the ground floor and the controversy arose as to whether the said lift charges of 10 paise could be subject of Entertainment Tax or not. The Division Bench of Gujarat High Court answered the question in favour of the Assessee by holding that it was not compulsory for anyone to utilize the lift facility given by the Assessee at the cinema theatre and if a cine goer climbs up to the first floor then he need not pay 10 paise. But if he wants to avail the extra facility of lift, he will have to pay 10 paise more. The Court concluded that charging of 10 paise per passenger who is given the facility of using the lift was not any payment received for admission to any entertainment and it was only for convenience of cine goers to go to the upper floor, where cinema auditorium was situated, where there were other facilities like book stalls, restaurants, ice cream parlours

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etc. and without entering the auditorium, a person may like to use any of the other services or facilities by paying 10 paise for the lift charges and therefore, such lift charges of 10 paise would not form part of 'cost of admission to entertainment', and unless such payment was made compulsory for every cine goer before he can enter the auditorium, the same cannot be exigible for Entertainment Tax. Likewise, the learned counsel argued that payment of Internet charges of Rs.30 additionally paid was absolutely optional for the customer and if he wanted to avail the facility of Internet booking of the ticket, only then he was required to pay such online booking charges and not otherwise. Therefore, it would not fall within the definition of Section 3(7)(c) of the Act, as 'payment for admission to entertainment', read as a whole and consequently, the Entertainment Tax could not be demanded on the same.

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8. Relying on the aforesaid decision of the Gujarat High Court, another Bench of Gujarat High Court in the case of ***Fun World and Tourism Development Ltd. V. State of Gujarat and others [(2013) 59 VST 306]***, dealing with the case of amusement park, where the entry to park was separately charged and each ride had a separate ticket for enjoying that entertainment of having the ride in amusement park. On

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the question of Entertainment Tax on the entry ticket for entry into the amusement park itself, following the earlier decision in the case of ***Ramanlal B. Jariwala*** the Division Bench of the Gujarat High Court held that the amusement park *per se* was not a place of entertainment like cinema hall or a theatre and for getting the entertainment, the visitor was required to purchase separate ticket for every ride and therefore, Entertainment Tax could not levied on the number of persons who have entered the amusement park. Purchase of ticket for mere entry into the amusement park, not being a payment for admission to an entertainment, would not be exigible to Entertainment Tax.

9. Mr.Easwar, learned Senior Counsel also cited a decision of the Hon'ble Supreme Court in the case of ***Markand Swaroop Agarwal vs. M.M.Bajaj/Volga Restaurant, [1979 (1) SCC 116]***, and he submitted that in the said restaurant, the entertainment by way of cabaret dance was provided, coupled with the facility of Tea or Coffee, with snacks, for which, a uniform ticket of Rs.50 was chargeable from all, irrespective of the fact whether a customer took coffee, tea and snacks inside the hall or not. Therefore, he submitted that in those circumstances, the entire cost of the ticket of Rs.50/- was considered by the Hon'ble Supreme Court to be the cost of ticket for entertainment and liable for

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Entertainment Tax. But such was not the case here and therefore, the online booking charges could not be made the subject matter of Entertainment Tax. He also urged that while booking the ticket online, the facility of booking even online food items and 3D glasses, in case the viewing of the movie required usage of 3D glasses was provided for, and though in the cited online booked ticket was produced before us, did not have any amount charged on these items, therefore, it was not a case in hand but he submitted that while the use of 3D glasses was integrally connected and was mandatorily payable, if that was the requirement of viewing the entertainment itself, therefore it could be chargeable to tax but no Entertainment Tax could be charged on the cost of food, which could also be booked and ordered online. Thus, he submitted that what is essentially and integrally connected as cost for admission into the place of entertainment for viewing of movie or any entertainment, only that cost could be made subject matter of entertainment and not other charges providing for different facilities like online booking charges etc.

10. Besides the aforesaid arguments, the learned Senior Counsel for the Assessee has also submitted the following written arguments, which are reproduced below in extenso:-

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"6. While Section 4 of TNET Act is the charging section, Section 3(7)(c) defines "payment for admission". A perusal of Section 3(7)(c) would indicate that there are three ingredients that needs to be satisfied in order to be applicable. The ingredients are as follows:

a. Any payment made for any purpose whatsoever

b. Such purpose should be connected with an entertainment

c. The payment made in relation to such purpose should be "required" to be made as a "condition" for attending or continuing to attend the entertainment

7. Therefore, it is clear that the payment which a person has to make must not only be "connected" with an entertainment but it should also be "required" to be made as a "condition" for attending or continuing to attend the entertainment. Therefore, unless the said payment satisfies all these ingredients, the payment cannot be made exigible to entertainment tax.

Online booking charges is not exigible to entertainment tax

8. As stated earlier, cine-goers have the option of booking the tickets at the counter or through the online portal. The base ticket price for

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a movie remains the same, regardless of whether it is booked online or through the portal. The only difference lies in the fact that tickets booked online would carry an additional fee towards online booking charges. Reference is drawn to the Additional Affidavit submitted by the Appellant on 06.10.2020, wherein the ticket pricing was demonstrated to be the same by providing a copy of the tickets booked at the counter and through the online portal for same movie and for the same show time.

9. Based on the wordings of Section 3(7)(c), the online booking charges could be taxed only if the same constitutes a "condition for attending or continuing to attend the entertainment…". Any payment can be said to operate as a "condition" only if it is charged uniformly for cine-goers booking tickets online as well as at the counter. However, as explained above, the cine-goers have the choice of booking tickets either at the counter or through the online booking portal and online booking charges is levied only in the instances of tickets booked through SPI Cinemas' website. Consequently, the online booking charges would not operate as a "condition for attending or continuing to attend the entertainment…". The online ticket booking facility is an optional service facility that

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can be availed by the customer and it is similar to other additional services provided by SPI Cinemas such as car parking, canteen, etc. It is pertinent to state that there were no demands for payment of entertainment tax on such additional services. Similar to car parking charges, which can be collected only from those who park their cars in the the parking space, the online booking charges can be collected only from those cine-goers who opt or choose to book tickets using the online facility.

10. The argument of the Respondent before this Hon'ble Court that the online booking charges are uniformly collected from all those who use the online booking facility overlooks the crucial requirement of the clause that it should have been collected as a condition for "attending or continuing to attend" the entertainment. The object of such a requirement is clear: if the quid pro quo for the payment is the entertainment, it should be levied and collected from every person who attends the entertainment. The entertainment referred to in the clause is the movie (in the case of the Appellant) and not the online ticket booking facility.

11. In respectful deference to the direction from this Hon'ble Court that the Written Submissions should specifically also cover the

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purport of the words "...payment for any purpose whatsoever..." appearing in Section 3(7)(c), it is respectfully submitted that though these words at first blush would appear to cover all payments made by the cine-goer (person entertained) which are connected in some way with the entertainment, the over-riding limitation is brought out by the words which appear later in the clause, viz., "....required to be made as a condition for attending or continuing to attend....". Therefore, the language of the clause itself contains the limits of the sweep of the words "payment for any purpose whatsoever". It is respectfully submitted that in light of such limiting words clearly set out in the clause, it will not be permissible to construe the words "payment for any purpose whatsoever" in an unbridled or unprincipled manner, ignoring the limitation. Though the purpose for which the payment is made by the cine-goer may be anything, the tests are: (a) it should be connected with the entertainment and (b) it should be paid in accordance with a requirement that such payment is a condition for attending the entertainment. Even assuming for the sake of argument and without conceding the point, that the online ticket booking charges are in some way or the other connected with the entertainment, it cannot at all

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be said that such charges have been required to be made as a condition for attending the entertainment. It is only a condition for using the online facility. Therefore, it is respectfully submitted that however wide the words "payment for any purpose whatsoever" may be construed, it will still have to be limited to such payments which are (a) required to be made as a condition (b) for attending or continuing to attend the entertainment.

*12. **In fact, the Respondent have charged and levied Value Added Tax ("VAT") on items like 3D glasses, food items which were booked online at the time of booking of online tickets. This highlights the fact that these collections do not constitute as "payment for admission" under Section 3(7)(c) of TNET Act.***

13. The online ticket booking charges are levied solely to recoup the expenses incurred in providing such services. Similar kind of online ticket booking services is also provided by third party aggregators like Paytm or Bookmyshow, whose online booking charges were not subject to entertainment tax. SPI Cinemas maintains their own website for the sale of online tickets. Consequently, even the second ingredient of Section 3(7)(c), i.e. connected with entertainment,

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would not be satisfied since the quid pro quo for the online charges is for the services rendered in providing an online portal for ticket booking.

14. Even assuming arguendo that online ticket charges satisfies the second ingredient, i.e. connected with entertainment, even then it cannot be exigible since it does not operate as a "condition" for attending the entertainment.

15. The customer who books a ticket online would enjoy the same level of entertainment as compared to the customer booking tickets at the counter and they could be seated next to each other in a cinema hall. There is no added entertainment value that is annexed to a ticket booked online.

16. As per the directions of TN govt., a customer will be issued a govt. printed ticket at the entrance of the theatre hall, which could be subject to verification by govt. officials. This process of issuing govt. approved tickets was mandatory during the entertainment tax regime, which is the period under consideration in the present case. Such govt. printed tickets had to be mandatorily held by the movie goers till the end of the show. If, during any inspection by the govt. authorities, a person is found to not be in possession of the govt. printed tickets, a penalty

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will be levied on the theatre owner. The govt. printed tickets will have ticket rate and the entertainment tax printed on that. Consequently, it is evident that the govt. printed ticket alone provides the right of admission to the entertainment. Also, such govt. printed tickets are issued regardless of whether tickets were booked online or at the counter.

...

*19. The Learned Single Judge's reliance on **State of Karnataka v. Drive-in-Enterprises ("Drive-in-Enterprises) (2013) 59 VST 306 (Guj)**, is wholly misplaced. The crucial distinction between the instant case and decision in Drive-in-enterprises are as follows:*

(i) The case firstly was concerning the challenge of the constitutional validity of levy of entertainment tax on vehicles. Moreover, there was a specific charging provision under the Karnataka Entertainment Tax Act, 1958 with respect to admission of motor vehicles into the place of entertainment.

(ii) The tax on the entry of cars was with respect to entry into a drive-in-theatre. The concept of drive-in-theatre is that a person could drive-in his car and watch a movie by sitting in his car. A person watching a movie in his car would

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certainly gain a better movie watching experience compared to a squatter in a drive-in-theatre. Consequently, the ruling was confined to the experience of a cine-goer with respect to a drive-in-theatre and the levy of tax on the entry of cars was upheld on this aspect. However, in the instant case, the online booking charges does not in any manner enhance any viewing experience. ***The movie watching experience for persons booking online is on par with the persons booking tickets from the ticketing counters****. The online booking charges are levied solely to recoup the expenses incurred for maintaining the online booking and has no connection with entertainment. Therefore, to state that online booking enhances the movie watching experience is wholly erroneous and consequently, online booking charges are not exigible to entertainment tax.*

(iii) Online booking charges do not operate as a "condition of attending or continuing to attend the entertainment" since the charges are not levied on persons purchasing tickets from the ticketing counters. Online booking is merely an additional facility provided to the cine-goers. The fact that a person has the freedom to choose between booking tickets from ticketing counters or online sufficiently demonstrates that payment of online

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booking charges is not a condition for attending the entertainment. It is respectfully pointed out that in paragraph 35 of the Impugned Order, it has been accepted by the Learned Single Judge that the cine-goers have a choice to either buy tickets from the ticket counter or to use the online facility by paying online booking charges. The payments made by the customer for attending the entertainment is only the ticket charges which remains the same for tickets booked online or at the counter.

20. It is most respectfully submitted that the Learned Single Judge's reliance on ***Sunrise Associates v. Govt. of NCT of Delhi and Ors. ("Sunrise") [(2006) 5 SCC 603]*** *is also wholly misplaced. The ratio in Sunrise does not apply to the present case since the Constitution Bench, while overruling H. Anraj case, had held that there is no bundle of rights involved in the purchase of a lottery tickets. Such issue does not arise here since is only regarding payment made for the entertainment and no question of dual services were involved. In the Petitioner's/Appellant's case, there is no question of an indivisible or composite payment which is required to be split into that which is exigible to entertainment tax and that which is not to be so split. In the*

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Petitioner's/Appellant's case, there are undisputedly two separate and distinct payments: one payment for the seat inside the auditorium to attend the entertainment, for which government-fixed rate, depending on the class, is paid and the other payment is separately and distinctly paid for a different quid pro quo, viz., payment of online booking charges for which the quid pro quo is the provision of the online booking facility. The Petitioner/Appellant respectfully submits that on the facts of the present case in which two separate and distinct payments of different nature and character are involved, the ratio of the judgment of the Supreme Court in Sunrise (supra) cannot, in the very nature of things, apply.

....

22. The Petitioner/Appellant respectfully begs to submit that the learned Single Judge has failed to appreciate that the doctrine of pith and substance, which has been pressed into service to hold that section 3(7)(c) should be broadly construed to include the online booking charges also as part of the "payment for admission", is a doctrine which properly belongs to the field of Constitutional Law and has no scope or place to be applied to the interpretation of the provisions of a legislative enactment. "Pith and substance"

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doctrine states that in testing the constitutional validity of an enactment in light of a challenge that it exceeds the legislative power conferred by the relevant entry in the Schedule VII to the Constitution, regard must be had to the pith and substance of the legislation and merely because it entrenches or impinges upon another entry it cannot be held to be unconstitutional. The interpretation of a charging section of a taxing enactment is guided by different rules of interpretation, the fundamental rule being that a charging section has to be strictly and literally construed and the subject sought to be charged shall strictly fall under the letter of the provision and it is not enough that he falls within the spirit of the provision. The learned Single Judge, with due respect, erred in ignoring this rule of interpretation of Section 4 r/w Section 3(7)(c) of the TNET Act, which together form the basis of the charge of entertainment tax, and in construing them on the basis of the doctrine of pith and substance which is a doctrine which properly belongs to the field of Constitutional law.

*23. While on this, it is further respectfully submitted that the **contention of the learned Government Pleader for the Respondent** that the provisions of Section 3(7)(c) only provide for the*

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***measure of taxation** and therefore the rule of strict construction which is applicable to a charging section of a taxing enactment does not apply is, with respect, erroneous. In order to appreciate the charge of entertainment tax, it is necessary to read Section 4 together with Section 3(7)(c) for the simple reason that the words "payment for admission", which is the basis of the charge of entertainment tax and are referred to in Section 4, are defined in Section 3(7)(c) and thus they become part of the charging Section 4. It is therefore wholly incorrect to rely on the judgment of the Supreme Court in **Union of India & Ors. v. Bombay Tyre International Ltd., [1984 SCR (1) 347]**, and the observations made therein in the context of Excise Duty and to bring those observations to the interpretation of Section 4 of the TNET Act. In the alternative and without prejudice to the aforesaid argument, it is further respectfully submitted that even assuming without conceding the point made by the learned Government Pleader, it is not the ratio of the judgment of the Supreme Court (supra) that while interpreting a statutory provision which provides for the measure of taxation it is permissible to expand its contours beyond the express language of the said provision. While the Petitioner/Appellant maintains that Section 3(7)(c)*

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is part of the charging Section 4, and therefore cannot be construed liberally as a measure of taxation, it is submitted in the alternative and without prejudice that even if it is construed as a measure of taxation it should still conform, and cannot exceed, the strict language. Accordingly, it is respectfully submitted that in any case - whichever way Section 3(7)(c) is construed, whether as part of the charging section or only as a measure of taxation, it should still be construed in light of the over-riding language, viz., "….required to be made as a condition for attending or continuing to attend the entertainment….". So construed, it will be clear that the online booking charges are paid only for use of the facility of booking tickets online and does not, without payment for the ticket, entitle the cine-goer to attend or continue to attend the movie. Therefore it cannot be construed as a "payment for admission".

Payment of Service Tax on tickets booked online

24. The Appellant, without prejudice to the arguments advanced above, also respectfully submits that it has paid service tax under the Finance Act, 1994 for the period commencing from 1-7-2012 on the online booking charges under the "Negative list" regime. It is submitted that the

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> *same transaction cannot be subjected to tax under the TNET Act as it would amount to the State transgressing into the legislative field which exclusively belongs to the Centre. This contention has been taken by the Petitioner in the Rejoinder submitted in W.P. No. 34216 - 34220 of 2015 and also in paragraph (G) in the Grounds of Appeal submitted in the above Writ Appeals. This contention draws support from the Supreme Court's decision in **Godfrey Philips India Ltd.** v. **Union of India [2005(2) SCC 515]** and Imagic **Creative** Pvt. Ltd. v. Commissioner of Commercial Tax [2008(12) VST 371].*

11. On the other hand, learned counsel for the Revenue Mr.Mohammed Shaffiq, learned Special Government Pleader (Taxes) submitted that the definition of Section 3(7)(c) is wide enough to cover the cost of online booking charges, as the said definition clearly stipulates that '**any payment for any purpose whatsoever, connected with an entertainment**' is chargeable to tax. He submitted that the emphasis should be on the "connection with the entertainment", rather than as a "condition of attending or entry into the entertainment place". He submitted that though it is optional for the customer to book the ticket through online on internet or come to

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the counter of the cinema hall and buy a ticket physically, but once he exercises this option and pays an inclusive sum for providing any service of online booking with the cost of ticket, the entire sum would be the cost of ticket, entitling him to the entry into the place of entertainment or cinema hall and thus, the entire amount would be liable for Entertainment Tax.

12. Mr.Shaffiq further submitted that measure of taxation for levy of Entertainment Tax can be different in different circumstances like, if somebody purchases a ticket of lower class in the cinema hall and the other person buys the ticket of a higher class, say a box or balcony, the ticket cost of both will be different. But they will have same right of entry in the place of entertainment and occupy their seat during the prescribed period on the ticket, and thus, Entertainment Tax would be payable on both the ticket cost equally. Likewise, whether the ticket is booked online or purchased at the counter, both types of customers may incur different costs, nonetheless, the State would be entitled to collect Entertainment Tax on both the costs, including the cost for providing facility like online booking charge from one customer, while no such charge being taken from the one who buys ticket at the counter. He urged that it is not necessary, as

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contended by the learned counsel for the Assessee that the charges for online booking is charged from all customers uniformly or not, and it cannot be said that it will become a condition to be uniformly applied to all for the purpose of attracting levy of Entertainment Tax under Section 3(7)(c) of the Act, read with the charging provisions of Section 4 of the Act.

13. Mr.Shaffiq also relied upon the decision of the Hon'ble Supreme Court in the case of ***Express Hotels Pvt. Ltd. vs. State of Gujarat and Another, [1989 (3) SCC 677], Federation of Hotel and Restaurant Association of India etc. vs. Union of India and ors. [(1989) 3 SCC 634]; and Sri Srinivasa Theatre and others vs. Government of Tamil Nadu and ors. [(1992) 2 SCC 643].***

14. In the case of **Express Hotels Pvt. Ltd.**, the Constitution Bench of Hon'ble Supreme Court was dealing with the validity of the provisions of Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977 and similar Acts for the State of Tamil Nadu, Karnataka, West Bengal etc. and while upholding the validity of these provisions and enactments, the Hon'ble Supreme Court held in paragraphs 26 and 27 that the taxable event need not necessarily be the actual

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utilization or the actual consumption, as the case may be, of the luxury, and a luxury which can be reasonably be said to be amenable to potential consumption would thus provide the nexus for imposition of luxury tax. Once the legislative competence and the nexus between the taxing power and the subject of taxation is established, the other incidents are matters of fiscal policy behind the taxing law. The measure of the tax is not the same thing and must be kept distinguished from the subject of the tax.

15. Relying upon the decision of the Hon'ble Supreme Court in the case of ***M/s.Doypack Systems Pvt. Ltd. vs. Union of India and others, [1988 (2) SCC 299]***, Mr.Shaffiq submitted that vide paragraph 50 of the said judgment, the Hon'ble Supreme Court has held that the expression "in relation to" (so also "pertaining to"), is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might have direct significance as well as indirect significance, depending on the context.

16. Mr.Mohammed Shaffiq referred to the decision of the Hon'ble Supreme Court in the decision of the ***State of Karnataka and ors. vs. Drive-in Enterprises, [2001 (4) SCC 60]***, on which the learned Single

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Judge also relied to hold that the Drive-in Theatre of the respondent/ Assessee provided an open air theatre into which admissions are given to persons desiring to see cinema while sitting in their motorcars taken inside the theatre. Drive-in Theatre also had a separate auditorium wherein other persons who are without cars could view the film exhibited therein either standing or sitting. While the person who was admitted in the auditorium to view the film was required to pay Rs.3/- for admission therein, those who wanted to take their car inside the theatre with a view to see the exhibition of films, while sitting in the car in the auditorium was further required to pay a sum of Rs.2/- to the proprietor of the Drive-in Theatre. On the question whether Entertainment Tax would be payable on the said cost of Rs.2/- also paid for driving the car in, on the contention that the car did not have any kind of "entertainment" and the charge of Rs.2/- was only for entry allowed to the car, the Hon'ble Supreme Court repelled the said contention on the basis of 'pith and substance' theory and held that in 'pith and substance', levy is on the person who is entertained. Therefore, whatever be the nomenclature of levy, in substance, the levy under the heading, "admission of vehicle" is a levy on entertainment and not on admission of vehicle inside the Drive-in Theatre. As long as in 'pith and substance', the levy satisfies the

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character of levy, i.e. Entertainment, it is immaterial in what name and form, it is imposed. The word "**entertainment**" is wide enough to comprehend in it, the luxury or comfort with which a person entertains himself. Once it is found that there is nexus between the Legislative competence and the subject of taxation, the levy is justified and valid. Accordingly, the Court upheld the validity of Section 2(i)(v) of the Karnataka Cinemas (Regulation Act), 1964.

17. Mr.Shaffiq also relied upon the decision of the Hon'ble Supreme Court in the case of ***Union of India and ors. vs. Bombay Tyre International Ltd. And ors, [1984 (1) SCC 467]***, paragraph 7, to submit that the value of an article for which purposes of excise levy must be determined with reference exclusively to the manufacturing cost and manufacturing profit of the manufacturer or should it be represented by the entire wholesale price, charged by the manufacturer. He submitted that the wholesale price actually charged by the manufacturer consists of not merely his manufacturing cost and his manufacturing profit, but includes, in addition, a whole range of expenses and an element of profit or post manufacturing expenses and post manufacturing profit, arising between the completion of manufacturing process and the point of sale by the manufacturer. He

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therefore submitted that the online booking charges would fall within the extended meaning of the definition provided under section 3(7)(c) of the Tamil Nadu Entertainment Tax Act and would be exigible to Entertainment Tax.

18. Besides the aforesaid arguments, Mr.Shaffiq, has also submitted the following written arguments, which are reproduced below in extenso :-

> *"A. On a combined reading of Section 4 read with Section 3(7) (c) of Tamil Nadu Entertainment Tax Act, it is submitted that entertainment tax is levied and collected on each payment for admission to any cinematograph exhibition theatre.*
>
> *Importantly "payment of admission" is defined under section 3(7)(c) , three expressions which may be relevant are " any payment for any purpose", " connected with an entertainment" and "condition of attending".*
>
> *A. Expression "for any purpose" include collateral purpose. Para 7,* ***Sanjeeva Reddy Vs. Johanputra Reddy A.I.R. 1972 A.P 373.***
>
> *B. Expression "in connection with" will embrace within its scope such activities have nexus with the main activity. Expression "connected with" presupposes existence of*

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*another subject matter – **Doypack Systems Pvt.Ltd. Vs. Union of India and Others (1988 2 SCC 299)** wherein the Bench equates various phrases such as " in relation to ", "in connected with" "pertaining to" as being synonymous.*

C. *There is no dispute that the charge is attracted in terms of Section 4 of the Entertainment Tax Act. The issue is only with reference to the measure of tax in terms of Section 3 (7)(c) viz., whether the online booking charges is to be added to the "payment for admission". The value of "payment for admission" in terms of Section 3 (7)(c) of the Act would include all payments received for any purpose in connection with the admission to entertainment.*

D. *It is well settled that, unlike the subject matter, the legislature would have greater latitude while fixing the measure or the value on which tax is leviable and need not contour along the lines of the subject matter of levy. - **Union of India V. Bombay Tyre International Ltd., - (1984) 1 SCC 467**:*

E. ***Single Right -** The submission of the assessee that "online booking charges" is distinct from the ticket is unsustainable in as much as the*

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*expression "for any purpose", "connection with" is expansive - **para 50 of Doypack Systems Pvt.Ltd. Vs. Union of India and Others (1988 2 SCC 299)** .*

*It is impermissible to dissect the online booking charge from the ticket, they are inextricably and intimately connected with the admission. The learned single judge has rejected the attempt to dissect after referring to Constitutional Bench decision in **Sunrise Associates reported in 2006 (5) SCC 603**, wherein while dealing with similar contention of a lottery ticket as representing two rights viz., right to participate in a draw and right of chance of winning a prize. It was held that it was not permissible to dissect a larger right into lesser rights. The above judgment was relied upon and it was held at para 25 of the learned single judge order as "Applied in the context of the present case, the distinction sought to be made by the petitioner between seating charge and online booking charge is clearly artificial and a distinction without a difference. By purchase of a ticket online, the petitioner obtains only a single vested right - that of entry to the theatre and the amounts collected from the petitioners, the seating and booking charges are both relatable and to the same entertainment event."*

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Appellant's contentions

A. Condition must mean uniformity *- It is submitted by the appellants that the expression "condition" in section 3(7)(c) would indicate that it must be uniformly applicable and if an option is made available as in the case of " online" booking, it would not constitute a "condition". The above submission overlooks the fact that there is an option available even in terms of the fares viz., Rs.100 + Rs.120 which corresponds and varies according to facilities available. Thus, uniformity as an essential ingredient to constitute "condition" is unsustainable.*

B1. Reliance on Gujarat High Court in is misplaced *- The judgment of Gujarat High Court is not relevant in as much as the charge for the admission is not connected to admission to auditorium but they are charged for using the facility lift to enter to a particular floor which houses not only theatre but also a restaurant or a play area etc. Therefore, someone may utilize lift and not even enter the theatre above but may go to the restaurant or book stall and therefore, they are disintegrated and independent of each other. To the contrary, the online booking charge is only for admission to a theatre by a cine-goer. The online booking enables smoother access to the*

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entertainment and enhances the quality of the entertainment apart from ensuring certainty of admission, which a viewer who books the ticket from the counter remains a chance and may suffer disappointments which could be avoided through online booking.

19. We have heard the both the learned counsels at length and given our earnest consideration to the rival submissions, provisions of the Statute and case laws cited at the Bar.

20. The basic elements or components which enter into the concept of levy of tax, were discussed by the Hon'ble Supreme Court in the case of ***Govind Saran Ganga Saran vs. Commissioner of Sales Tax, [1985 SCC Supp. 205]***, where the provisions of Bengal Finance (Sales Tax) Act, 1941 were tested on the anvil of restrictions imposed under Section 15 of the Central Sales Tax Act, 1956 and the Hon'ble Supreme Court held as under :

"The components which enter into the concept of a tax are : ***(1) the character of the imposition known by its nature which prescribes the taxable event attracting the levy; (2) a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax; (3) the rate at which the tax is***

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imposed; (4) the measure or value to which the rate will be applied for computing the tax liability. *Any uncertainty or vagueness in the legislative scheme defining any of these components of the levy will be fatal to its validity.*

The ordinary rule under the Bengal Finance (Sales Tax) Act appears to be that the sale made by every dealer in a series of sales by successive dealers is liable to tax. That is multipoint taxation. Section 5(2)(a)(ii) of the State Act does not imply that the single point of taxation is fixed by the State Act at the resale by a registered dealer to an unregistered dealer or to a consumer.

There is ample power under Section 5-A of the State Act enabling the Chief Commissioner to specify the single point at which tax may be levied in a series of sales. This can, however, be done by him only by a notification in the Official Gazette. This position is clear and so reference to the Statement of Objects and Reasons attached to the Bengal Finance (Sales Tax) (Delhi Amendment) Act, 1959 is not required. When the language of a statute is clear and admits of no ambiguity, recourse to the Statement of Objects and Reasons for the purpose of construing a statutory provision is not permissible.

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In the absence of any such notification relating to the assessment year in question, a vital prerequisite of Section 15 of the Central Sales Tax Act, namely, that the tax shall not be levied at more than one stage, has not been satisfied in respect of the turnover of cotton yarn, and accordingly the assessment complained of is liable to be quashed.

Therefore, it is well, nay, settled legal position that unless all the following four components are satisfied and clearly defined, the levy of tax would fail viz., **(i) taxable event; (ii) object of taxation; (iii) rate of taxation; (iv) measure or value on which rate will be applied for computing the tax liability**. Unless all the four parameters are clear and unambiguous and uniformly applied to the taxable event chargeable under a taxation enactment, the levy is bound to fail.

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21. In the case before us, the test for levy of Entertainment Tax is 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

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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 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

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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 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**

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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 "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.

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Therefore, Entertainment Tax on the full rate of tickets whether it was Rs.5/- for the car owners or Rs.3/-, 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.

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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 Court in the case of ***Drive-in Theatre***

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(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 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)

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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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(V.K.,J.) **(M.S.R.,J.)**
15.10.2020

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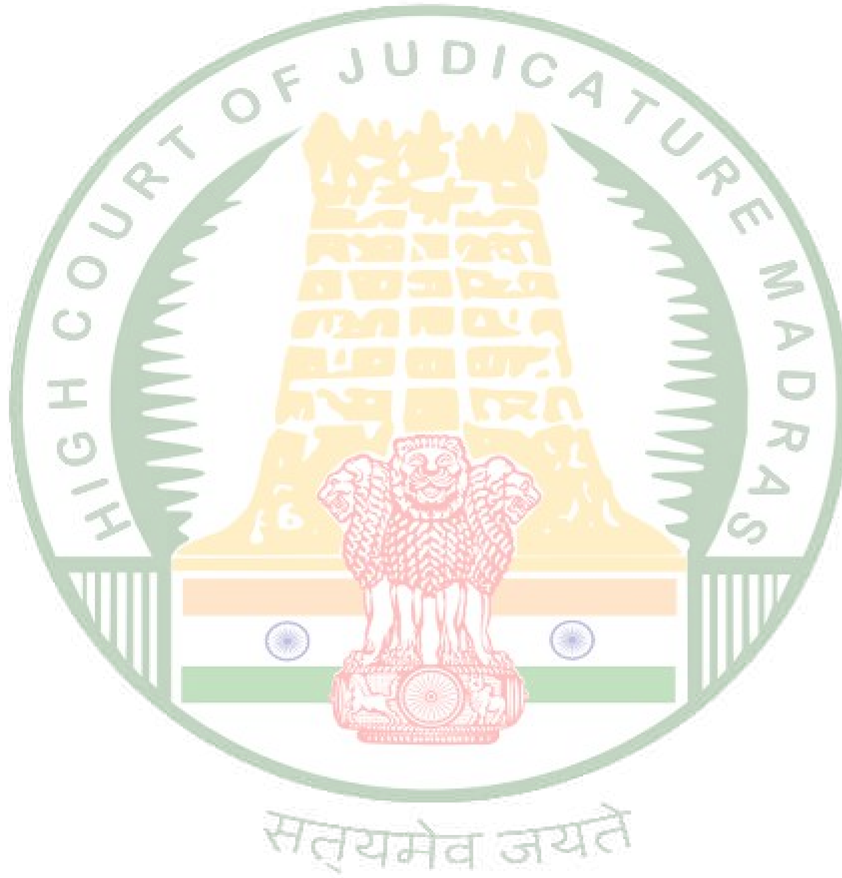

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DR.VINEET KOTHARI, J.
and

M.S.RAMESH, J.

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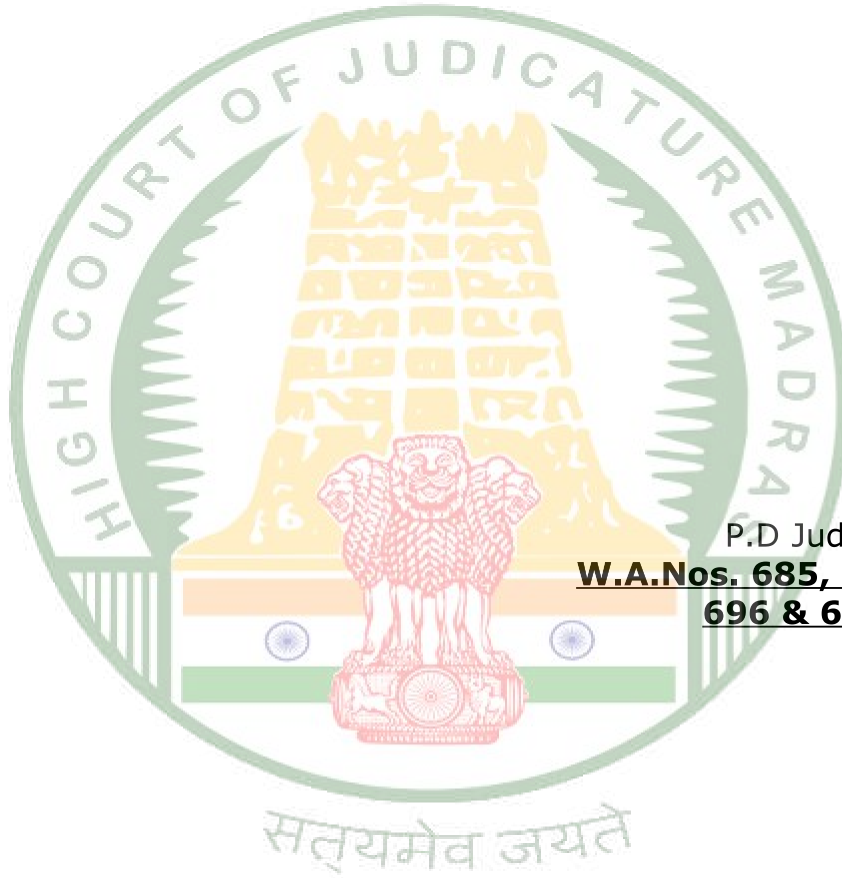

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