

(2010) 03 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 56, 101, 276, 292 and 427
(Tax) of 2005.

Abhay Cinema

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Constitution of India, 1950 — Article 301, 304

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 11(1), 11(3), 12, 2, 29(A)

Uttar Pradesh Entertainments and Betting Tax Rules, 1981 — Rule 12, 13, 13(1), 2, 28

Uttar Pradesh Sales Tax Act, 1948 — Section 3(A), 8(1)

Uttar Pradesh Trade Tax Act, 1948 — Section 4(A)

Citation : (2010) 36 VST 272

Hon'ble Judges : S.P. Mehrotra, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The controversy involved in the aforesaid five writ petitions is the same. The facts of the aforementioned writ petitions are similar, and the questions of law involved in the said writ petitions are common, therefore, the same are being disposed of by this common judgment. Civil Misc. Writ Petition No. 427 (Tax) of 2005 will be treated as the leading case.

2. The Petitioner in each of the above five writ petitions is the owner/licensee of cinema hall and is aggrieved by the imposition of the entertainment tax for certain period consequent to the withdrawal of exemption from entertainment tax granted by the State Government of Uttar Pradesh in respect of film "Zamin". M/s. Ginni Arts was the distributor of the said film "Zamin" for the State of Uttar Pradesh.

3. The affidavits have been exchanged between the parties in the above writ petitions.

4. It appears that the State Government of Uttar Pradesh issued a Government order dated June 13, 2000 laying down policy for grant of exemption from entertainment tax in respect of films. One of the conditions for grant of exemption laid down in Clause 6 of the said policy was that a maximum of 12 prints of the film would be exhibited at one time in the entire State of Uttar Pradesh, and only one print would be exhibited at one time in a District. The said Government order dated June 13, 2000 has been filed as part of annexure 2 to the aforementioned Civil Misc. Writ Petition No. 56 (Tax) of 2005. The said policy, as contained in the said Government order dated June 13, 2000, was amended by the Government order dated April 16, 2003 and by the Government order dated May 17, 2003.

5. Copies of the said Government order dated April 16, 2003 and the Government order dated May 17, 2003 have been filed as part of annexure 2 to Civil Misc. Writ Petition No. 56 (Tax) of 2005.

6. It further appears that by the Government order dated October 16, 2003, exemption from entertainment tax was granted in respect of film "Zamin" with immediate effect for a period of 90 days (three months) in exercise of powers conferred u/s 11(1) of the U. P. Entertainments and Betting Tax Act, 1979 (hereafter also referred to as, "the 1979 Act") subject to the following three conditions :

7. Copy of the said Government order dated October 16, 2003 has been filed as annexure 1 to the aforementioned Civil Misc. Writ Petition No. 427 (Tax) of 2005. Copy of the said Government order has also been filed as annexure CA1 to the counter-affidavit filed on behalf of the Respondents in the aforementioned Civil Misc. Writ Petition No. 56 (Tax) of 2005.

8. It will be noticed that condition No. 1 in the aforesaid Government order dated October 16, 2003 provided that a maximum of 12 prints of the above film "Zamin" would be exhibited at one time in the entire State of Uttar Pradesh and only one print of the film would be exhibited at one time in a District.

9. It further appears that the Entertainment Tax Commissioner, Uttar Pradesh, sent a communication dated December 6, 2003 to the State Government, inter alia, stating that the film "Zamin" was exhibited at the same time in more than one cinema hall in various districts mentioned in the said communication, and further, the said film was being exhibited at the same time in 23 districts, and, thus, Condition No. 1, as contained in the Government order dated October 16, 2003, had been violated. The Entertainment Tax Commissioner in the said communication recommended for consideration of the withdrawal of the exemption granted to the film "Zamin" by the said Government order dated October 16, 2003.

10. Copy of the said communication dated December 6, 2003 has been filed as annexure CA2 to the counter-affidavit filed on behalf of the Respondents in Civil Misc. Writ Petition No. 56 (Tax) of 2005.

11. In view of the said communication dated December 6, 2003, the State Government by the Government order dated November 24, 2004 withdrew the exemption from entertainment tax granted to the film "Zamin" by the Government order dated October 16, 2003.

12. Copy of the said Government order dated November 24, 2004 has been filed as annexure CA3 to the counter affidavit filed on behalf of the Respondents in the aforementioned Civil Misc. Writ Petition No. 56 (Tax) of 2005.

13. Pursuant to the said Government order dated November 24, 2004, the Entertainment Tax Commissioner, Uttar Pradesh, issued directions by his communication dated November 25, 2004 to the Deputy Entertainment Tax Commissioner, Uttar Pradesh, Assistant Entertainment Tax Commissioner, Uttar Pradesh, District Entertainment Tax Officer, Uttar Pradesh and In-charge of Entertainment Tax Inspector, Uttar Pradesh, inter alia, directing them to take necessary action for computation and realization of entertainment tax for the relevant period in view of the withdrawal of exemption from entertainment tax granted to the film "Zamin".

14. Copy of the said communication dated November 25, 2004 has been filed as annexure 3 to the aforementioned Civil Misc. Writ Petition No. 427 (Tax) of 2005.

15. In view of the said Government order dated November 24, 2004 and the said communication dated November 25, 2004, proceedings were taken in respect of the Petitioner in each of the aforementioned five writ petitions, as detailed below :

1. Civil Misc. Writ Petition No. 427 (Tax) of 2005

In Civil Misc. Writ Petition No. 427 (Tax) of 2005, a notice dated December 15, 2004 u/s 12 of the 1979 Act was issued by the District Magistrate, Varanasi, to the Petitioner M/s. Abhay Cinema, Varanasi proposing to impose Rs. 47,668.94 as entertainment tax for the exhibition of the film "Zamin" in the cinema hall of the Petitioner during the period from November 21, 2003 to November 27, 2003 in view of the withdrawal of exemption from entertainment tax on account of violation of condition No. 1, as contained in the Government order dated October 16, 2003.

Copy of the said notice dated December 15, 2004 has been filed as annexure 4 to the said writ petition.

In response to the said notice, the Petitioner submitted its reply dated January 5, 2005, copy whereof has been filed as annexure 5 to the writ petition.

Thereafter, the District Magistrate, Varanasi, passed an order dated February 8, 2005, inter alia, assessing entertainment tax as Rs. 47,668.94 in respect of the exhibition of the film "Zamin" during the period from November 21, 2003 to November 27, 2003 and directing the Petitioner to deposit the said amount or else the same would be realized as arrears of land revenue u/s 34 of the 1979

Act.

Copy of the said order dated February 8, 2005 has been filed as annexure 6 to the writ petition.

2. Civil Misc. Writ Petition No. 56 (Tax) of 2005

In Civil Misc. Writ Petition No. 56 (Tax) of 2005, a notice dated December 16, 2004 presumably u/s 12 of the 1979 Act was issued by the District Magistrate, Allahabad, to the Petitioner Raj Karan Palace, Allahabad proposing to impose Rs. 17,536.70 as entertainment tax for the exhibition of the film "Zamin" in the cinema hall of the Petitioner during the period from December 19, 2003 to December 25, 2003 in view of the withdrawal of exemption from entertainment tax on account of violation of condition No. 1, as contained in the Government order dated October 16, 2003.

Copy of the said notice dated December 16, 2004 has been filed as annexure 7 to the said writ petition.

From a perusal of the allegations made in paragraph 19 of the writ petition, it is evident that the Petitioner did not give any reply to the said notice. In the circumstances, it appears that the Respondents finalized the assessment of Rs. 17,536.70 as mentioned in the said notice dated December 16, 2004.

3. Civil Misc. Writ Petition No. 101 (Tax) of 2005

In Civil Misc. Writ Petition No. 101 (Tax) of 2005, a notice dated December 15, 2004 u/s 12 of the 1979 Act was issued by the District Magistrate, Gorakhpur, to the Petitioner Menka Theatre, Gorakhpur, proposing to impose Rs. 1,60,541.25 as entertainment tax for the exhibition of the film "Zamin" in the cinema hall of the Petitioner during the period from October 24, 2003 to November 13, 2003 in view of the withdrawal of exemption from entertainment tax on account of violation of condition No. 1, as contained in the Government order dated October 16, 2003.

Copy of the said notice dated December 15, 2004 has been filed as annexure 6 to the said writ petition.

In response to the said notice, the Petitioner submitted its reply dated December 17, 2004, copy whereof has been filed as annexure 7 to the writ petition.

Thereafter, the District Magistrate, Gorakhpur, passed an order dated December 27, 2004, inter alia, assessing entertainment tax as Rs. 1,60,541.25 in respect of the exhibition of the film "Zamin" during the period from October 24, 2003 to November 13, 2003 and directing the Petitioner to deposit the said amount or else the same would be realized as arrears of land revenue u/s 34 of the 1979 Act.

Copy of the said order dated December 27, 2004 has been filed as annexure 8 to the writ petition.

It further appears that on December 29, 2004 the Petitioner moved an application praying for grant of 30 days" period for solving the matter. The said application was rejected by the District Magistrate, Gorakhpur, by the order dated December 29, 2004, copy whereof has been filed as annexure 9 to the writ petition.

It is further relevant to note that by the Government order dated February 17, 2005, the policy for grant of exemption from entertainment tax, as contained in the aforesaid Government orders dated June 13, 2000, April 16, 2003 and May 17, 2003 was amended, and it was provided that in case of grant of exemption from entertainment tax, a maximum of 12 prints would be exhibited tax-free at one time in the entire State of Uttar Pradesh, and there would be no restriction on exhibition of more than one print at one time in a District; and that excepting exhibition of 12 tax-free prints, there would be no other restriction on tax-free exhibition.

Copy of the said Government order dated February 17, 2005 has been filed as annexure RA 1 to the rejoinder affidavit filed on behalf of the Petitioner in the said writ petition.

It further appears that pursuant to the said Government order dated February 17, 2005, the Petitioner moved an application dated February 23, 2005 before the District Magistrate, Gorakhpur, inter alia, praying for refund of the entertainment tax deposited by the Petitioner. Copy of the said application has been filed as annexure RA 2 to the aforesaid rejoinder affidavit.

By the order dated March 4/6, 2005 the District Magistrate, Gorakhpur, rejected the said application dated February 23, 2005 filed on behalf of the Petitioner. The District Magistrate, Gorakhpur, inter alia, concluded that the matter pertaining to the Petitioner would be decided in the light of the Government order dated November 24, 2004 whereby exemption from entertainment tax granted to the film "Zamin" was withdrawn, and the amendment made by the Government order dated February 17, 2005 could not be applied retrospectively in the case of the Petitioner. Copy of the said order of the District Magistrate, Gorakhpur dated March 4/6, 2005 has been filed as annexure RA 3 to the aforesaid rejoinder affidavit.

4. Civil Misc. Writ Petition No. 292 (Tax) of 2005

In Civil Misc. Writ Petition No. 292 (Tax) of 2005, a notice dated December 15, 2004 u/s 12 of the 1979 Act was issued by the District Magistrate, Varanasi to the Petitioner-Yamuna Picture Palace, Varanasi proposing to impose Rs. 31,667.52 as entertainment tax for the exhibition of the film "Zamin" in the cinema hall of the Petitioner during the period from December 5, 2003 to December 11, 2003 in view of the withdrawal of exemption from entertainment tax on account of violation of condition No. 1, as contained in the Government order dated October 16, 2003.

Copy of the said notice dated December 15, 2004 has been filed as annexure 4 to the said writ petition.

In response to the said notice, the Petitioner submitted its reply dated December 28, 2004, copy whereof has been filed as annexure 5 to the writ petition.

Thereafter, the District Magistrate, Varanasi, passed an order dated February 8, 2005, inter alia, assessing entertainment tax as Rs. 31,667.52 in respect of the exhibition of the film "Zamin" during the period from December 5, 2003 to December 11, 2003 and directing the Petitioner to deposit the said amount or else the same would be realized as arrears of land revenue u/s 34 of the 1979 Act.

Copy of the said order dated February 8, 2005 has been filed as annexure 6 to the writ petition.

5. Civil Misc. Writ Petition No. 276 (Tax) of 2005

In Civil Misc. Writ Petition No. 276 (Tax) of 2005, a notice dated December 15, 2004 u/s 12 of the 1979 Act was issued by the District Magistrate, Varanasi, to the Petitioner, M/s. Chhavi Mahal, Varanasi proposing to impose Rs. 51,385.92 as entertainment tax for the exhibition of the film "Zamin" in the cinema hall of the Petitioner during the period from November 14, 2003 to November 20, 2003 in view of the withdrawal of exemption from entertainment tax on account of violation of condition No. 1, as contained in the Government order dated October 16, 2003.

Copy of the said notice dated December 15, 2004 has been filed as annexure 4 to the said writ petition.

In response to the said notice, the Petitioner submitted its reply dated December 22, 2004, copy whereof has been filed as annexure 5 to the writ petition.

Thereafter, the District Magistrate, Varanasi, passed an order dated February 8, 2005, inter alia, assessing entertainment tax as Rs. 51,385.92 in respect of the exhibition of the film "Zamin" during the period from November 14, 2003 to November 20, 2003 and directing the Petitioner to deposit the said amount or else the same would be realized as arrears of land revenue u/s 34 of the 1979 Act.

Copy of the said order dated February 8, 2005 has been filed as annexure 6 to the writ petition.

16. We have heard Shri Govind Krishna, Shri Satish Chaturvedi and Shri Tarun Verma, learned Counsel for the Petitioners and Shri A.C. Tripathi, learned standing counsel appearing for the Respondents, and perused the records.

17. Before proceeding to deal with common questions involved in the aforementioned five writ petitions, it is necessary to deal with certain specific points raised in some of the writ petitions.

18. In Civil Misc. Writ Petition No. 56 (Tax) of 2005, it is alleged in the writ petition that the Petitioner was not given any opportunity to place the correct position before imposition of entertainment tax. The said allegation has been disputed in the counter-affidavit filed on behalf of the Respondents, and it has been pointed out that the notice dated December 16, 2004 (annexure 7 to the said writ petition) gave opportunity to the Petitioner.

19. As noted in the earlier part of this judgment, the allegations made in paragraph 19 of the said writ petition make it evident that the Petitioner did not give any reply to the said notice dated December 16, 2004. In the circumstances, it appears that the Respondents finalized the assessment of Rs. 17,536.70 as mentioned in the said notice dated December 16, 2004.

20. In view of the above, we are of the opinion that the plea of the Petitioner in the said writ petition that it (Petitioner) was not given any opportunity before the assessment of entertainment tax is misconceived and incorrect.

21. A perusal of the averments made in the aforementioned writ petitions shows that the Petitioners have not disputed the fact that the film "Zamin" was exhibited at the same time in more than one cinema hall in various districts, and that more than 12 prints of the said film were at the same time exhibited in the State of Uttar Pradesh. However, in Civil Misc. Writ Petition No. 56 (Tax) of 2005 it has been alleged that while 12 prints of the said film were exhibited tax-free in the entire State of Uttar Pradesh, the remaining prints though exhibited at the same time were exhibited by charging entertainment tax as per law, therefore, condition No. 1, as contained in the Government order dated October 16, 2003, was not violated. The said allegations have been made in paragraphs 12, 13 and 14 of the said writ petition.

22. We have considered the said plea raised in Civil Misc. Writ Petition No. 56 (Tax) of 2005, and we find ourselves unable to accept the same.

23. Condition No. 1, as contained in the said Government order dated October 16, 2003, is clear that a maximum of 12 prints of the film "Zamin" would be exhibited at one time in the entire State of Uttar Pradesh. Once more than 12 prints of the said film were exhibited at the same time in the State of Uttar Pradesh, condition No. 1 stood violated. It was not at all material that while 12 prints were being exhibited tax free the remaining prints were being exhibited by charging entertainment tax as per the law, assuming the said allegations made in the writ petition to be correct.

24. As noted above, along with rejoinder affidavit filed in Civil Misc. Writ Petition No. 101 (Tax) of 2005, the Petitioner in the said writ petition has filed a copy of the Government order dated February 17, 2005 as annexure RA 1 to the said rejoinder-affidavit whereby the policy regarding exemption from entertainment tax as contained in the Government orders dated June 13, 2000, April 16, 2003 and May 17, 2003 was amended, and it was provided that in case of grant of exemption from entertainment tax, a maximum of 12 prints would be exhibited

tax-free at one time in the entire-State of Uttar Pradesh, and there would be no restriction on exhibition of more than one print at one time in a district; and that excepting exhibition of 12 tax-free prints, there would be no other restriction on tax-free exhibition. The application dated February 23, 2005 filed by the Petitioner for refund of the entertainment tax in view of the said Government order dated February 17, 2005, was rejected by the District Magistrate, Gorakhpur by the order dated March 4/6, 2005 (annexure RA 3 to the rejoinder affidavit).

25. We are of the opinion that the District Magistrate, Gorakhpur rightly rejected the said application by his order dated March 4/6, 2005. The exemption from entertainment tax granted to the film "Zamin" by the Government order dated October 16, 2003 was withdrawn by the Government order dated November 24, 2004 on account of violation of condition No. 1, as contained in the Government order dated October 16, 2003. The policy as contained in the Government orders dated June 13, 2000, April 16, 2003 and May 17, 2003 was in operation during the said period, and the withdrawal of exemption from entertainment tax in respect of the film "Zamin" by the Government order dated November 24, 2004 was fully in accordance with the policy operative at the relevant time.

26. Subsequent withdrawal of the restriction by amending the policy by the Government order dated February 17, 2005 was not relevant so far as the exhibition of the film "Zamin" during the relevant period was concerned. The amendment made in the policy by the Government order dated February 17, 2005 could not be applied retrospectively to the exhibition of the film "Zamin" during the relevant period.

27. Let us now consider common questions involved in the aforementioned five writ petitions.

28. Section 11 of the 1979 Act gives power to the State Government to exempt any entertainment or class of entertainments from liability to pay tax under the said Act. The said Section 11 is as under :

11. Exemption.-(1) The State Government may, for promotion of peace, international goodwill, arts, sports or other public interest, by general or special order, exempt any entertainment or class of entertainments from liability to pay tax under this Act.

(2) The State Government may, by general or special order, exempt in public interest any class of audience or spectators from liability to pay tax under this Act.

(3) Without prejudice to the generality of the provisions of Sub-section (1) where the State Government is satisfied that any entertainment,-

(a) is wholly of an educational character ; or

(b) is provided partly for educational or partly for scientific purposes by a society

not conducted or established for profit; or

(c) is provided by a society not conducted for profit and established solely for the purpose of promoting public health or the interests of agriculture, or a manufacturing industry, and consists solely of an exhibition of articles which are of material interest in connection with questions relating to public health or agriculture or are the products of the industry for promoting the interest whereof the society exists, or the materials, machinery, appliances or foodstuff used in the production of such products ; it may, subject to such terms and conditions as it may deem fit to impose, grant exemption to such entertainment from payment of tax under this Act:

Provided that the State Government may cancel such exemption if it is satisfied that the exemption was obtained through fraud or misrepresentation, or that the proprietor of such entertainment has failed to comply with any of the terms or conditions imposed or directions issued in this behalf and thereafter the proprietor shall be liable to pay the tax which would have been payable had not the entertainment been so exempted.

(4) Where the entire gross proceeds of an entertainment are to be devoted to philanthropic, religious or charitable purposes without any deductions whatsoever on account of the expenses of the entertainment, the District Magistrate,--

(a) may, in the case of the entertainment whose entire gross proceeds do not exceed rupees twenty thousand, subject to the Rules made under this Act, grant exemption to such entertainment from payment of tax under this Act on such terms and conditions as he may deem fit to impose ;

(b) shall, in the case of the entertainment whose entire gross proceeds exceed rupees twenty thousand, refer the matter to the Entertainment and Betting Tax Commissioner along with his recommendations and other relevant records and the Commissioner may, subject to the Rules made under this Act, grant exemption to such entertainment from payment of tax under this Act on such terms and conditions as he may deem fit to impose.

(5) Where any exemption from payment of tax is granted under Sub-section (4), the proprietor of such entertainment shall furnish to the (District Magistrate or Entertainment and Betting Tax Commissioner, as the case may be) such documents and records and in such manner as may be prescribed.

(6) If the proprietor of an entertainment exempted under Sub-section (4) fails to furnish the documents and records required under Sub-section (5), or fails to comply with any conditions imposed or directions issued in this behalf, or if the (District Magistrate or Entertainment and Betting Tax Commissioner, as the case may be) is not satisfied with the correctness of such documents or records, the (District Magistrate or Entertainment and Betting Tax Commissioner, as the case may be) may cancel the exemption so granted and thereupon the proprietor shall be liable to pay the tax which would have been payable had not the

entertainment been so exempted.

29. It has already been noticed above that the State Government of Uttar Pradesh issued the Government order dated June 13, 2000 laying down the policy for grant of exemption from entertainment tax in respect of a film. The said policy, as contained in the said Government order dated June 13, 2000, was amended by the Government order dated April 16, 2003 and by the Government order dated May 17, 2003.

30. One of the conditions for grant of exemption as laid down in the said policy was that a maximum of 12 prints of the film would be exhibited at one time in the entire State of Uttar Pradesh, and only one print would be exhibited at one time in a district. It has further been noticed above that by the Government order dated October 16, 2003, exemption from entertainment tax was granted in respect of film "Zamin" with immediate effect for a period of 90 days (three months) in exercise of powers conferred u/s 11(1) of the 1979 Act subject to the three conditions mentioned in the earlier part of this judgment.

31. Condition No. 1, as noted earlier, provided that a maximum of 12 prints of the above film "Zamin" would be exhibited at one time in the entire State of Uttar Pradesh and only one print of the film would be exhibited at one time in a district. The said condition was evidently in consonance with the above policy of the State Government of Uttar Pradesh.

32. Clause (3) of the said Government order dated October 16, 2003 provided as under:

33. The above Clause (3), thus, inter alia, provided that in case any of the conditions laid down in the said Government order was violated, the facility of the exemption from entertainment tax would be withdrawn, and the entertainment tax would be imposed and realized in accordance with Rules from the concerned cinema halls in regard to the entertainment tax exempted exhibitions.

34. As mentioned above, a perusal of the averments made in the aforementioned writ petitions shows that the Petitioners, i.e., the owners/ licensees of cinema halls have not disputed the fact that the film "Zamin" was exhibited at the same time in more than one cinema hall in various districts, and that more than 12 prints of the said film were at the same time exhibited in the State of Uttar Pradesh.

35. Condition No. 1, as contained in the said Government order dated October 16, 2003, thus, stood violated.

36. In the circumstances, the Entertainment Tax Commissioner, Uttar Pradesh, sent the aforementioned communication dated December 6, 2003 to the State Government, inter alia, recommending for consideration of the withdrawal of the exemption granted to the film "Zamin" by the said Government order dated October 16, 2003.

37. In view of the said communication dated December 6, 2003, the State Government by the Government order dated November 24, 2004 withdrew the exemption from entertainment tax granted to the film "Zamin" by the said Government order dated October 16, 2003.

38. The withdrawal of exemption from entertainment tax by the said Government order dated November 24, 2004 was fully justified in view of Clause (3) of the said Government order dated October 16, 2003 which gave power to withdraw exemption from entertainment tax in case of violation of any of the conditions mentioned in the said Government order dated October 16, 2003.

39. It is noteworthy that the proviso to Sub-section (3) of Section 11 of the 1979 Act, inter alia, provides that the State Government may cancel exemption from entertainment tax if it is satisfied that the proprietor of such entertainment has failed to comply with any of the terms or conditions imposed or directions issued in this behalf and thereafter the proprietor shall be liable to pay the tax which would have been payable had not the entertainment been so exempted.

40. Therefore, in view of the proviso to Sub-section (3) of Section 11 of the 1979 Act, the State Government was fully justified in issuing the said Government order dated November 24, 2004 withdrawing exemption from entertainment tax granted in respect of the film "Zamin" by the Government order dated October 16, 2003.

41. Question arises as to whether in view of the withdrawal of exemption from entertainment tax granted to the film "Zamin", it was open to the entertainment tax authorities to take action for computation and realization of entertainment tax against the Petitioners, i.e., the cinema hall owners/ licensees for the relevant period during which the exemption from entertainment tax granted to the film "Zamin" was operative.

42. In this regard, the learned Counsel for the Petitioners have made the following submissions :

1. As the violation of the terms and conditions laid down in the Government order dated October 16, 2003 was committed by the distributor or the producer of the film "Zamin", the cinema hall owners/licensees could not be compelled to pay the entertainment tax for the period of exemption.

2. The Petitioners did not collect the entertainment tax from the public during the exemption period, and, therefore, it would be harsh to require the Petitioners to pay entertainment tax even though the violation of the terms and conditions had been committed by the distributor or the producer of the film "Zamin" and not by the Petitioners (cinema hall owners/licensees).

3. It was the duty of the licensing authority to inform the Petitioners regarding violation of the aforementioned condition No. 1 by the distributor or the producer of the film "Zamin" so that the Petitioners could start collecting entertainment tax from the public.

4. Proviso to Sub-section (3) of Section 11 uses the word "proprietor" at two places. It contemplates withdrawal of exemption from entertainment tax in respect of entertainment on account of violation of the terms and conditions by the "proprietor" of such entertainment and the consequent liability of the "proprietor" to pay the entertainment tax for the period of exemption. The word "proprietor" at two places in the said proviso would have the same meaning. The violation of the terms and conditions in the present case was committed by the distributor or the producer of the film "Zamin" and, therefore, the distributor or the producer of the film "Zamin" would be "proprietor" within the meaning of the said word as used in the proviso to Sub-section (3) of Section 11 of the 1979 Act. Evidently, therefore, the "proprietor" liable to pay entertainment tax, as mentioned in the said proviso, would be the distributor or the producer of the film "Zamin" and not the cinema hall owners/licensees.

43. In reply, the learned standing counsel has made the following submissions:

1. The definition of "proprietor" in Clause (m) of Section 2 of the 1979 Act is an inclusive definition. Sub-clause (ii) of Clause (m) of Section 2, inter alia, provides that any person "charged with the work of admission to the entertainment" would be included within the meaning of the word "proprietor". Section 3 of the 1979 Act, which is the charging section, levies entertainment tax on all payments for "admission to any entertainment".

Reading Section 3 and Sub-clause (ii) of Clause (m) of Section 2 of the 1979 Act together, it is evident that the liability to pay the entertainment tax is on the person charged with the work of admission to the entertainment, i.e., the cinema hall owner/licensee.

Section 8 of the 1979 Act provides for the manner of payment of the entertainment tax. A reading of various clauses of Section 8 shows that the proprietor, who admits to the entertainment, has been made responsible for the payment of entertainment tax. This evidently means that the cinema hall owner/licensee has been made responsible for payment of entertainment tax.

In view of the said provisions of the 1979 Act, the liability to pay the entertainment tax for the period of exemption has been rightly imposed on the Petitioners, i.e., the cinema hall owners/licensees.

2. Clause (3) of the Government order dated October 16, 2003, inter alia, clearly provided that in case of violation of any of the conditions contained in the said Government order, the facility of the exemption from entertainment tax would be withdrawn, and the entertainment tax would be imposed and realized in accordance with Rules from the concerned cinema halls in respect of the entertainment tax exempted exhibition. In view of the fact that condition No. 1, as contained in the said Government order dated October 16, 2003, was violated, the Petitioners, i.e., the cinema hall owners/licensees became liable to pay the entertainment tax for the period of exemption irrespective of the fact that they did not collect the entertainment tax from the public during the said

period or the fact that the violation of condition No. 1 was committed by the distributor or the producer of the film "Zamin" and not by the Petitioners (cinema hall owners/licensees).

3(A) The Petitioners, i.e., the cinema hall owners/licensees were fully aware that under the Government order dated October 16, 2003 granting exemption from entertainment tax, the liability for payment of entertainment tax for the period of exemption could be fastened on the Petitioners in case of violation of the terms and conditions of the exemption--whether by the Petitioners or by the distributor or by the producer. Having enjoyed exemption under the said Government order, it is not open to the Petitioners to resile from liability as contemplated in the said Government order.

(B) Inquiry regarding violation of the terms and conditions of the exemption and collection of relevant details in this regard would evidently take time, and there was no responsibility on the licensing authority to intimate the cinema hall owners/licensees in this regard or to permit the cinema hall owners/licensees to charge entertainment tax despite the existence of the exemption.

4. The definition of the word "proprietor" in Clause (m) of Section 2 of the 1979 Act is an inclusive definition. Sub-clause (i) of Clause (m) of Section 2 includes any person connected with the organization of the entertainment within the meaning of the word "proprietor". Sub-clause (i) may thus include the distributor and the producer of a film as they are the persons connected with the organization of the entertainment. Sub-clause (ii) of Clause (m) of Section 2 includes the cinema hall owners/licensees as they are the persons charged with the work of admission to the entertainment.

The word "proprietor" in the proviso to Sub-section (3) of Section 11 will have to be interpreted in the wide sense in which it has been defined in Clause (m) of Section 2. Therefore, the word "proprietor" will include the producer, the distributor as well as the exhibitor (cinema hall owner/ licensee) of a film. Violation of the terms and conditions regarding exemption from entertainment tax by any of the persons covered within the meaning of the word "proprietor", would result in the withdrawal of exemption and in the imposition of entertainment tax for the period of exemption. Such tax would, evidently, be realized from the "proprietor" who is liable to pay the entertainment tax under the Scheme of the 1979 Act, namely, the person who admits to the entertainment, i.e., the cinema hall owner/licensee. Even if the liability may be imposed on the producer and/or the distributor as they are also covered within the meaning of the word "proprietor", still it was open to the State Government to fix the liability on the cinema hall owner/licensee, who is also covered within the meaning of the word "proprietor". This is what has been done by the State Government while granting exemption by the Government order dated October 16, 2003 by including Clause (3) in the said Government order wherein it was, inter alia, provided that in case of violation of any of the conditions contained in the said Government order, the entertainment tax would be imposed and realized

in accordance with Rules from the concerned cinema halls in respect of the entertainment tax--exempted exhibition.

44. Let us now deal with the submissions made on behalf of the Petitioners.

The FIRST SUBMISSION made on behalf of the Petitioners, as noted above, is that as the violation of the terms and conditions laid down in the Government order dated October 16, 2003 was committed by the distributor or the producer of the film "Zamin", the cinema hall owners/licensees could not: be compelled to pay the entertainment tax for the period of exemption.

45. Clause (3) of the said Government order dated October 16, 2003, as noted above, inter alia, provided that in case of violation of any of the conditions laid down in the said Government order, the facility of the exemption from entertainment tax would be withdrawn, and the entertainment tax would be imposed and realized in accordance with Rules from the concerned cinema halls in respect of the entertainment tax-exempted exhibition. Thus, Clause (3) came into play in case of violation of the conditions laid down in the said Government order dated October 16, 2003, and it was not material or relevant as to who committed such violation.

46. The exemption from entertainment tax was granted under the said Government order dated October 16, 2003, and the Petitioners, i.e., the cinema hall owners/licensees enjoyed the benefit of the exemption under the said Government order, and therefore, they were bound by the terms and conditions as contained in the said Government order. As such, in case of violation of any of the conditions laid down in the said Government order, the Petitioners, i.e., the cinema hall owners/licensees became liable to pay the entertainment tax in respect of the period of exemption irrespective of the fact as to who committed such violation of the terms and conditions. As already noted above, condition No. 1, as contained in the said Government order dated October 16, 2003, was violated and in consequence, the State Government by the Government order dated November 24, 2004 withdrew the exemption from entertainment tax granted to the film "Zamin". Hence, in view of the provisions of Clause (3) of the said Government order dated October 16, 2003, the Petitioners, i.e., the cinema hall owners/licensees became liable to pay entertainment tax and it was not open to them to contend that the violation of the terms and conditions had been committed by the distributor and/or the producer and not by the Petitioners.

47. Even according to the Scheme of the 1979 Act also, the liability has been rightly imposed on the Petitioners as will be evident from the discussion hereinafter.

48. Section 3 of the 1979 Act, which is the charging section, provides as follows:

3. Tax on payment for admission to entertainment.--(1) Subject to the provisions of this Act, there shall be levied and paid on all payments for admission to any entertainment, other than an entertainment to which (Section 4 or Section 4A or

Section 4B applies or a compounded payment is made under the proviso to this Sub-section) an entertainment tax at such rate not exceeding (one hundred and fifty per cent.) of each such payment as the State Government may from time to time notify in this behalf, and the tax shall be collected by the proprietor from the person making the payment for admission and paid to the Government in the manner prescribed:

Provided that a proprietor of a (cinema or cable operator) (in a local area having a population not exceeding one lac.) may, in lieu of payment under this Sub-section, pay a compounded payment to the State Government on such conditions and in such manner as may be prescribed and at such rate (. . .) as the State Government may from time to time notify, and different rates of compounded payments may be notified for different categories of local areas.

Explanation.--(. . .)

(2) Nothing in Sub-section (1) shall preclude the State Government from notifying different rates of entertainment tax for different areas or for different classes of entertainment or for different payments for admission to entertainment.

(3) Where the payment for admission to an entertainment, together with the tax, charges for maintenance of cinema premises and extra charge for air cooling or air conditioning facility, is not a multiple of (one rupee), then notwithstanding anything contained in Sub-section (1) or Sub-section (2) or any notification issued thereunder, the tax shall be increased to such extent and be so computed that the aggregate of such payment for admission to entertainment, the tax, charge for maintenance of cinema premises and extra charge for all air cooling or air conditioning facility is rounded off to the next higher multiple of (one rupee) and such increased tax shall also be collected by the proprietor and paid to the Government in the manner prescribed.

(4) If in any entertainment, referred to in Sub-section (1), to which admission is generally on payment, any person is admitted free of charge or on a concessional rate, the same amount of tax shall be payable as would have been payable had such person been admitted on full payment.

(5) Where the payment for admission to an entertainment, referred to in Sub-section (1), is made wholly or partly, by means of a lump sum paid as subscription, contribution, donation or otherwise, the tax shall be paid on the amount of such lump sum and on the amount of payment for admission, if any, made otherwise.

(6) Where in a hotel or a restaurant, entertainment by way of cabaret or floor show (by whatever name called, but excluding a mere band in attendance or recorded music) is provided along with any meal or refreshment with a view to attracting customers, whether or not payment for admission is charged distinctly for such entertainment, twenty per cent of the amount payable by the customer

for such meal or refreshment or the amount charged distinctly for such entertainment, whichever is higher, shall be deemed to be the payment for admission to such entertainment and the tax shall be levied and paid accordingly.

(7) Where in a hotel, entertainment by way of cable service is provided in rooms or other places, the entertainment so provided in each room or other place shall be deemed to be a separate entertainment and the subscription for admission to each such entertainment shall be deemed to be equal to the amount of subscription charged from a subscriber in the vicinity of the hotel by the cable operator providing cable service in the hotel, and the tax shall be levied and paid on the basis of such subscription:

Provided that where the cable operator himself is the proprietor of the hotel, the subscription for admission to each such entertainment shall be deemed to be equal to the amount of subscription charged from a subscriber in the vicinity of the hotel by any other cable operator.

Explanation.--For the purposes of this Sub-section and Clause (ee) of Section 2, "hotel" includes an accommodational unit wherein rooms are provided to the customers on rent, but does not include the units approved under the "Paying Guest Scheme" of the Department of Tourism of the State Government.

49. Sub-section (1) of Section 3 of the 1979 Act, thus, lays down that there shall be levied and paid on all payments for admission to any entertainment, an entertainment tax at such rate not exceeding one hundred and fifty per cent of each such payment as the State Government may from time to time notify in this behalf. It is further provided that this tax shall be collected by the proprietor from the person making the payment for admission and shall be paid to the Government in the manner prescribed.

50. Sub-section (1) of Section 3, however, provides that the provision contained in the said Sub-section (1) will not apply to an entertainment to which Section 4 or Section 4A or Section 4B of the 1979 Act applies. It may be mentioned that Section 4 of the 1979 Act deals with interior cinema, Section 4A of the said Act deals with video cinema and Section 4B of the said Act deals with video show in public service vehicle or hotels.

51. Sub-section (1) of Section 3 further lays down that the said provision will not apply where a compounded payment is made under the proviso to the said Sub-section. Proviso to the said Sub-section (1) lays down that a proprietor of a cinema or cable operator in a local area having a population not exceeding one lac may, in lieu of payment under the said Sub-section, pay a compounded payment to the State Government on such conditions and in such manner as may be prescribed and at such rate as the State Government may from time to time notify. Different rates of compounded payments may be notified for different categories of local areas.

52. Sub-section (2) of Section 3 of the 1979 Act provides that nothing in Sub-

section (1) of the said section shall preclude the State Government from notifying different rate of entertainment tax for different areas or for different classes of entertainment or for different payment for admission to entertainment.

53. Sub-section (3) of Section 3 of the 1979 Act shows that while collecting the payment for admission to an entertainment and the entertainment tax, charge for maintenance of cinema premises and extra charge for air cooling or air conditioning facility, may also be collected.

54. Sub-section (4) of Section 3 of the 1979 Act lays down that if in any entertainment, referred to in Sub-section (1), to which admission is generally on payment, any person is admitted free of charge or on a concessional rate, the same amount of entertainment tax shall be payable as would have been payable had such person been admitted on full payment.

55. Sub-section (5) of Section 3 of the 1979 Act lays down that in case the payment for admission to an entertainment, referred to in Sub-section (1), is made wholly or partly, by means of a lump sum paid as subscription, contribution, donation or otherwise, the tax shall be paid on the amount of such lump sum and on the amount of payment for admission, if any, made otherwise.

56. Section 2 of the 1979 Act deals with definitions. The relevant portion of Section 2 is reproduced below:

2. Definitions.-In this Act,-

(a) "admission to an entertainment" includes admission to any place in which the entertainment is held ;

(b) to (f) . . .

(g) "entertainment" includes any exhibition, performance, amusement, game, sport or race (including horse race) to which persons are admitted for payment and in the case of cinematograph exhibition, includes exhibition of newsreal, documentaries, cartoons, advertisement shorts or slides, whether before or during the exhibition of a feature film or separately ;

(h) to (k) . . .

(l) "payment for admission" includes--

(i) any payment for seats or other accommodation in any form in a place of entertainment ;

(ii) any payment for a programme or synopsis of an entertainment ;

(iii) any payment made for the loan or use of any instrument or contrivance which enables a person to get a normal or better view or hearing or enjoyment of the entertainment, which without the aid of such instrument or contrivance such person would not get ;

(iv) any payment, by whatever name called for any purpose whatsoever, connected with an entertainment, which a person is required to make in any form as a condition of attending, or continuing to attend the entertainment, either in addition to the payment, if any, for admission to the entertainment or without any such payment for admission ;

(v) 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 tax or more tax is required ;

Explanation.--Any subscription raised or donation collected in connection with an entertainment in any form shall be deemed to be payment for admission ;

(II) . . .

(m) "proprietor" in relation to any entertainment includes any person--

(i) connected with the organization of the entertainment, or

(ii) charged with the work of admission to the entertainment, or

(iii) responsible for, or for the time being in charge of, the management thereof;

(mm) to (o)

(p) "tax" means entertainment tax, betting tax or the totalizator tax, as the case may be, and includes surcharge, cess, penalty or any other charge levied under this Act;

(q) "ticket" means a ticket or a complimentary pass for the purposes of securing admission to an entertainment in accordance with the provisions of this Act or the Rules made thereunder, and a "duplicate ticket", means a ticket or set of tickets used or intended to be used otherwise than in accordance with this Act or the Rules made thereunder ;

(r) to (t) . . .

57. Clause (a) of Section 2 defines the phrase "admission to an entertainment". Accordingly, "admission to an entertainment" includes admission to any place in which the entertainment is held.

58. Clause (g) of Section 2 defines "entertainment". Accordingly, "entertainment" includes any exhibition, performance, amusement, game, sport or race (including horse race) to which persons are admitted for payment. Further, in the case of cinematograph exhibition, "entertainment" includes exhibition of newsreel, documentaries, cartoons, advertisement shorts or slides, whether before or during the exhibition of a feature film or separately.

59. Clause (l) of Section 2 defines the phrase "payment for admission". According to Sub-clause (iv) of Clause (l) of Section 2, "payment for admission" includes any payment, by whatever name called for any purpose whatsoever,

connected with an entertainment, which a person is required to make in any form as a condition of attending, or continuing to attend the entertainment, either in addition to the payment, if any, for admission to the entertainment, or without any such payment for admission. Therefore, whatever payment a person is required to make as a condition of attending, or continuing to attend the entertainment, the same shall be included in "payment for admission".

60. Clause (m) of Section 2 of the 1979 Act defines the word "proprietor". Accordingly, "proprietor" in relation to any entertainment includes the following :

- (i) Any person connected with the organization of the entertainment.
- (ii) Any person charged with the work of admission to the entertainment.
- (iii) Any person responsible for, or for the time being in charge of, the management of the entertainment.

61. Clause (p) of Section 2 of the 1979 Act defines the word "tax". Accordingly, "tax" means entertainment tax, betting tax or the totalizator tax, as the case may be, and includes surcharge, cess, penalty or any other charge levied under the 1979 Act.

62. A conjoint reading of Sub-section (1) of Section 3, Clause (a) of Section 2, Clause (g) of Section 2, Clause (l)(iv) of Section 2, Clause (m) of Section 2 and Clause (p) of Section 2 of the 1979 Act shows that if any payment is made for admission to an entertainment, i.e., for admission to any place in which the entertainment is held, then the entertainment tax shall be levied and paid on such payment. Such tax shall be collected by the proprietor from the person making the payment for admission and shall be paid to the Government in the manner prescribed.

63. The word "proprietor" in the context in which it is used in Sub-section (1) of Section 3 of the 1979 Act shows that the proprietor is a person who is charged with the work of admission to the entertainment as contemplated in Sub-clause (ii) of Clause (m) of Section 2. In other words, "proprietor" as contemplated in Sub-section (1) of Section 3 of the 1979 Act, is the cinema hall owner/licensee.

64. Hence, the responsibility to collect the entertainment tax is on the cinema hall owner/licensee. This is further borne out from the proviso to Sub-section (1) of Section 3, which contemplates a compounded payment by a "proprietor of a cinema". Again, Sub-section (3) of Section 3 permits charging for maintenance of cinema premises and extra charge for air cooling or air conditioning facility. Such charging will evidently be done by the cinema hall owner/licensee.

65. The above conclusion that "proprietor" in the context of Sub-section (1) of Section 3, is the cinema hall owner/licensee, is further substantiated by a perusal of other provisions of the 1979 Act.

66. Clause (q) of Section 2 of the 1979 Act defines the word "ticket". Accordingly, "ticket" means a ticket or a complimentary pass for the purposes of

securing admission to an entertainment in accordance with the provisions of the 1979 Act or the Rules made thereunder.

67. Sections 6 and 7 of the 1979 Act are as under :

6. Restriction of admission.-Save as otherwise expressly provided by or under this Act, no person (other than a person who has some duty to perform in connection with the entertainment, or a duty imposed upon him by law, or a person authorised by the State Government in this behalf) shall be admitted to any entertainment, except with a ticket in the prescribed form denoting that the proper tax payable u/s 3 has been paid.

7. Restriction on entertainment.-No person (other than a person who has some duty to perform in connection with the entertainment, or duty imposed upon him by law, or a person authorised by the State Government in this behalf) shall enter or obtain admission to an entertainment without being in possession of a proper ticket as required u/s 6.

68. Section 6 of the 1979 Act, thus, lays down that no person shall be admitted to any entertainment, except with a ticket in the prescribed form "denoting that the proper tax payable u/s 3 has been paid."

69. Section 7 of the 1979 Act provides that no person shall enter or obtain admission to an entertainment without being in possession of a proper ticket as required u/s 6 of the said Act.

70. Reading Sections 2(q), 6 and 7 of the 1979 Act together, it is evident that "proprietor" contemplated in Sub-section (1) of Section 3 is the cinema hall owner/licensee and such proprietor is required to ensure issuance of a ticket denoting that the proper tax payable u/s 3 has been paid. This conclusion is further supported by a perusal of Rule 39 of the Uttar Pradesh Entertainments and Betting Tax Rules, 1981 (in short "the 1981 Rules") framed u/s 38 of the 1979 Act. Rule 39 of the 1981 Rules deals with the manner of sale or resale of tickets, which is as follows :

39. Manner of sale or resale of tickets.-(1) The tickets for admission to a cinematograph exhibition shall be issued by the proprietor only from a booking office provided for the purpose.

(2) The purchaser of a ticket, who, for any reasons, does not want to see the show shall not resell the ticket directly to any other person but he may do so through the booking office of the cinema.

(3) Ticket once detached from the ticket book and issued shall not, however, be kept for resale in the booking office.

71. Sub-rule (1) of Rule 39 provides that the tickets for admission to a cinematograph exhibition shall be "issued by the proprietor only from a booking office provided for the purpose". The requirement that the tickets are to be issued by the proprietor only from a booking office, shows that the word

"proprietor" refers to the cinema hall owner/licensee.

72. Rule 3 of the 1981 Rules deals with the manner of collection and levy of tax. The said Rule 3 is as under :

3. Manner of collection and levy of tax.--(1) The proprietor of an entertainment in respect of which tax is leviable u/s 3 of the Act shall intimate in writing to the District Magistrate the rates of admission, excluding tax, to various classes, and the rates of different kinds of tickets for each class, the amount of tax and the surcharge if any, leviable and extra charges realisable on each kind of ticket and the total value of the ticket.

(2) Where payment for a programme or synopsis is compulsory, the tax shall be levied on the total sum paid for admission to the entertainment including the sum paid for the programme or synopsis. Where payment for a programme or synopsis is voluntary, the tax shall be levied separately on the sum paid for admission and on the sum paid for the programme or synopsis.

(3) The entertainment tax and surcharge, if any, levied and extra charges realised under the Act shall be collected by the proprietor from every person obtaining admission to an entertainment along with the charge for admission by issuing a ticket for each such payment.

73. Sub-rule (1) of Rule 3 lays down that the "proprietor" of an entertainment in respect of which tax is leviable u/s 3 of the 1979 Act shall intimate in writing to the District Magistrate the rates of admission, excluding tax, to various classes, and the rates of different kinds of tickets for each class, the amount of tax and the surcharge if any, leviable and extra charges realisable on each kind of ticket and the total value of the ticket.

74. Sub-rule (3) of Rule 3 lays down that the entertainment tax and surcharge, if any, levied and extra charges realized under the 1979 Act shall be collected by the "proprietor" from every person obtaining admission to an entertainment along with the charge for admission by issuing a ticket for each such payment.

75. The requirements of Sub-rules (1) and (3) of Rule 3 make it evident that the word "proprietor" in the said sub-rules refers to the cinema hall owner/ licensee.

76. Rule 4 of the 1981 Rules deals with the form of ticket.

77. Rule 5 of the 1981 Rules deals with the issuance of tickets, and provides as under :

5. Issue of tickets.--(1) The proprietor of an entertainment shall issue the outer and middle counterfoils of ticket to the purchaser thereof and shall retain inner counterfoil in the ticket book. At the time of admission to the class the middle counterfoil shall be collected at the gate and the outer counterfoil shall be returned to the person obtaining admission.

(2) Each kind of ticket shall be issued strictly in serial order only from one ticket

book at a time and no ticket from fresh serial shall be issued unless tickets up to one lakh of the current serial have been exhausted. Any ticket used in contravention of this rule shall, unless proved to the contrary, be considered to be a duplicate ticket issued with the object of evading the tax.

(3) The proprietor of an entertainment shall not keep in stock tickets of fresh serial numbers of any kind unless tickets of the serial 90,000 in use have been exhausted and unless prior information of the same has been given to the District Magistrate and any ticket found in stock in contravention of this rule shall, unless proved to the contrary, be considered to be duplicate kept for use with the object of evading the tax.

78. Sub-rule (1) of Rule 5 of the 1981 Rules, thus, provides that the "proprietor" of an entertainment shall issue the outer and middle counterfoils of ticket to the purchaser thereof and shall retain inner counterfoil in the ticket book. This provision again makes it clear that the word "proprietor" refers to the cinema hall owner/licensee.

79. Rule 12 of the 1981 Rules deals with admission without payment of tax. The said Rule 12 is as under :

12. Admission without payment of tax.-If in any entertainment on which tax is leviable under the Act any person in respect of whom tax is payable is found witnessing the show without a ticket it shall, unless proved to the contrary, be presumed that such person has been allowed admission without payment of due entertainment tax by the proprietor of such entertainment.

80. Rule 12, thus, provides that if any person is found witnessing the show without a ticket it shall be presumed that such person has been allowed admission without payment of due entertainment tax "by the proprietor of such entertainment". The presumption contemplated in this rule against the "proprietor" shows that the word "proprietor" refers to the cinema hall owner/licensee.

81. Rule 13 of the 1981 Rules deals with return for payment of tax. The said Rule 13 is as under :

13. Return for payment of tax.--(1) The proprietor of every entertainment shall prepare separately for each show a return in form B in duplicate with ball pen and double side carbon showing the number of each kind of ticket issued for various classes, gross amount received from the sale of tickets and the amount of entertainment tax and surcharge leviable and extra charges realisable under the Act, collected.

(2) The account in form B shall be completed within one hour from the commencement of the show or ten minutes before the commencement of the interval, whichever is earlier (in case of English films or other shows of short duration within 30 minutes from the commencement of the main features film or the show, as the case may be) and shall be kept readily available for inspection

in the manager's office, if it is situated on the ground floor or, if there be no manager's office or where manager's office is not on the ground floor, in the booking office which shall be treated as manager's office for the purpose.

(3) No ticket shall be sold after the account in form B has been prepared.

(4) Where it may be necessary to make corrections in the Form B no overwriting or correction in the figures shall be made and the corrections shall be made only by encircling the wrong figure and writing the correct figure above it neatly under the signature of manager. No erasion or overwriting in the form B shall be made.

(5) Contravention of Sub-rules (2), (3) and (4) shall, unless proved to the contrary, be deemed to be the evasion of tax.

82. Sub-rule (1) of Rule 13, thus, requires that the "proprietor" of every entertainment shall prepare separately for each show a return in form B in duplicate with ball pen and double side carbon showing the number of each kind of ticket issued for various classes, gross amount received from the sale of tickets and the amount of entertainment tax and surcharge leviable and extra charges realizable under the 1979 Act, collected. The responsibility of the "proprietor" as laid down in this sub-rule makes it evident that the word "proprietor" refers to the cinema hall owner/licensee.

83. Reading Rule 39, Rule 3, Rule 4, Rule 5, Rule 12 and Rule 13 of the 1981 Rules with Sub-section (1) of Section 3 of the 1979 Act, it is evident that the word "proprietor" in the context of Sub-section (1) of Section 3 of the 1979 Act refers to the cinema hall owner/licensee. This conclusion is further supported by certain other provisions of the 1979 Act and the 1981 Rules.

84. Section 9 of the 1979 Act deals with refund of entertainment tax. The said Section 9 is as under :

9. Refund of tax.--(1) Where the (Assistant Commissioner or Entertainment Tax Officer, as the case may be) is satisfied that the proprietor has deposited tax in excess of the amount actually due, he shall grant a refund in respect of such amount or allow its adjustment against future payments of tax.

(2) When an entertainment is not completed for reasons beyond the control of the proprietor, and the (Assistant Commissioner or Entertainment Tax Officer, as the case may be) is satisfied that the proprietor has refunded the amount charged for the tickets, he shall remit the amount of tax payable in respect of such tickets and order the show to be treated as cancelled.

(3) Where the State Government is satisfied that the entire net proceeds of an entertainment are devoted to philanthropic, religious or charitable purposes, and that in calculating the net proceeds not more than twenty-five per cent. of the gross proceeds have been deducted on account of the expenses of the entertainment, it shall refund to the proprietor, the amount of the tax paid in respect of such entertainment :

Provided that refund of entertainment tax shall be allowed where the State Government is satisfied that--

(i) the refund of such tax has been claimed in a case where the incidence of such tax has been actually passed on to the persons who have made payment for admission ; or

(ii) the refund of such tax has been claimed in respect of entertainment for which grant-in-aid has been received from the State Government under any incentive scheme and the proprietor has committed violation of any condition of such grant:

Provided further that claim for refund of tax shall not be entertainable unless it is made within three months from the date when such refund becomes due :

Provided also that where any amount of such tax is realized by a proprietor of an entertainment from a person admitted to entertainment in contravention of the provisions of Act or the Rules made thereunder the said proprietor shall be required to deposit the entire amount so realized in the manner as may be prescribed.

85. Sub-section (1) of Section 9, thus, lays down that where the Assistant Commissioner or Entertainment Tax Officer, as the case may be, is satisfied that the "proprietor" has deposited tax in excess of the amount actually due, he shall grant a refund in respect of such amount or allow its adjustment against future payments of tax. The word "proprietor" in the said provision evidently refers to the cinema hall owner/licensee.

86. Rule 28 of the 1981 Rules deals with submission of an application for refund of tax deposited in excess. The said Rule 28 is as under :

28. Refund of tax deposited in excess.-The proprietor of an entertainment claiming refund of tax under Sub-section (1) of Section 9 of the Act shall submit an application in this behalf to the District Magistrate within twelve months of the deposit of the tax stating clearly the period to which the tax relates, the amount of tax actually due, the amount of tax actually deposited, the treasury challan number and the reasons for the deposit of the tax in excess. An application for refund not submitted within the aforesaid period of twelve months shall be liable to be rejected.

87. Rule 28, thus, provides that the "proprietor" of an entertainment claiming refund of tax under Sub-section (1) of Section 9 of the 1979 Act shall submit an application in this behalf to the District Magistrate within the period and giving such details as mentioned in the said Rule 28. The application claiming refund of entertainment tax will evidently be made by the cinema hall owner/licensee. Thus, the word "proprietor" in Rule 28 refers to the cinema hall owner/licensee.

88. Reading Section 9 of the 1979 Act and Rule 28 of the 1981 Rules with Sub-section (1) of Section 3 of the 1979 Act, it is evident that the word "proprietor"

in the context of Sub-section (1) of Section 3 of the 1979 Act refers to the cinema hall owner/licensee.

89. In view of the above provisions of the 1979 Act and the 1981 Rules, it is evident that the word "proprietor" in the context of Sub-section (1) of Section 3 of the 1979 Act means the cinema hall owner/licensee. Thus, the examination of the scheme of the 1979 Act and the 1981 Rules framed under the said Act shows that the responsibility for collection and payment of entertainment tax has been imposed on the cinema hall owner/licensee. Hence, in view of the withdrawal of exemption from entertainment tax granted to the film "Zamin", the entertainment tax authorities were right in taking action for computation and realization of entertainment tax against the Petitioners, i.e., the cinema hall owners/licensees for the relevant period during which the exemption from entertainment tax granted to the film "Zamin" was operative.

90. The first submission made by the learned Counsel for the Petitioners cannot, therefore, be accepted.

91. Let us now consider the SECOND SUBMISSION made on behalf of the Petitioners, namely, that the Petitioners did not collect the entertainment tax from the public during the exemption period, and, therefore, it would be harsh to require the Petitioners to pay entertainment tax even though the violation of the terms and conditions had been committed by the distributor or the producer of the film "Zamin" and not by the Petitioners (cinema hall owners/licensees).

92. As noted earlier, Clause (3) of the Government order dated October 16, 2003, inter alia, provided that in case of violation of any of the conditions contained in the said Government order, the facility of the exemption from entertainment tax would be withdrawn, and the entertainment tax would be imposed and realized in accordance with Rules from the concerned cinema halls in respect of the entertainment tax exempted exhibition. In view of the fact that condition No. 1, as contained in the said Government order dated October 16, 2003, was violated, and in consequence, the exemption from entertainment tax was withdrawn in respect of the film "Zamin", the Petitioners, i.e., cinema hall owners/licensees became liable to pay entertainment tax for the period of exemption.

93. Again, as discussed in detail while dealing with the first submission made on behalf of the Petitioners, according to the Scheme of the 1979 Act and the 1981 Rules framed thereunder, the word "proprietor" in the context of Sub-section (1) of Section 3 of the 1979 Act means the cinema hall owner/licensee, and the responsibility for collection and payment of entertainment tax has been imposed on the cinema hall owner/licensee. Therefore, in view of the withdrawal of exemption from entertainment tax in respect of the film "Zamin" on account of violation of condition No. 1, as contained in the said Government order dated October 16, 2003, the Petitioners, i.e., the cinema hall owners/licensees became liable to pay entertainment tax in view of the provisions of the 1979 Act and the

1981 Rules framed thereunder.

94. As regards the submission made on behalf of the Petitioners that violation of condition No. 1, as contained in the said Government order dated October 16, 2003 had been committed by the distributor or the producer of the film "Zamin" and not by the Petitioners (cinema hall owners/licensees), it is noteworthy that Clause (3) of the said Government order came into play in case of violation of the conditions laid down in the said Government order, and it was not material or relevant as to who committed such violation. The exemption from the entertainment tax was granted under the said Government order dated October 16, 2003, and the Petitioners, i.e., the cinema hall owners/licensees enjoyed the benefit of the exemption under the said Government order, and, therefore, they were bound by the terms and conditions as contained in the said Government order. As such, in case of violation of any of the conditions laid down in the said Government order, the Petitioners, i.e., the cinema hall owners/ licensees became liable to pay entertainment tax in respect of the period of exemption irrespective of the fact as to who committed such violation of the terms and conditions.

95. Again, as noted above, the word "proprietor" in the context of Section 3 of the 1979 Act means the cinema hall owner/licensee and, therefore, in view of the withdrawal of exemption from entertainment tax in respect of the film "Zamin", the Petitioners, i.e., the cinema hall owners/licensees became liable to pay entertainment tax in respect of the period of exemption. This liability of the cinema hall owners/licensees is not dependent on the question as to who committed violation of the conditions, as contained in the said Government order dated October 16, 2003.

96. As regards reliance placed by the learned Counsel for the Petitioners on the language of the proviso to Sub-section (3) of Section 11 of the 1979 Act, it is noteworthy that the said proviso, inter alia, provides "provided that the State Government may cancel such exemption if it is satisfied that . . . the proprietor of such entertainment has failed to comply with any of the terms or conditions imposed or directions issued in this behalf and thereafter the proprietor shall be liable to pay the tax which would have been payable had not the entertainment been so exempted". Thus, the proviso contemplates that the proprietor of such entertainment has failed to comply with any of the terms or conditions imposed or directions issued in this behalf. The consequence will be that "thereafter the proprietor shall be liable to pay the tax which would have been payable had not the entertainment been so exempted".

97. In our opinion, the word "proprietor" in the above proviso has the same meaning as in Section 3 of the 1979 Act, i.e., the cinema hall owner/licensee.

The words "the proprietor of such entertainment has failed to comply with any of the terms or conditions imposed or directions issued in this behalf" mean that the cinema hall owner/licensee has failed to comply with any of the terms or

conditions imposed or directions issued in this behalf on account of the own fault or on account of the fault of someone else. Whether on account of the own fault of the cinema hall owner/licensee or on account of the fault of someone else, the inevitable consequence will be that the cinema hall owner/licensee shall be liable to pay the tax which would have been payable had not the entertainment been so exempted.

98. The above interpretation is in consonance with the conclusion that under the Scheme of the 1979 Act and the 1981 Rules, the responsibility for collection and payment of entertainment tax has been imposed on the cinema hall owner/licensee.

99. Therefore, even if we were to accept the submission made on behalf of the Petitioners that the violation of condition No. 1 was committed by the distributor or the producer of the film "Zamin" and not by the Petitioners (cinema hall owners/licensees), still the liability to pay entertainment tax for the period of exemption was on the Petitioners (cinema hall owners/ licensees).

100. It is well-settled that there is no equity about a tax. Reference in this regard may be made to certain judicial decisions.

1. In Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others, , the apex court observed as under (paragraph 8 of the said AIR) (at page 400 of ITR) :

8. Before we advert to the said arguments, it will be convenient to notice the relevant rules of construction. The classic statements of Rowlatt, J., in Cape Brandy Syndicate v. Inland Revenue Commissioners [1921] 1 KB 64 at page 71, still holds the field. It reads:

".. Ana taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used".

To this may be added a rider: in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. "The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just or expedient." The expressed intention must guide the court. Another rule of construction which is relevant to the present enquiry is expressed in the maxim, *generalia specialibus non derogant*, which means that when there is a conflict between a general and a special provision, the latter shall prevail. The said principle has been stated in Craies on Statute Law, 5th edition, at page 205, thus:

"The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive

sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

But this rule of construction is not of universal application. It is subject to the condition that there is nothing in the general provision, expressed or implied, indicating an intention to the contrary: see Maxwell on Interpretation of Statutes, 11th edition, at pages 168, 169. When the words of a section are clear, but its scope is sought to be curtailed by construction, the approach suggested by Lord Coke in *In re ; Heydon's case* [1584] 3 Rep. 7b, yields better results:

"To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act; to consider, according to Lord Coke: 1. What was the law before the Act was passed ; 2. What was the mischief or defect for which the law had not provided ; 3. What remedy Parliament has appointed ; and 4. The reason of the remedy.

(emphasis supplied)

2. In *Income Tax OFFICER, TUTICORIN Vs. T. S. DEVINATHA NADAR AND OTHERS.*, it was observed as under (paragraph 24 of the said AIR) (at page 267 of 68 ITR):

24. Rowlatt, J. observed in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64 (at page 71):

"in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

These principles have been accepted as correct both by the English courts and the superior courts in this country. It is now well-settled that if the interpretation of a fiscal enactment is in doubt, the construction most beneficial to the subject should be adopted even if it results in obtaining an advantage to the subject; the subject cannot be taxed unless he comes within the letter of the law and the argument that he falls within the spirit of the law cannot avail the department.

(emphasis supplied)

3. In *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*,

27. The construction which we have placed on these provisions of the 1953 Act does no violence to the familiar principle, which, in *Cape Brandy Syndicate v. Commissioner of Inland Revenue*[1921] 12 Tax Cas 358 at page 366 was expressed thus by Rowlatt j.:

"In a taxing statute one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at

the language used."

This principle was approved and adopted by this Court in several decisions: *A.V. Fernandez Vs. The State of Kerala*, *Commissioner of Income Tax, Bombay Vs. The Provident Investment Co. Ltd.*, *Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator*, *Commissioner of Income Tax, Gujarat Vs. B.M. Kharwar*, *The Commissioner of Income Tax, West Bengal 1*, *Calcutta Vs. Vegetables Products Ltd.*, The principle is variously expressed by saying that in fiscal statutes one must have regard to the letter of the law and not to the spirit of the law, that the subject cannot be taxed by inference or analogy, that in a taxing Act there is no governing principle to look at and one has simply to go on the Act itself to see whether the tax claimed is that which the statute imposes, that while construing taxing Acts it is not the function of the court to give to the words used a strained and unnatural meaning and that the subject can be taxed only if the revenue satisfies the court that the case falls strictly within the provisions of the law.

29. The true implication of the principle that a taxing statute must be construed strictly is often misunderstood and the principle is unjustifiably extended beyond the legitimate field of its operation. Indeed, the more well expressed the principle as in the *Cape Brandycase* [1921] 12 Tax Cas 358 greater the reluctance to see its limitations. In that famous passage marked by a happy turn of phrase, Rowlatt J. said, "there is no equity about a tax. There is no presumption as to a tax". There is no equity about a tax in the sense that a provision by which a tax is imposed has to be construed strictly, regardless of the hardship that such a construction may cause either to the treasury or to the taxpayer. If the subject falls squarely within the letter of law he must be taxed, howsoever inequitable the consequences may appear to the judicial mind. If the Revenue seeking to tax cannot bring the subject within the letter of law, the subject is free no matter that such a construction may cause serious prejudice to the Revenue. In other words, though what is called equitable construction may be admissible in relation to other statutes or other provisions of a taxing statute, such a construction is not admissible in the interpretation of a charging or taxing provision of a taxing statute. Speaking for the court in *Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator*, Subba Rao J., after citing the passage from the judgment of Rowlatt J. in the *Cape Brandy case* [1921] 12 Tax Cas 358, said: "To put it in other words, the subject is not to be taxed unless the charging provision clearly imposes the obligation"

(emphasis supplied)

101. In the present case, as noted earlier, an examination of the various provisions of the 1979 Act and the 1981 Rules framed thereunder shows that the liability for collection and payment of entertainment tax has been imposed u/s 3 of the 1979 Act, i.e., the charging section, on the proprietor, i.e., the cinema hall owner/licensee. In view of the clear provision contained in the charging section, it is not open to the Petitioners, i.e., the cinema hall owners/licensees to contend

that they may be absolved of the liability as the violation of the condition No. 1, as contained in the Government order dated October 16, 2003, was committed by the distributor or the producer of the film "Zamin" and not by the Petitioners, i.e., the cinema hall owners/licensees. As the charging section of the 1979 Act clearly imposes the obligation to collect and pay entertainment tax on the cinema hall owner/licensee, the Petitioners, i.e., the cinema hall owners/ licensees were rightly saddled with the liability to pay entertainment tax for the period of exemption, and there is no room for resorting to equitable considerations keeping in view the principles laid down in the above decisions.

102. Again, as regards the submission made on behalf of the Petitioners that as they did not collect the entertainment tax from the public during the exemption period, it would be harsh to require them to pay entertainment tax for the said period, it is noteworthy that in view of the clear provision contained in Clause (3) of the said Government order dated October 16, 2003, once the exemption from entertainment tax granted by the said Government order was withdrawn on account of the violation of condition No. 1, as contained in the said Government order, the Petitioners, i.e., the cinema hall owners/licensees became liable to pay the entertainment tax for the period of exemption irrespective of the fact that they did not collect the entertainment tax from the public during the said period. This conclusion is also supported by an examination of the various provisions of the 1979 Act and the 1981 Rules framed thereunder which show that unless exempted from such liability, the proprietor, i.e., the cinema hall owner/licensee is liable to pay entertainment tax in full if the proprietor admits any person to entertainment irrespective of the fact that such person is admitted free of charge or on a concessional rate.

103. It is well-settled that levy of tax or duty is not dependent on the realization of such tax or duty having been made by the Assessee. Reference in this regard may be made to certain judicial decisions :

(1) In *The Tata Iron and Steel Co., Ltd. Vs. The State of Bihar*, the Supreme Court considered the validity of Section 4(1) of the Bihar Sales Tax Act, 1947, as amended by the Act No. 6 of 1949. [It was contended that the retrospective levy by reason of the amendment of Section 4(1) destroyed its character as a sales tax and made it a direct tax on the dealer instead of an indirect tax to be passed on to the consumer. The Supreme Court laid down as under (page 284 of 9 STC ; paragraph 17 of AIR) :

17. Re. point No. 5: The argument on this point is that sales tax is an indirect tax on the consumer. The idea is that the seller will pass it on to his purchasers and collect it from them. If that is the nature of the sales tax, then, urges the learned Attorney-General, it cannot be imposed retrospectively after the sale transaction has been concluded by the passing of title from the seller to the buyer, for it cannot, at that stage, be passed on to the purchaser. According to him the seller collects the sales tax from the purchaser on the occasion of the sale. Once that time goes past, the seller loses the chance of realising it from the purchaser and

if it cannot be realised from the purchaser, it cannot be called sales tax. In our judgment this argument is not sound. From the point of view of the economist and as an economic theory, sales tax may be an indirect tax on the consumers, but legally it need not be so. Under the 1947 Act the primary liability to pay the sales tax, so far as the State is concerned, is on the seller. Indeed before the amendment of the 1947 Act by the amending Act the sellers had no authority to collect the sales tax as such from the purchaser. The seller could undoubtedly have put up the price so as to include the sales tax, which he would have to pay but he could not realise any sales tax as such from the purchaser. That circumstance could not prevent the sales tax imposed on the seller to be any the less sales tax on the sale of goods. The circumstance that the 1947 Act, after the amendment, permitted the seller who was a registered dealer to collect the sales tax as a tax from the purchaser does not do away with the primary liability of the seller to pay the sales tax. This is further made clear by the fact that the registered dealer need not, if he so pleases or chooses, collect the tax from the purchaser and sometimes by reason of competition with other registered dealers he may find it profitable to sell his goods and to retain his old customers even at the sacrifice of the sales tax. This also makes it clear that the sales tax need not be passed on to the purchasers and this fact does not alter the real nature of the tax which, by the express provisions of the law, is cast upon the seller. The buyer is under no liability to pay sales tax in addition to the agreed sale price unless the contract specifically provides otherwise, See *Love v. Norman Wright (Builders) Ltd.* [1944] 1 KB 484. If that be the true view of sales tax then the Bihar Legislature acting within its own legislative field had the powers of a sovereign Legislature and could make its law prospectively as well as retrospectively. We do not think that there is any substance in this contention either.

(emphasis supplied)

(2) In *J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another*, , the Supreme Court considered the validity of Section 3A of the U. P. Sales Tax Act, 1948 as amended, inter alia, by the U. P. Sales Tax (Validation) Act, 1958 (U. P. Act XV of 1958) and the notifications issued under the said section. It was held as under (pages 436 and 437 of the said STC ; paragraphs 11 and 13 of the said AIR) :

11. The point for decision, stating it succinctly, is whether the Validation Act is within the ambit of entry 54 in List II of the Seventh Schedule to the Constitution. That entry confers on the States authority to enact a law with respect to tax on sales of goods. Not what is the extent of that authority ? There must be in fact a sale as recognised by law. It is only then that a tax could be imposed. But if the transaction sought to be taxed is not a sale, a law which seeks to tax it, treating it as a sale, would be ultra vires. Thus in *The Sales Tax Officer, Pilibhit Vs. Budh Prakash Jai Prakash*, a tax on agreement to sell was held to be not authorised by the entry, and in *The State of Madras Vs. Gannon*

Dunkerley and Co., (Madras) Ltd., a tax on the supply of materials in a contract for the construction of works simpliciter on the footing of a sale was held to be outside the entry, and the legislation which imposed such a tax was struck down as ultra vires. But where the transaction is one of sale of goods as known to law, the power of the State to impose a tax thereon is plenary and unrestricted subject only to any limitation which the Constitution might impose, and in the exercise of that power, it will be competent to the Legislature to impose a tax on sales which had taken place prior to the enactment of the legislation.

13. And then it is argued that a sales tax being an indirect tax, the seller who pays that tax has the right to pass it on to the consumer, that a law which imposes a sales tax long after the sales had taken place deprives him of that right, that retrospective operation is, in consequence, an incident inconsistent with the true character of a sales tax law, and that the Validation Act is therefore not a law in respect of tax on the sale of goods, as recognised, and it is ultra vires entry 54. We see no force in this contention. It is no doubt true that a sales tax is, according to accepted notions, intended to be passed on to the buyer, and provisions authorising and regulating the collection of sales tax by the seller from the purchaser are a usual feature of sales tax legislation. But it is not an essential characteristic of a sales tax that the seller must have the right to pass it on to the consumer, nor is the power of the Legislature to impose a tax on sales conditional on its making a provisions for sellers to collect the tax from the purchasers. Whether a law should be enacted, imposing a sales tax, or validating the imposition of sales tax, when the seller is not in a position to pass it on to the consumer, is a matter of policy and does not affect the competence of the Legislature. This question is concluded by the decision of this Court in *The Tata Iron and Steel Co., Ltd. Vs. The State of Bihar*, The following observations of Das, C. J., bearing on this question might be quoted:

"Under the 1947 Act the primary liability to pay the sales tax, so far as the State is concerned, is on the seller. Indeed before the amendment of the 1947 Act by the amending Act the sellers had no authority to collect the sales tax as such from the purchaser. The seller could undoubtedly have put up the price so as to include the sales tax, which he would have to pay but he could not realise any sales tax as such from the purchaser. That circumstance could not prevent the sales tax imposed on the seller to be any the less sales tax on the sale of goods. The circumstances that the 1947 Act, after the amendment, permitted the seller who was a registered dealer to collect the sales tax as a tax from the purchaser does not do away with the primary liability of the seller to pay the sales tax. This is further made clear by the fact that the registered dealer need not, if he so pleases or chooses, collect the tax from the purchaser and sometimes by reason of competition with other registered dealers he may find it profitable to sell his goods and to retain his old customers even at the sacrifice of the sales tax. This also makes it clear that the sales tax need not be passed on to the purchasers and this fact does not alter the real nature of the tax which, by the express provisions of the law, is cast upon the seller. The buyer is under no liability to pay

sales tax in addition to the agreed sale price unless the contract specifically provides otherwise. See *Love v. Norman Wright (Builders) Ltd.* [1944] 1 KB 484. If that be the true view of sales tax then the Bihar Legislature acting within its own legislative field had the powers of a sovereign Legislature and could make its law prospectively as well as retrospectively/ (pages 1378-1379 (of SCR): (page 463 of AIR): (pages 284 and 285 of 9 STC).

(3) In *The Commissioner of Sales Tax Vs. Qureshi Cruchible center*, the question involved was as to whether the levy of interest u/s 8(1) of the U. P. Sales Tax Act, 1948 was justified on the facts and in the circumstances of the case. The Supreme Court laid down as under (pages 468-469 of STC ; paragraphs 2 and 3 of the said AIR):

2. In this case, the dealer filed a return for the assessment year 1975-76. The goods in which he was dealing fell within the category of unspecified goods. For unspecified goods, the rate of tax prior to 1-12-1973 was 3.5 per cent. With effect from the said date, however, the rate was revised to seven per cent. In the return filed by the Respondent-Assessee, he arrived at the tax admittedly payable on tin-turnover disclosed by him, by applying rate of 3.5 per cent. The authorities held that inasmuch as he has not paid the tax admittedly payable within the meaning of Section 8(1) inasmuch as he has not calculated and paid the tax at the rate prescribed by law--he must be held to have failed to comply with the requirement of Section 8(1), Accordingly, interest as prescribed by the said section was levied. The appellate authority as well as the Tribunal affirmed the said levy. The matter was carried to the High Court by way of a revision. The learned judge allowed the revision holding that "there have been no finding by the Tribunal that the Assessee acted mala fide in not depositing the tax at the rate of seven per cent. The demand of interest was not justified".

3. We are unable to see any relevance of the mala fides in this case. Section 8(1) does not say that the non-payment should be mala fide. This is also not a case where the rate of tax applicable was in dispute or disputed by the dealer. This is simply a case where the dealer calculated the tax at an inapplicable rate. He did not and could not plead ignorance of the change in rate of tax effected two years earlier. In the circumstances, the concept of mala fides was not relevant in tin-context.

(emphasis supplied)

(4) In *Devi Dass Copal Krishen Ltd. v. State of Jammu and Kashmir*, [2001] 121 STC 388 (SC) the facts were as follows :

A notification dated March 7, 1991 issued u/s 5 of the Jammu and Kashmir General Sales Tax Act, 1962 granted exemption from payment of sales tax to all the units manufacturing and carrying on business in edible oil in the State of Jammu and Kashmir. The result was that the manufacturers of the State of Jammu and Kashmir were not required to pay any sales tax whereas the outside manufacturers had been paying sales tax at four per cent. The rate of sales tax

was enhanced to eight per cent. by the notification dated June 27, 1994.

The said notification dated March 7, 1991 was held to be invalid being violative of Articles 301 and 304(a) of the Constitution of India by the Supreme Court in the case of *Shree Mahavir Oil Mills and Another Vs. State of Jammu & Kashmir and Others*, However, the declaration of invalidity was on and from April 1, 1997. Therefore, up to and inclusive of March 31, 1997, the said notification dated March 7, 1991 continued to be effective and operative.

In *Devi Dass Copal Krishen Ltd. v. State of Jammu and Kashmir*, [2001] 121 STC 388 (SC) , the argument was that during the period prior to April 1, 1997, the Appellants had been realizing sales tax at four per cent. and since it had not been realized at eight per cent., the Appellants should not be required to deposit the balance, namely, the remaining four per cent. of the sales tax. Rejecting the argument, the Supreme Court held as follows (paragraph 11 of the said AIR and STC):

11. In view of the discussion held above in our view it is not a case for interference with the orders passed by the High Court of Jammu and Kashmir and to issue any such direction to the Respondents not to realize the balance amount of the sales tax for the reason that it had not been realized by the Appellants, nor due to the fact that exemption granted to the local manufacturers was quashed but with effect from a prospective date, viz., April 1, 1997. It has also been noticed that in the case of *Shree Mahavir Oil Mills and Another Vs. State of Jammu & Kashmir and Others*, one of the provision made in the operative part of the order is to the effect that :

"(a) the Appellants shall not be entitled to claim any amount by way of refund or otherwise by virtue of or, as a consequence of, the declaration contained herein."

Conceding to the request made by the Appellants in this case, would also amount to granting relief in the teeth of order quoted above. The Appellants had been throughout under a statutory liability to realize the sales tax at the rate of eight per cent.

(emphasis supplied)

(5) In *State of Rajasthan and Another Vs. J.K. Udaipur Udyog Ltd. and Another*, the Supreme Court referred to the provisions of the Rajasthan Sales Tax Act, 1994 (in short, "the RST Act") and the Central Sales Tax Act, 1956 (in short, "the CST Act"), and discussed the nature of exemptions granted under the said Acts, and the power of the State Government to modify or revoke such exemptions and the consequent liability to pay the sales tax irrespective of its collection from the customers. It was observed as under (paragraphs 25, 26, 27, 28, 31, 35 and 36 of the said STC and JT) :

25. An exemption is by definition a freedom from an obligation which the exemptee is otherwise liable to discharge. It is a privilege granting an advantage not available to others. An exemption granted under a statutory provision in a

fiscal statute has been held to be a concession granted by the State Government so that the beneficiaries of such concession are not required to pay the tax or duty they are otherwise liable to pay under such statute. The recipient of a concession has no legally enforceable right against the Government to grant a concession except to enjoy the benefits of the concession during the period of its grant. This right to enjoy is a defeasible one in the sense that it may be taken away in exercise of the very power under which the exemption was granted [See: Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another, Kasinka Trading and another, etc. etc. Vs. Union of India and another, ; Shrijee Sales Corporation and Another Vs. Union of India (UOI),

26. In this case the scheme being notified under the power in the State Government to grant exemptions both u/s 15 of the RST and Section 8(5) of the CST in the public interest, the State Government was competent to modify or revoke the grant for the same reason. Thus what is granted can be withdrawn unless the Government is precluded from doing so on the ground of promissory estoppel, which principle is itself subject to considerations of equity and public interest. (See: Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, . The vesting of a defeasible right is therefore, a contradiction in terms. There being no indefeasible right to the continued grant of an exemption (absent the exception of promissory estoppel), the question of the Respondent-companies having an indefeasible right to any facet of such exemption such as the rate, period, etc., does not arise.

27. In any event, the High Court erred in fact in holding that J. K. Synthetics had a vested right to the benefits of the scheme. Clause 4 of the scheme clearly provides that the benefits under the scheme were subject to the sanction of the Screening Committee. No sanction has been issued to J. K. Synthetics till date.

28. Apart from this, the exemption being a creature of the scheme is subject to the scheme. Clause 9 of the scheme makes it clear that the right under the scheme was temporary in the sense that the scheme could be modified or reviewed. It is true that Clause 9 also provides that such review or modification could take place only in the public interest. But nevertheless the right conferred was a modifiable or revocable one. If any right under the scheme is held to be unmodifiable it would be contrary to the scheme itself. Therefore, even if one were to assume that the Respondent-companies were entitled to the benefits of the scheme on par with new units under serial No. 1 with effect from the date of the certification of their application under Clause 4(h), the right could be modified with effect from the date on which the scheme was modified. The further argument of the Respondent that the subsequent notification could not be construed as a modification and would apply only to subsequent applicants is unacceptable. There is no ambiguity in the language of the subsequent notification. On the contrary the use of the word corrigendum itself indicates the intention was to correct and to rectify what the State Government thought had been erroneously done.

31. It was to clarify this ambiguity that the subsequent notification was issued by the State Government to correct or amend annexure B to the extent that it could be interpreted in a manner not in keeping with the published industrial policy of the State and the substantive provisions of the scheme.

35. This brings us to the last argument of the Respondent-companies, viz., that they should not be made liable for the sales tax on the basis of the corrigendum for the period they had availed of the exemptions after the decision of the High Court. The submission proceeded on the basis that the High Court had quashed the corrigendum notification. As we have noted earlier, the Division Bench had not quashed the corrigendum notification but had contended itself with construing it. The mere fact that this Court has not granted a stay of operation of the decision of the High Court would not give the Respondent-companies any right to the fruits of that decision if the decision is ultimately reversed by this Court. Besides the Respondent-companies should have been aware that with the admission of the appeal from the High Court's order their rights thereunder were precarious (See: Union of India (UOI) and Others Vs. West Coast Paper Mills Ltd. and Another,

36. The mere circumstances that the Respondent-companies having availed of the exemption scheme were prohibited from collecting the tax from its customers or that they had not collected the sales tax from their customers (which assertion is strongly disputed by the Appellants), is of no consequence. The primary liability to pay the sales tax is on the seller. The seller may or may not be entitled to recover the same from the purchaser. The State Government is entitled to recover the same from the Respondent-companies irrespective of the fact that the Respondent-companies may have lost the chance of passing on their liability to pay sales tax to their purchasers.

(emphasis supplied)

6. In Commissioner of Trade Tax, U.P. and Another Vs. Kajaria Ceramics Ltd., the Supreme Court considered the question regarding the extent of the entitlement of the Respondent to the benefit of exemption from payment of trade tax granted under a notification dated July 27, 1991 issued u/s 4A of the U. P. Trade Tax Act, 1948. It was held as under (paragraphs 72, 73, 74, 75 and 78 in STC ; paragraphs 74, 75, 76, 77 and 80 of said AIR):

74. The Respondent then submitted that it has not availed of even 50 per cent. of the total benefit under the notification in terms of the impugned judgment and it has not and could not in law have realised any tax during the period of the facility which expired on 31st March, 2003. Reference has been made to Section 8A(2) read with Section 15A(1)(qq) to contend that the prohibition on the collection of tax from consumers by a dealer which is itself not liable to pay tax is backed by severe penalties. It is said that the recovery of the tax would lead to the ultimate closure of the Respondent's unit which would be contrary to the very concept, object and intention of the exemption provision and policy of the

State.

75. The Appellants on the other hand have relied on the State of Rajasthan and Another Vs. J.K. Udaipur Udyog Ltd. and Another, to contend that even if the Respondent had not passed on its liability to and collected tax from its consumers, it was bound to pay the tax which it could and should have paid on the tiles sold by it during the period of facility. The factual basis of the Respondent's claim that it had not collected tax from its customers is also disputed. It is said that the Respondent had the option of collecting the tax and applying for refund u/s 29A of the Act in terms of paragraph II of the industrial policy.

76. A similar contention was considered by us in State of Rajasthan and Another Vs. J.K. Udaipur Udyog Ltd. and Another, where after considering the authorities on the issue we held:

"The mere circumstance that the Respondent-companies having availed of the exemption scheme were prohibited from collecting the tax from their customers or that they had not collected the sales tax from their customers (which assertion is strongly disputed by the Appellants), is of no consequence. The primary liability to pay the sales tax is on the seller. The seller may or may not be entitled to recover the same from the purchaser. The State Government is entitled to recover the same from the Respondent-companies irrespective of the fact that the Respondent-companies may have lost the chance of passing on their liability to pay sales tax to their purchasers."

77. We see no reason to differ from this view. Indeed the Act itself envisages a situation where a dealer may be called upon to pay the tax which it may not have collected from its customers . . .

80. Therefore, even if the dealer under the fear of punishment u/s 15A(1)(qq) (viii) does not realize amount by way of tax on the sale of its goods in compliance with the provisions of Section 8A(2) during the period it is exempt from paying tax, it would still have to pay the tax under Sub-section (4) of Section 4A if it is found that it was not entitled to such exemption. The overriding nature of this consequence follows not only from the use of the imperative word "shall" in Sub-section (4) but also from the non obstante clause with which Section 4A opens. Given the clear language, it is not necessary for us to express any view on Section 29A of the Act or the industrial policy underlying Section 4A or the 1991 notification.

(emphasis supplied)

104. These decisions thus show that even if the Petitioners, i.e., the cinema hall owners/licensees did not collect the entertainment tax from the public during the exemption period, still, once the exemption from entertainment tax was withdrawn, the Petitioners became liable to pay the entertainment tax for the period of exemption.

105. In view of the above, we are of the opinion that the Petitioners, i.e., the cinema hall owners/licensees were liable to pay the entertainment tax for the period of exemption irrespective of the fact that they did not collect the entertainment tax from the public during the said period or the fact that the violation of condition No. 1, as contained in the Government order dated October 16, 2003, was committed by the distributor or the producer of the film "Zamin" and not by the Petitioners (cinema hall owners/licensees).

106. Coming now to the THIRD SUBMISSION made by the learned Counsel for the Petitioners, namely, that it was the duty of the licensing authority to inform the Petitioners regarding violation of the aforementioned condition No. 1 by the distributor or the producer of the film "Zamin" so that the Petitioners could start collecting entertainment tax from the public, we are of the view that the said submission is misconceived. The Petitioners, i.e., the cinema hall owners/licensees were fully aware that under the Government order dated October 16, 2003 granting exemption from entertainment tax, the liability for payment of entertainment tax for the period of exemption could be fastened on the Petitioners in case of violation of the terms and conditions of the exemption--whether by the Petitioners or by the distributor or by the producer. Thus, it was the responsibility of the Petitioners to ensure full compliance of the terms and conditions of the exemption. It was not the duty or the responsibility of the licensing authority to inform the Petitioners (cinema hall owners/licensees) regarding any violation of the terms and conditions of the exemption by the distributor or the producer of the film "Zamin", nor was it open to the licensing authority to permit the Petitioners, i.e., the cinema hall owners/licensees to charge entertainment tax while the exemption was still in existence. Having taken the benefit of exemption under the said Government order dated October 16, 2003, it was the responsibility of the Petitioners, i.e., the cinema hall owners/licensees to ensure full compliance of the terms and conditions of exemption during the entire period of exemption, and once they failed to discharge the said responsibility resulting in the withdrawal of exemption, they are required to bear all the consequences which followed the withdrawal of such exemption. It is not open to the Petitioners to resile from their liability by shifting the blame on the licensing authority.

107. Hence, in our view, there was no duty or responsibility of the licensing authority to inform the Petitioners regarding violation of condition No. 1, as contained in the said Government order dated October 16, 2003, by the distributor or the producer of the film "Zamin" nor was it open to the licensing authority to permit the Petitioners to collect entertainment tax from the public despite the existence of the exemption.

108. Let us now consider the FOURTH SUBMISSION made by the learned Counsel for the Petitioners, namely, regarding interpretation of the proviso to Sub-section (3) of Section 11 of the 1979 Act.

109. It is submitted that under Sub-clause (i) of Clause (m) of Section 2 of the

1979 Act, the word "proprietor" includes any person connected with the organization of the entertainment. Therefore, the distributor as well as the producer of a film are included within the meaning of the word "proprietor". The violation of the terms and conditions in the present case, it is submitted, was committed by the distributor or the producer of the film "Zamin", and, therefore, the distributor or the producer of the film "Zamin" would be "proprietor" within the meaning of the said word as used in the proviso to Sub-section (3) of Section 11 of the 1979 Act. Therefore, the "proprietor" liable to pay the entertainment tax, as mentioned in the said proviso, would be the distributor or the producer of the film "Zamin" and not the cinema hall owners/licensees.

110. Having considered the said submission made by the learned Counsel for the Petitioners, we find ourselves unable to accept the same.

111. Proviso to Sub-section (3) of Section 11 of the 1979 Act, inter alia, provides that "the State Government may cancel such exemption if it is satisfied that . . . the proprietor of such entertainment has failed to comply with any of the terms or conditions imposed or directions issued in this behalf and thereafter the proprietor shall be liable to pay the tax which would have been payable had not the entertainment been so exempted".

112. As considered in detail above, the word "proprietor" as used at two places in the above proviso has the same meaning as in Section 3 of the 1979 Act, i.e., the cinema hall owner/licensee. Therefore, irrespective of the fact that the violation of the terms and conditions has been committed by the distributor or the producer of the film, the failure to comply with the terms and conditions would be attributed to the proprietor, i.e., the cinema hall owners/licensees, and the cinema hall owners/licensees would be liable to pay the entertainment tax for the period of exemption.

113. The question may be examined from another angle also. Under Sub-clause (i) of Clause (m) of Section 2 of the 1979 Act, the word "proprietor" includes any person connected with the organization of the entertainment. As the distributor and the producer of the film are the persons connected with the organization of entertainment, they are included in the word "proprietor" as defined in Clause (m) of Section 2 of the 1979 Act. As already noted, in view of Sub-clause (ii) of Clause (m) of Section 2, the word "proprietor" includes the cinema hall owners/licensees as they are the persons charged with the work of admission to the entertainment. Therefore, the word "proprietor" includes the producer, the distributor as well as the exhibitor (cinema hall owner/licensee) of a film. Violation of the terms and conditions regarding exemption from entertainment tax by any of the persons covered within the meaning of the word "proprietor", would result in the withdrawal of exemption and in the imposition of the entertainment tax for the period of exemption in view of the proviso to Sub-section (3) of Section 11. Such tax would, evidently, be realized from the proprietor, who is liable to pay the entertainment tax under the Scheme of the 1979 Act, namely, the person who admits to the entertainment, i.e., the cinema

hall owner/licensee.

114. There is yet another aspect of the matter. Even if the liability to pay entertainment tax as contemplated in the proviso to Sub-section (3) of Section 11 may be imposed on the producer and/or the distributor as they are also covered within the meaning of the word "proprietor", still it was open to the State Government to fix the liability on the cinema hall owner/ licensee, who is also covered within the meaning of the word "proprietor". This is what has been done by the State Government while granting exemption by the Government order dated October 16, 2003 by including Clause (3) in the said Government order wherein it was, inter alia, provided that in case of violation of any of the conditions contained in the said Government order, the entertainment tax would be imposed and realized in accordance with the Rules from the concerned cinema halls in respect of the entertainment tax exempted exhibition.

115. In view of the above discussion, we are of the opinion that the aforementioned writ petitions, namely, Civil Misc. Writ Petition No. 427 (Tax) of 2005, Civil Misc. Writ Petition No. 56 (Tax) of 2005, Civil Misc. Writ Petition No. 101 (Tax) of 2005, Civil Misc. Writ Petition No. 292 (Tax) of 2005, and Civil Misc. Writ Petition No. 276 (Tax) of 2005 lack merits, and are liable to be dismissed. Accordingly, the aforementioned writ petitions, namely, Civil Misc. Writ Petition No. 427 (Tax) of 2005, Civil Misc. Writ Petition No. 56 (Tax) of 2005, Civil Misc. Writ Petition No. 101 (Tax) of 2005, Civil Misc. Writ Petition No. 292 (Tax) of 2005, and Civil Misc. Writ Petition No. 276 (Tax) of 2005 are dismissed.

116. However, on the facts and in the circumstances of the case, there will be no order as to costs.