

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-07-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

WRIT PETITION NO.23720, 22149, 27291, 39342 of 2003
1271, 1305, 7436, 14618, 20480, 23135, 24882, 36033,
36969, 37157, 37621, 37709 of 2004, 3883, 4123,
13388 to 13390, 19379, 24105, 24697, 28345, 28441, 30635,
33473, 34213, 36943, 37947, 39134, 39135, 40426 of 2005
1487, 3328, 4943, 6800, 6848, 8251, 8639, 8640, 8751, 9349,
9532, 11366, 11367, 12023, 12171, 13193, 13194, 17574,
17614, 24671, 25293, 27992, 33955, 36392 36399, 41365, 41366,
47723, 50172 of 2006, 689, 1277, 1378, 6609 9551,
10262, 10807, 12888, 15476, 15915, 15916, 15332, 15525, 15893, 18420,
19425 of 2007
and
W.M.P.Nos.29306 of 2003, 1332, 1364, 8800, 8801, 17328, 24641,
27983,
44604, 45117, 45261 of 2004, 4332, 20966, 30860, 31007, 43373,
43374 of 2005, 3508, 3509, 7372, 7423, 9677, 9678,
10554, 13636, 13760, 14802 of 2006 and respective
M.P.NOs.1 and 2 of 2006 and M.P.Nos.1 and 2 of 2007

P.Sankara Narayanan ...Petitioner in WP No.23720/2003

J.V.Rukmangadan ...Petitioner in WP 22149/03

Rasi Films Circuit
rep.by its Prop.Mrs.P.R.Lalitha

Warner Bros. FEINC
rep.by its Manager Mr.Sunil Narvekar

Columbia Tristor Films of India Ltd.
rep. by its Regional Sales Manager
Mr.Appu K.Singh

Innovision Films & T.V.Distributors
rep. by its Authorised Signatory
Mr.N.Ramamurthy

United Front Arts
rep. by its Proprietor Mr.S.T.Raghuraj

Hansa Pictures
rep. by its Partner Mr.Bipin H.Shah

Zackaria Films
rep. by its Proprietor Gayaz Hashim

Royal Enterprises
rep. by its Proprietor G.Hemanth

Block buster Home Entertainment Company
rep. by its Proprietor A.V.Mohan

Sri Raghavendraswamy Films
rep. by its Proprietor C.Balasubramanian

..Petitioners in WP 27291/03

Viswas Films
rep. by its Sole Proprietor
Mr.V.Sundar

..Petitioner in WP 39342/03, 19379/05,
19425/07

M/s. Celebrity Films Pvt. Ltd.,
rep. by its Director Mr.VNL Sridhar

..Petitioner in WP 1271/04

Roy Augustine

..Petitioner in WP 1305/04

Keyar Enterprises
by its Proprietor Mr.A.Kothandaramaiah

..Petitioner in WP 7436/04

M/s. Icon Entertainment
rep. by its R.Syed Salim

..Petitioner in WP 14618/04

M/s.OM Films
rep. by its Propreitor S.Elangovan

..Petitioner in WP 20480/04

M/s.M.Purushothan
Proprietor of Suguna movies

..Petitioner in WP 23135/04

R.B.Films rep. by its Proprietor
Vimal Chand Jain

..Petitioner in WP 24882/04

Gaurav Sharma
Prop. Goldie Films

..Petitioner in WP 36033/04 &
WP 36969/04

M/s. Sri Raghavendra Movie
International, rep. by its Balaji Rao

..Petitioner in WP 37157/04

Sri Kailash Films
rep. by its Proprietor P.Vidyasagar

..Petitioner in WP 37621/04

Arasan Cine International
rep.by its Proprietor Mr.Elango

..Petitioner in WP 37709/04

K.Gopi
Prop. M/s. Leela Films

Petitioner in WP.No.3883/05

Goldie Films
C/o. Sathyam Cinema

Petitioner in WP.No.4123/05,
33473/05

A.V.Mohan
Prop Anu Roshini Films

Petitioner in WP.No.13388 to
13390/05, 24697/05, 30635/05,
36943/05, 39134/05, 39135/05
1487/06, 4943/06, 8251/06, 8639/06,
8640/06, 13193/06, 13194/06,
17574/06, 17614/06, 36392/06,
36399/06, 41365/06, 41366/06 and
50172/06
6609/07, 12888/07, 15476/07,
15525/07, 15893/07, 15915/07 and
15916/07

K.Dhaivanathan
Prop. M/s. Thaikarpagambal
Pictures

Petitioner in WP.No.24105/05

Madhav Chabria
Saraswathi Films

Petitioner in WP.No.28345/05

AIM Future Films
Prop. Z.H.Bijeli

Petitioner in WP.No.28441/05

K.M.Rajendran
Prop.K.M.R.Pictures

Petitioner in WP.No.34213/05

WIND Screens
rep. by Prop. Mr.Vijayakumar
RKV.Studio

Petitioner in WP.No.37947/05

M/s. Indo Overseas Films
rep. by its Partner
Mr.Firoz Elias,

Petitioner in WP.No.40426/05

V.Sashikumar
Proprietor,
Trade Channel

V.Sundar
Prop. Sri Lakshmi Viswanathan
Combines Petitioner in WP.No.6800/06

Mrs.Farhat Fathima
Prop. Em.Em.Entertainment Petitioner in WP.No.6848/06

Sri Baba Films,
Unit of Sri Baba Theaters (P) Ltd.,
rep. by its Managing Director,
Mr.S.Balasubramanian Petitioner in WP.No.8751/06

M/s. Hema Screens,
rep. by its Prop.
N.Hemadhri

M.Gunasekar
Prop. Sree Kalas Enterprises Petitioner in WP.No.9532/06

M/s. Shringar Films (P) Ltd.,
Mr.Sundareshan Kumar Petitioner in WP.No.11366, 11367/06

Larsco Entertainment (P) Ltd,
rep. by its Director
L.Sridhar

Altaf Ahamed
Prop Silver Screen ...Petitioner in WP.No.12171/06

A.M.A. Mallick
Prop Star Movie ...Petitioner in WP.No.24671/06

Mr. Dayanand R. Mandre
Prop D. R. M. Combines ...Petitioner in WP.No.25293/06

S. E. Partheban
Prop M/s. S. E. P. Films ...Petitioner in WP.No.27992/06

R. Shanmugham
Prop Shan Movie
International ...Petitioner in WP.No.33955/06

S. D. Prasad
prop Prasad Talkies ...Petitioner in WP.No.47723/06

M/s. Dharshan Cine Creators
rep by its Proprietor
Mr. C. Gajendran ...Petitioner in WP.No.689/07

M/s. Madras Talkies
rep by its partner Mr. Maniratnam
...Petitioner in WP.No.1277/07

KSA Films
rep by its proprietor
Mr. K. S. Abubecker
...Petitioner in WP.No.1378/07

Surface Technics
rep by its Prop R. Manoharan
...Petitioner in WP.No.9551/07

Ch. Shekar Prop.
M/s. Supriya Combines ...Petitioner in WP.No.10262/07

M/s. Shanmuga films
Prop S. Kalidass ...Petitioner in WP.No.10807/07

M.S. Vijayakumar
Prop KAM Enterprises ...Petitioner in WP.No.15332/07

R. Sundara Kamaraj
Prop Manickavalli Creations
...Petitioner in WP.No.18420/07

VS

1. State of Tamilnadu
rep.by its Secretary,
to Govt.Commercial,
Taxes Department,
Fort st. George,
Chennai.9

... 1st Respondent in
All WPS

2. Abiramni Complex,
Purasawalkam High Road,
Chennai.7
3. Maharani Theatre,
Thandiarpet, Chennai.
4. Kasi Theatre: K.K.Nagar,
Chennai.
5. Vidya Theatre: Tambaram
6. Rohini Complex, Koyambadu,
Chennai.
7. Ganga Complex, Kulathur,
Chennai.
8. Aruna Complex, Kancheepuram
9. Lena/Vadhunathan Theatres,
Chidambaram.
10. Navaneetham Theatre,
Kallakurichi, SA Dist.
11. Velmurugan Theatre,
Kadalur, SA Dist.
12. Kaveri Theatre, Trichy.
13. Shanthi Theatre, Thanjavur.
14. Kasi Theatre, Kumbakonam.
15. Thinnappa Theatre, Karur.

- 16.G.M.Theatre, Dharmपुरi.
- 17.Amirtham Theatre, Madurai.
- 18.Mappillai Vinayagar
Theatre, Madurai.
- 19.K.G.Complex, Coimbatore.
- 20.Srisakthi Theatre, Tiruppur.
- 21.Krishna Theatre, Erode.

22.Nallappa/Durais Theatre,
Pollachi.

... Respondents 2 to
22 in W.P.No.7436/04

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Declaration declaring that the provision of Tamil Nadu Entertainment (Third Amendment) Act, 2003 (Tamil Nadu Act 15 of 2003) as unconstitutional, ultravires, illegal, void and unenforceable.

For Petitioner in WP.No.23720/03 Mr.S.Ashvin

For Petitioner in WP.No.22149/03 ,WP.No.27291/03
Mr.B.S.Gnanadesikan

For Petitioner in WP.No.1271/04

WP.No.40426/05

WP.No.3328/06

WP.No.8751/06

Mr.Saikrishnan for M/s.Sai Bharth & Ilan

For Petitioner in

WP.No.1305/04,36033/04,4123/05,36969/04,13388/05&

13390/05,24697/05,30635/05,33473/05,39134and

39135/05,1487/06,4945/06,8639/05&8640/06,8251/06,

6848/06,11366&11367/06,36743/05,8251/06,6609/06,13193/06and

13194/06,17574/06,17614/06,36399/06,41365/06and

41366/06,47723/06,50172/06,25293/06,36392/06,

1277/07,12888/07,15915,and 15916,15525,

15893,15476/07 :Mr.K.F.Manavalan

For Petitioner in

WP.No.7436/04

K.Harishankar
for M/s.Srinath Sridevan

For Petitioner in

WP.No.14618/04

M/s.V.Ravi

For Petitioner in

WP.No.20480/04

WP.No.23135/04 and WP.33955/06 Mr.K.P.Sanjeekumar

For Petitioner in

WP.No.24882/04

Mr.P.Thyagarajan

For petitioner in

WP.No.37157/04

WP.3883/05,6800/06

27992/06,19379/04,

24105/05,10262/07

18420/07.

:A.Chidambaram

For Petitioner in

WP.37621/04

Mr.P.Radhakrishnan

For Petitioner in

WP.No.28345/05

WP.No.12023/06

M/s.C.Jagadish

For Petitioner in

WP.No.37709/04

M/s.S.Muthuraman

For Petitioner in

WP.34213/05

M/s. Anand

For Petitioner in

W.P.37947/05

M/s.D.S.Rajasekaran

For Petitioner

in WP.No.9349/06

M/s.Eathirraj.P.S.

For Petitioner in

WP.9532/2006

WP.12171/06

V.D.Srinivasan

For Petitioner in

WP.No.24671/06

WP.No.1378/07

M/s.V.Nithiyanandhan

For Petitioner in

WP.No.689/07

WP.No.19425/07

M/s.Waraon and Sai Rams

For petitioner in
WP.No.10807/07

M/s.R.Karunakaran

For Petitioner in
WP.9551/07

Mr.P.Shanmugam

For petitioner in
WP.No.15332/07

M/s.P.Anbazhagan

For Petitioner in
Wp.No.28441/05

Mr.K.V.Jayakumar

For Respondents in
All WPs

Mr.Haja Nazirudeen
Spl.G.P.(Taxes)

COMMON JUDGMENT

P.K. MISRA, J

In this batch of writ petitions, the petitioners have challenged the validity of the provisions contained in Tamil Nadu Entertainment Tax (3rd Amendment) Act (15 of 2003).

2. Tamil Nadu Entertainments Tax, 1939 (hereinafter referred to as "the Act") contains provisions regarding levy of entertainment tax on various modes of entertainment including by cinema. Section 4 of the Tamil Nadu Entertainments Tax, 1939 envisages payment of entertainment tax at the rate of 25% of the gross payment for admission for any new film and at the rate of 20% for the old. By virtue of the provisions contained in such Amendment Act(No.15 of) 2003, hereinafter referred to as the "(3rd Amendment) Act", certain provisions have been inserted in the Tamil Nadu Entertainment Tax Act, 1939 making provisions for payment of entertainment tax at a higher rate on tickets of "dubbed films".

Section 3(3-A), inserted by (3rd Amendment) Act, is a definition clause according to which "dubbed film" means any film for cinematograph exhibition made or produced originally in a language other than Tamil and subsequently dubbed in Tamil language.

Section 4-H, inserted by such (3rd Amendment) Act, is as follows :-

"4-H. Tax on dubbed film. - (1)
Notwithstanding anything contained in this Act, there shall be levied and paid to the State Government, a tax (hereinafter referred to as the entertainment tax), on

each payment for admission to any cinematograph exhibition of dubbed film, calculated at the rate of fifty per cent of the gross payment for admission inclusive of the amount of the tax.

(2) Notwithstanding anything contained in sub-section (1), there shall be levied and paid to the State Government (except as otherwise expressly provided in this Act), on every taxable complimentary ticket, entertainment tax at the rate specified in sub-section (1), as if full payment had been made for admission to the entertainment according to the class of seat or accommodation which the holder of such taxable complimentary ticket is entitled to occupy or use; and for the purposes of this Act and the Tamil Nadu Local Authorities Finance Act, 1961 (Tamil Nadu Act No.52 of 1961), the holder of such taxable complimentary ticket shall be deemed to have been admitted on payment.

(3) Where the proprietor has exercised option to pay tax under Section 5-B and exhibits dubbed film on any day in the week, the tax in respect of payment for admission to such exhibition shall be calculated under sub-section (1) and the tax in respect of exhibition of other films in that week shall be calculated under Section 5-B proportionately.

(4) The tax levied under sub-section (1) shall be recovered from the proprietor.

(5) The provisions of this Act other than Sections 4, 4-B, 4-D, 4-E, 4-F, 4-G, 5, 5-A, 5-B, 5-C, 5-D, 5-E, 5-F and 5-G and the rules made thereunder shall, so far as may be, apply in relation to the tax payable under sub-section (1)."

3. Net result of such (3rd Amendment) Act is to the effect that, if any film made or produced originally in a language other than Tamil is subsequently dubbed in Tamil language and exhibited in any cinema theatre, obviously within Tamil Nadu, entertainment tax shall be levied and paid to the State Government at the rate of 50% of the gross payment for admission.

4. The main contention raised by the petitioners is to the effect that there cannot be any discrimination regarding payment of entertainment between films originally produced in Tamil and films originally produced in any other language but, subsequently dubbed in Tamil. The liability sought to be fastened by such amendment i.e., payment of entertainment tax at a higher rate in respect of dubbed Tamil films, being discriminatory, arbitrary, capricious and without any rationale, is violative of the provisions contained in Articles 14 and 19 of the Constitution of India. This also affects

the freedom of expression.

5. In the counter affidavit originally filed on behalf of the State Government, it has been stated that even before the present enactment, by virtue of Tamil Nadu Entertainments Tax (Second Amendment) Act, 1994 (Act 38 of 1994), hereinafter referred to as "(2nd Amendment) Act, the provisions contained in the Tamil Nadu Entertainments Tax Act, 1939 has been amended. As per the provisions then extant before such amendment by virtue of Tamil Nadu Act 38 of 1994, entertainment tax was levied at the rate of 40%. By virtue of Act 38 of 1994, a classification was made between dubbed films and non-dubbed films and entertainment tax payable in respect of dubbed films was 50% of the gross payment for admission. At that stage, W.P.No.20229 of 1994 had been filed. However, such writ petition was subsequently withdrawn as the classification between the dubbed films and non-dubbed films was done away by the (2nd Amendment) Act, 1998 (Tamil Nadu Act 47 of 1998). However, by virtue of Tamil Nadu Act 47 of 1998, a classification was made relating to payment of entertainment tax for exhibition of new films and old films at the rate of 30% and 20% respectively. By virtue of (3rd Amendment) Act, provisions have been incorporated providing for payment of entertainment tax in respect of films dubbed in Tamil and in respect of other films. It has been indicated in the counter that films originally produced in other language but, subsequently dubbed in Tamil, stand on a different footing as compared to the films originally produced in Tamil and it cannot be said that the provisions are either arbitrary or discriminatory. It has been stated that since the production cost of a film originally produced in Tamil is high as compared to the dubbing cost of a film dubbed into Tamil from any other language, producers of Tamil film are facing steep competition and, therefore, such amendment has been made raising entertainment tax payable in respect of films dubbed into Tamil. It is further stated that the impugned amendments having been made to save Tamil film industry, it cannot be said that there is no rationale behind the classification and there is reasonable nexus with the objects sought to be achieved.

6. During pendency of the writ petitions, a further counter affidavit has been filed on behalf of the State, wherein it is indicated that intention of the (3rd Amendment) Act is to encourage of new films within the State and to enable low budget Tamil films to withstand the competition from films produced in other languages and dubbed in Tamil. It has been further stated that since large number of such dubbed films were on the higher side and consequently affecting livelihood of several sections of film industry such as professionals, artists, technicians, musicians, etc., within the State, the impugned amendment has been introduced. In the counter, justification is made out on the basis of the provisions contained in Article 38 of the Constitution. It is

further stated that films originally produced in Tamil and the films produced in other languages, but subsequently dubbed in Tamil, form different classes and there is no discrimination either on the basis of language alone or even otherwise.

7. In course of hearing of the present batch of writ petitions, learned Special Government Pleader, apart from highlighting the stand taken in the counter affidavit, relevant portions of which have already been summarized, has submitted that there being a strong presumption of validity of a statute, it is for the petitioners to plead and prove as to how the provisions contained in the (3rd Amendment) Act are discriminatory or violative of Article 19. On the other hand, it is submitted that the object is to encourage and protect the producers, who produce their films in Tamil, as they have to face stiff competition in the shape of dubbed Tamil films.

8. In 2007(3) CTC 596 (AASHIRWAD FILMS v. UNION OF INDIA AND OTHERS), validity of the provisions of Andhra Pradesh Entertainment Tax, 1939 providing for payment of entertainment tax at the rate of 10% for Telugu films and 24% for non-Telugu films, was in question. In the said case, it was observed :-

"10. A taxing statute, however, as is well known, is not beyond the pale of challenge under Article 14 of the Constitution of India.

11. In Chhotabhai v. Union of India, AIR 1962 SC 1006, it was stated :

"(37) But it does not follow that every other Article of Part III is inapplicable to tax laws. Leaving aside Art.31(2) that the provisions of a tax law within legislative competence could be impugned as offending Art.14 is exemplified by such decisions of this Court as Suraj Mal Mohta & Co. v. A.V. Visvanatha Sastri, 1955(1) SCR 448: AIR 1954 SC 545, and Shree Meenakshi Mills Ltd., Madurai v. A.V. Visvanatha Sastri, 1955(1) SCR 787 : AIR 1955 SC 13. In Moopil Nair v. State of Kerala, AIR 1961 SC 552 the Kerala Land Tax Act was struck down as unconstitutional as violating the freedom guaranteed by Art.14. It also goes without saying that if the imposition of the tax was discriminatory as contrary to Art.15, the levy would be invalid."

12. A taxing statute, however, enjoys a greater latitude. An inference in regard to contravention of Article 14 would, however, ordinarily be drawn if it seeks to impose on the same class of persons or occupations similarly situated or an instance of taxation which leads to inequality. The taxing event under the Andhra Pradesh

State Entertainment Tax Act is on the entertainment of a person. Rate of Entertainment tax is determined on the basis of the amount collected from the visitor of a cinema theatre in terms of the entry fee charged from a viewer by the owner thereof.

13. It is not the case of the respondent that the imposition of different rates of entertainment tax is justified on any ground other than language. Entertainment of a person may not wholly depend upon the language of the film he sees. A film may be produced in one language and may be dubbed in another. Even within a State, people belonging to different regions may speak different languages, although the State language may be one.

...

18. The fact of the matter remains that it is difficult to laud the objective of the taxation statute in the instant matter which differentiates on the basis of language alone. This is definitely derisive of social attributes of the polity and Article 14 in its basic form i.e. equality before law. If any classification seeks to take refuge of exception under reasonable differentia category under Article 14, it must stay clear of the broad constitutional mandate as mentioned hereinbefore. In the instant matter, the classification solely on the basis of language, fails in its initiative to be called reasonable. The classification thus is arbitrary and as such violative of Article 14 of the Constitution of India.

...

25. The purported classification only on the basis of language without anything more and in particular having regard to the difference in the rate of tax, in our opinion is ex-facie arbitrary. The burden was, therefore, on the State to show that the imposition was justified. Different rates of entertainment tax had not been levied having regard to the nature of theatre, the area where they were situated or extent of occupancy, etc. It has not been explained as to whether cinema theatres exhibiting Telugu films suffer from any disadvantage which others had not been. It has not been shown as to why the same theatre where films in different languages are exhibited would be a class apart, only because at different times exhibit films produced in different languages. Moreover, how Telugu films have been treated as a separate class have not been stated. Although the legislature enjoys a greater freedom and latitude in choosing person upon whom and suggest upon which it can levy tax, it is trite that taxing legislations are not

immune from attack based on Article 14. It is also not the case of the respondent State that in imposing different rate of tax, they intend to achieve an avowed object envisaged under Part IV of the Constitution of India.

26. We, furthermore, may take judicial notice of the fact and keeping in view that this case was tagged with other matters where it had been brought to our notice that some States have been making hostile discriminations at the instance of the distributors of the films produced in local languages. State of Andhra Pradesh imposed the said tax on the said basis which is per se discriminatory in nature." (Emphasis added)

9. Learned counsel for the State has, however, submitted that ratio of the aforesaid decision of the Supreme Court is not applicable inasmuch as in the said case there was a discrimination only on the basis of language and non-Telugu films were subjected to entertainment tax on a much higher rate as compared to Telugu films. According to the learned Special Govt. Pleader, in the present case, there is no discrimination on the basis of language. It has been submitted by him that the films originally produced in Tamil and films originally produced in other language - but subsequently dubbed in Tamil form two different classes and since much less expenditure is incurred for dubbing the film in Tamil rather than producing a film in Tamil, the Producers of Tamil films cannot be expected to compete against such dubbed films and, therefore, there is a need to protect the interest of Tamil film producers. Learned Special Govt. Pleader has further submitted that the objects and reasons for the (2nd Amendment) Act, by which similar provisions had been made, can justify the present provisions. The objects and reasons of the (2nd Amendment) Act, are extracted hereunder:-

"Statement of Objects and Reasons - With a view to encourage the production of new films in this State and to enable low budget Tamil films to withstand the competition from films production on other languages and dubbed in Tamil, it is proposed to increase the rate of entertainment tax on films dubbed into Tamil and screened in this State by ten percentage points in each slab by amending the Tamil Nadu Entertainments Tax Act, 1939 (Tamil Nadu Act X of 1939) suitably."

10. In spite of the valiant efforts made by the learned Special Government Pleader, we are not impressed by the submission made on behalf of the State justifying the imposition of entertainment tax at a higher rate for the films dubbed in Tamil. First of all it has to be remembered that burden of entertainment

tax is ultimately borne by moviegoer rather than by a Producer, distributor or film exhibitor. The taxing event under the Act is on the entertainment of the moviegoer. The rate of tax is determined on the basis of the amount collected from such person. We fail to see any reason as to why a person who sees a film dubbed into Tamil would be required to pay more than a person who watches an original Tamil film.

11. Even assuming that it is the producer who has to pay the tax, discrimination is writ large on the face of it and we fail to see any rationale for the purpose of payment of entertainment tax at different rates. A producer, who produces a film in Tamil and dubs such film in other language such as Telugu, English or Hindi and exhibits such film within Tamil Nadu is not required to pay at the rate of 50%. Similarly, a producer, whether within Tamil Nadu or without, produces a film in any other language such as Telugu, English or Hindi and exhibits such films within Tamil Nadu are also not required to pay entertainment tax at higher rate. Only a producer who produces a film in any other language such as Telugu, English and Hindi and subsequently dubs such film in Tamil and exhibits the same within Tamil Nadu will be affected by such imposition of entertainment tax at a differential rate.

12. We hardly see any rationale behind such a provision. According to us, there is no basis for classification, far less any reasonable basis nor there is any nexus between the classification and object to be achieved. If the object is to discourage people from watching dubbed Tamil films mainly because such films are ordinarily produced by outside producers, such a provision cannot stand on the scrutiny of provisions relating to equality nor it can be construed as a reasonable restriction in the interest of general public. In our considered opinion, discrimination is solely based on language in the sense that a picture, which is originally produced in Tamil, is subjected to entertainment tax at a much lower rate, whereas a picture originally produced in any language other than Tamil, but subsequently dubbed in Tamil, is subjected to entertainment tax at a higher rate.

13. Even the contention that freedom of expression is being unreasonably curtailed appears to be justified. A production of film by a producer in any other language is a fundamental right of freedom of expression as well as right to carry on business. If he exercises the freedom of expression by dubbing films in a particular language, the provisions contemplate restriction in the shape of payment of tax at a higher rate cannot be considered as a reasonable restriction in the interest of general public, but on the other hand it may deprive the opportunity of viewing movies originally produced in other languages depicting other social mores and cultures. Similarly, the freedom of a producer to carry on

business of showing dubbed films is also being adversely affected without any reasonable basis.

14. Learned counsel representing the State has placed reliance upon several decisions of the Supreme Court holding that there is a greater latitude in classifying different persons for the purpose of taxation at different rates. It is not necessary to refer the decisions on such aspect as the principle is well known and, moreover, many of such decisions were noticed and analysed in 2007(3) CTC 596 (cited supra).

15. Learned counsel for the State has also submitted that similar provisions had been made in 1994 and the objects and reasons of such provisions constitute a valid basis. The fact that similar provisions have been made in 1994 is immaterial, particularly when subsequently such provisions had been withdrawn. The object of giving protection to producers of original films in Tamil may appear to be justified only when a tunnel vision is adopted. We do not find any reasonable nexus between the object to be achieved and the basis of classification.

16. We are also not impressed by the submission made by the Special Govt. Pleader that for dubbing a picture no artistic skill is required nor it has the effect of encouraging the local artists. Even for dubbing the film certain amount of skill in the shape of preparing or translating the lyrics, writing new lyrics and writing and recording such dialogues and lyrics is required to be done. At any rate, keeping in view the overriding sentiment that from "Kashmir and Kanyakumari - India is One", such a policy can scarcely be encouraged.

17. As we had already noticed, the burden of taxation is ultimately passed on to the moviegoers and the producers or distributors or exhibitors are merely collecting agents. From the point of view of a moviegoer, it makes any difference to him, whether a film good, bad or indifferent, is made originally in Tamil or such a film made in any other language is subsequently dubbed in Tamil. It is very difficult to fathom as to why a moviegoer, who is very interested in watching a film should be subjected to pay higher rate of entertainment tax merely because the film which he wants to view was originally produced in some other language and was subsequently dubbed in Tamil. From the view point of such a person, obviously the provisions of the (3rd Amendment) Act are discriminatory.

18. For the aforesaid reasons, we are unable to uphold the validity of the provisions contained in the Amending Act 15 of 2003. Accordingly, all the writ petitions are allowed, however, there would be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

To

1. The Secretary to Government,
State of Tamilnadu,
Commercial Taxes Department,
Fort St. George,
Chennai 600 009.

40 ccs to Mr.K.F. Manavalan, Advocate, Sr. 47719 to 47722 , 47725, 47726, 47727, 47728

2 ccs to Mr.B.S. Ganadesikan, Advocate, Sr. 47325

1 cc to Mr.R. Karunagaran, Advocate, Sr. 47386

2 ccs to M/s. Waraon and Sairams, Advocate, Sr. 47136, 47137

2 ccs to Special Government Pleader (Taxes), Sr. 47803

1 cc to Ethiraj.P.S. Advocate, sr. 47693

1 cc to Mr. Sai Bharath Advocate, Sr. 46989

1 cc to Mr.K. Sridhar, Advocate, Sr. 47337

W.P.Nos.23720/2003 & Batch

AKR , MS (CO)

kk 24/10