



**COMPETITION COMMISSION OF INDIA**

**Case No. 54 of 2014**

**In re:**

**M/s Red Giant Movies  
No.180, Murasoli Achagam,  
Kodambakkam High Road,  
Nungambakkam, Chennai - 34**

**Informant**

**And**

**1. The Secretary to Government**

**Commercial Taxes & Registration Department  
Government of Tamil Nadu  
Tamil Nadu**

**Opposite Party No. 1**

**2. The Commissioner**

**Commercial Taxes Department  
Government of Tamil Nadu  
Tamil Nadu**

**Opposite Party No. 2**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

**Mr. M. L. Tayal  
Member**

**Mr. S. L. Bunker  
Member**



**Mr. Sudhir Mital**

**Member**

**Mr. Augustine Peter**

**Member**

**Mr. U. C. Nahta**

**Member**

**Appearances:** Shri Vivek Singh, Advocate for the Informant.

**Order under section 26(2) of the Competition Act, 2002**

1. The present information has been filed by M/s Red Giant Movies (the '**Informant**') under section 19(1) (a) of the Competition Act, 2002 (the '**Act**') against the Secretary, Commercial Taxes & Registration Department, Government of Tamil Nadu (the '**Opposite Party No. 1**') and the Commissioner, Commercial Taxes Department, Government of Tamil Nadu (the '**Opposite Party No. 2**') alleging *inter alia* contravention of the provisions of section 4 of the Act.
2. Facts, as gathered from the information, may be briefly noted:
  - 2.1 The Informant is a partnership firm and is engaged in full length movie production, distribution and other allied activities in the cinema industry in South India.
  - 2.2 The Informant submits that since one of its partners is son of a former Deputy Chief Minister of Tamil Nadu, with the change of regime in the State of Tamil Nadu, it has been sidelined by the present Government and more particularly, it has been repeatedly discriminated in grant of Entertainment



Tax exemption for movies produced by it. It has been submitted that vide Tamil Nadu government order G.O. (Standing) No. 72 dated 22.07.2006 all movies having Tamil names were exempted from payment of Entertainment Tax whereas, in spite of having Tamil names, the movies produced by the Informant were not considered for tax exemption which caused huge revenue loss to it. Also, this created a situation whereby the Informant is unable to compete with other cinema production houses that were granted entertainment tax exemptions.

2.3 It is averred that the Opposite Party No. 2 is the authority under whom a committee, consisting of official and non-official members, is appointed by the Government of Tamil Nadu for preview of the movies to grant entertainment tax exemption and the committee is expected to view the movies and either recommend or reject the application seeking for entertainment tax exemption. The Opposite Party No. 1 is expected to issue a Government Order granting entertainment tax exemption for the movies having Tamil names as per the Government Orders, i) dated 22.07.2006, bearing G.O (Standing) No. 72 of the Commercial Taxes and Registration (C1) Department, ii) dated 21.07.2011 bearing G.O. No. 89 of the Commercial Taxes and Registration (C1) Department, iii) dated 03.01.2012 bearing G. O (Standing) No. 002 of the Commercial Taxes and Registration (C1) Department, and iv) dated 09.01.2012, bearing executive order No. sk-4/569/2012 of the Principal Secretary/ Commercial Taxes Commissioner.

2.4 It is averred that the entertainment tax exemption shall become applicable only from the date of passing of the Government order and not from the date of filing the application or from the date of release of the movie. Hence, if the tax exemption is delayed and given after the release of the movie, the movie distributors and the theatre owners have to pay the 30% entertainment tax until the date of passing of the government order granting exemption, and all taxes paid prior to the passing of the order cannot be reclaimed if exemption is granted for the movie subsequent to its screening.



2.5 It is, therefore, alleged that the Opposite Parties are in a dominant position with regard to the grant of entertainment tax exemption and the Informant and other similar enterprises are completely at the mercy of the Opposite Parties since they not only have to wait endlessly for the verdict of the Opposite Party No. 1 after having applied for exemption of tax but also forced to bear the brunt of demands for illegal gratification for issuing the exemption on most occasions.

2.6 It is also stated in the information that the Informant firm has been forced to move the Hon'ble High Court of Madras repeatedly to obtain tax exemption orders or to obtain expeditious orders from the government due to the biased attitude exhibited by the government towards it.

2.7 It is alleged that in view of this blatant discrimination shown towards the Informant, theatre owners are reluctant to purchase movies produced by the Informant since there would always be a delay in obtaining tax exemption or tax exemption may not be granted at all to its movies and therefore with a view to avoid any loss, the theatre owners choose movies of other producers over the movies produced by the Informant.

2.8 Lastly, it is alleged that with the knowledge that the Informant is being targeted by the Opposite Parties in the grant of tax exemptions, leading cine stars hesitate to act in movies produced by it and thereby the Informant faced difficulties to produce films with popular stars and is forced to settle down for stars with lesser demand, causing a severe loss to it.

2.9 Based on the above averments and allegations, the Informant has sought the following relief from the Commission:

- i) To direct the Opposite Parties to reimburse by way of compensation at the rate of 30% or such other rates of all the taxes which have been collected from the Informant and its distributors through the theatre owners for the



movies produced by the Informant and for which tax exemption were granted much after the release of the movies; and

ii) To direct the Opposite Parties to compensate the Informant for mental agony and for costs quantified at Rupees one crore for each movie.

3. The Commission has perused the material available on record besides hearing the counsel for the Informant who appeared before the Commission on 30.09.2014.
4. The Informant; which is engaged in full length movie production, distribution and other allied activities in the cinema industry in South India; appears to be aggrieved by the alleged discriminatory attitude exhibited by the Opposite Parties in the grant of entertainment tax exemption for movies produced by it.
5. It is the case of the Informant that one of its partners is son of a former Deputy Chief Minister of Tamil Nadu and hence due to the change in regime, the Informant is being sidelined by the present government in the matter of tax exemption causing severe loss in revenue to it. It is alleged that due to this conduct of the Opposite Parties, the Informant is unable to compete with other cinema production houses that are granted entertainment tax exemption very liberally.
6. The Commission notes that the information is not maintainable as the Opposite Parties do not constitute 'enterprise' within the meaning of the said term as defined in section 2(h) of the Act.

7. For felicity of reference, the definition is quoted below:

*“Section 2(h): Enterprise means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or*



*control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.*

*Explanation-For the purposes of this clause-*

- (a) “activity” includes profession or occupation;*
- (b) “article” includes a new article and “service” includes a new service;*
- (c) “unit” or “division”, in relation to an enterprise, includes—*
  - (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;*
  - (ii) any branch or office established for the provision of any service;*

8. A bare perusal of the definition reveals that for an entity to be an enterprise, the following conditions need to be fulfilled:

- i) it must be a *person* or department of the Government;



ii) it must be *engaged in* the specified economic activities; and

iii) such activity must not be a *sovereign activity*.

9. The gravamen of the Informant emanates out of the alleged conduct of the Opposite Parties in the matter of granting entertainment tax exemption for movies produced by it. It may be pointed out that the activities relatable to sovereign functions have been exempted from the purview of the Act. The Act gives illustrative list of sovereign function by way of examples of atomic energy, currency, defence and space. However, the same is not exhaustive.

10. The term sovereign function came up directly for consideration before the Hon'ble High Court of Delhi in the context of the Competition Act itself in the case of *Union of India v. Competition Commission of India & Ors.*, W.P. (C) 993 of 2012 decided on 23.02.2012 where the Hon'ble Court dismissing the petition filed by Union of India through the Chairman, Railway Board, Ministry of Railways quoted with approval the order of the Commission to the following effect:

*“29. From the analysis of case law on the question as to what constitutes “sovereign” or “non-sovereign” function, it appears that the courts have taken a very narrow view of the term “sovereign function” by confining the same to strict constitutional functions of the three wings of the State. Welfare activities, commercial activities and economic adventures have been kept outside the purview of the term “sovereign functions”.*

*30. In the premises, it is held that only primary, inalienable and non-delegable functions of a constitutional government should qualify for exemption within the meaning of “sovereign functions” of the government under section 2(h) of the Competition Act, 2002. Welfare, commercial and economic activities, therefore, are not covered within*



*the meaning of “sovereign functions” and the State while discharging such functions is as much amenable to the jurisdiction of competition regulator as any other private entity discharging such functions.”*

11. It may be observed that the services rendered by the Government in discharge of the sovereign functions of the State include maintenance of law & order, judiciary, collection of taxes, maintenance of military and international relations.
12. As the impugned conduct of the Opposite Parties is relatable to collection of taxes- a sovereign function- the same does not fall within the purview of the Act and the Opposite Parties in discharge of such functions do not constitute ‘enterprise’ within the meaning of the term as given in section 2(h) of the Act.
13. Resultantly, the provisions of section 4 of the Act have no manner of application to the facts of the present case. The relief of compensation as sought for by the Informant is also beyond the powers of the Commission.
14. In view of the above discussion, no case of contravention of the provisions of section 4 of the Act is made out against the Opposite Parties and the information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.
15. The Secretary is directed to inform the parties accordingly.

**Sd/-  
(Ashok Chawla)  
Chairperson**





**Sd/-  
(M. L. Tayal)  
Member**

**Sd/-  
(S. L. Bunker)  
Member**

**Sd/-  
(Sudhir Mital)  
Member**

**Sd/-  
(Augustine Peter)  
Member**

**Sd/-  
(U. C. Nahta)  
Member**

**New Delhi**

**Date: 29/10/2014**