(2011) 08 RAJ CK 0072

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No''s. 12, 13, 14, 16, 17, 25, 30, 36, 43, 45, 54, 55, 56, 57, 60, 60, 79, 80, 109, 115, 116, 118, 119, 122, 123, 124, 125, 126, 127, 130, 131, 132, 135, 137, 140, 182 of 2009 and 8, 9, 72, 73, 74, 78, 79, 95, 108, 109, 110, 11

Acto and Others APPELLANT

Vs

Space and Others etc. etc. RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Entertainment and Advertisement Tax Act, 1957 — Section 11, 7, 7(2)

Citation : (2011) 08 RAJ CK 0072

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.

BY THE COURT:

1. All these revision petitions seek to challenge the judgments passed by the Rajasthan Tax Board dated 18/6/2008, 27/6/2008, 22/7/2008, 30/7/2008 and 29/10/2009 by which Tax Board decided 11, 15 and 26 appeals, respectively. One set of revision petitions have been filed by the Revenue, which is authorised to collect the entertainment tax under the Rajasthan Entertainment and Advertisement Tax Act, 1957 (for short, the "Act of 1957") against the judgments of the Rajasthan Tax Board dated 18/6/2008, 27/6/2008, 22/7/2008 and 30/7/2008, whereby orders of assessment for recovery of entertainment tax from the Assessees in those cases have been set-aside. Another batch of revision petitions have been filed by the Assessees against the subsequent judgment of the Rajasthan Tax Board dated 29/10/2009, which while partly accepting the appeals, held that the Assessee were not required to pay any tax for first two years and remanded the matter to the Assessing Officer for fresh assessment for subsequent three years. All the matters were clubbed together because they

involve questions with regard to interpretation and applicability of the same gazette notification/s issued by the government and therefore they were heard together and are now being decided by this common judgment.

2. The controversy that has arisen in the present case is result of different notifications issued by the government in exercise of its powers conferred under Sub-section (2) of Section 7 of the Act of 1957. Stand of the Assessees in all these cases is that they made huge investments in the purchase of land and construction of multiplex cinema halls motivated by notification of the Government of Rajasthan in its Finance Department dated 15/3/1996. The notification dated 15/3/1996 issued by the government, provided that the government in public interest has decided to exempt the new cinema halls from the purview of realising the entertainment tax for a period of five years subject to the condition that commercial exhibition in such cinema halls is started by 31/3/2000.

3. Contention of the Assessees is that the government issued this notification with the avowed objective of encouraging construction of cinema halls, which business had received a serious set back on account of increase in the popularity of television, video cassettes and DV Ds etc. Subsequently, the date 31/3/2000 upto which commercial exhibition was required to be started as per the aforesaid notification dated 15/3/1996, was extended upto 31/3/2002 vide another notification of the government dated 30/3/2000. Most of the Assessees by that time started commercial exhibition after procuring license from the District Magistrate / District Collector, who is the Licensing Authority under the Rajasthan Cinemas (Regulation) Act, 1952 (for short, the "Act of 1952"). The licensing authority in Column No. 7.3 of the license that were issued to the Assessees specifically mentioned that Assessee / licensee would be entitled to exemption of the entertainment tax for a period of five years from the date of commencement of the commercial exhibition in terms of the government notification dated 15/3/1996 read with notification dated 30/3/2000. The licensing authority in the license itself has prescribed the admission rate for different classes but has indicated Nil amount in the column relating to entertainment tax. The Assessee therefore could not have actually charged the entertainment tax and has actually not charged the same. There was thus no question of imposing such tax by the impugned order as change of opinion by the authorities of particular notification or its applicability or otherwise of that notification or attractibility of another subsequent notification, cannot be basis for imposition of such a tax.

4. Stand of the revenue however is that the notification that was earlier issued on 15/3/1996 applied only to a unitary cinema house and not to multiplexes having more than one cinema houses, which are constructed in one building, for which purpose, special notification dated 18/2/2002 was issued by the government in exercise of powers under Sub-section (2) of Section 7 of the Act of 1957. The tax exemption was granted in respect of multiplex cinema hall and drive-in-cinema/theater thereby for a period of three years in the manner

indicated therein that they would be entitled to tax exemption of 75% in the first year, 50% in second year and 25% in third year. Vide subsequent notification dated 8/8/2002, however the earlier notification dated 18/2/2002 was superseded and tax exemption was provided to such newly multiplex cinema halls, drive-in-cinema/ theater, provided commercial exhibition of films in which was started before 31/3/2002, for a period of five years, namely; 100% in the first & second years, 90% in third year, 80% in fourth year and 70% in fifth year. By yet another notification dated 25/2/2008, there was change in the slab by providing tax exemption of 100% in first, second and third years, 90% in fourth year and 80% in fifth year. Revision petitions have thus been filed assailing two sets of judgment of the Rajasthan Tax Board.

5. There are in all five notifications issued by the government u/s 7(2) of the Act, on interpretation of which hinges the fate of these petitions. These notifications for the facility of reference are reproduced hereunder:

Notification dated 15.3.1996- In exercise of the powers conferred by Sub-section (2) of Section 7 of the Rajasthan Entertainments & Advertisements Tax Act, 1957, the State Government being of the opinion that it is expedient in the public interest so to do hereby exempts entertainment tax (including additional entertainment) for a period of 5 years, payable by a new cinema hall constructed subject to the condition that commercial exhibition in such cinema halls should start upto 31.3.2000.

Notification dated 30.3.2000- In exercise of the powers conferred by Sub-section (2) of Section 7 of the Rajasthan Entertainments & Advertisements Tax Act, 1957, the State Government hereby makes the following amendment in this department notification dated 15.3.1996 namely-Amendment- In the said notification, the existing expression "upto 31.3.2000" shall be substituted by the expression "upto March 31, 2002.

Notification dated 18.2.2002- In exercise of the powers conferred by Sub-section (2) of Section 7 of the Rajasthan Entertainments & Advertisements Tax Act, 1957, the State Government being of the opinion that it is expedient in the public interest so to do hereby remits the Entertainment Tax (including additional entertainment tax) in the case of newly built multiplex cinema halls and driving cinema / theaters in Rajasthan, payable for 3 years from the date of commencement of the commercial exhibition as follows:

(i) 75% in the 1st year;

(ii) 50% in the 2nd year;

(iii) 25% in the 3rd year.

Notification dated 8.8.2002-In exercise of the powers conferred by Sub-section (2) of Section 7 of the Rajasthan Entertainments & Advertisements Tax Act, 1957 (Rajasthan Act No. 24 of 1957) and in supersession of this Departments notification No. F.10(14)FD/Tax-Div/97-pt.-138 Dated 18.2.2002, the State

Government being of the opinion that it is expedient in the public interest so to do, hereby remits the entertainment tax (including additional entertainment tax), in the case of newly built Multiplex Cinema Halls and Drive-In-Cinema/Theaters which have commercial exhibition on or before March 31, 2002 payable for a period of five years, from the date of commencement of their commercial exhibition. The extent of remission will be as mentioned hereunder:

(i) 100% in the 1st year

(ii) 100% in the 2nd year

(iii) 90% in the 3rd year

(iv) 80% in the 4th year

(v) 70% in the 5th year.

Notification dated 25.2.2008-S.O. 442.- In exercise of the powers conferred by Sub-section (2) of Section 7 of the Rajasthan Entertainments & Advertisements Tax Act, 1957 (Rajasthan Act No. 24 of 1957), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following amendment in this departments notification No. F.10(14) FD/Tax/97-Petitioner-89 dated 08.08.2002, namely:

AMENEMENT

In the said notification, for the existing expression:

(i) 100% in the 1st year

(ii) 100% in the 2nd year

(iii) 90% in the 3rd year

(iv) 80% in the 4th year

(v) 70% in the 5th year."

The following expression shall be substituted with effect from 08.08.2002, namely:

(i) 100% in the 1st year

(ii) 100% in the 2nd year

(iii) 100% in the 3rd year

(iv) 90% in the 4th year

(v) 80% in the 5th year.

Subject to the condition that tax charged or collected shall be deposited to the State Government and where tax has been deposited to the State Government, it shall not be refunded.

6. I have heard Shri Pankaj Ghiya, learned Counsel for the Assessees and Shri R.B. Mathur, learned Counsel for the revenue-Commercial Taxes Department and perused the material available on record.

7. Shri Pankaj Ghiya, learned Counsel appearing for the Assessees in these cases argued that all the Assessees of cinema halls are entitled to tax exemption in terms of government notification dated 15/3/1996 subject only to the condition that commencement of exhibition of film in the concerned cinema has to be started before 31/3/2000, which period was extended vide notification dated 30/3/2000 upto 31/3/2002.

District Magistrate /Collector, who is Licensing Authority in all these matters held the Assessees entitled to tax exemption as per the government notification dated 15/3/1996 read with notification dated 30/3/2000. According to Section 11 of the Act of 1957, District Magistrate-cum-Collector has power to renew or revoke or suspend the license for a cinema hall. The licensing authority in the relevant column of entertainment tax mentioned the amount of tax as ''nil'', therefore, there was no occasion for the Assessees to have charged the entertainment tax from the viewers. Therefore, the Assessees could not be required to pay the tax. Learned Counsel argued that two different organs of the government cannot be permitted to speak different voices and for that reason the Assessees cannot be penalized. Assessees on the basis of previously issued notification dated 15/3/1996, incurred a huge expenditure on purchase of land and construction of the multiplex cinema halls, which is a long drawn process and cannot be completed overnight. The Assessees have been treated as cinema halls and they were granted licenses, which were renewed on year to year basis by the licensing authorities in terms of Section 11 of the Act of 1957. The subsequent notification dated 25/2/2008 on the basis of which the revenue is seeking to realize the tax does not supersede the earlier notification dated 15/3/1996, whereas, the Government while issuing notification dated 8/8/2002 has superseded the notification dated 18/2/2002. Benefit of the earlier notification dated 15/3/1996 is therefore still available to the Assessees, on the basis of which, they have made huge investments in construction of multiplex cinema halls under the licenses granted to them by the licensing authorities.

8. Shri Pankaj Ghiya, learned Counsel argued that the District Magistrate/ Collector, who is Licensing Authority has imposed a condition on the Assessees not to charge any entertainment tax by simultaneously fixing the rate of admission fee of cinema house. The Assessees therefore were obliged not to charge the tax, which they are actually not charging from any viewer. The license granted to the Assessees by the District Magistrate is renewable on year to year basis. If it had charged the tax, that would have amounted to violating condition of license making the license liable to cancellation. Even otherwise, having not charged the tax from the viewers, Assessees cannot be compelled to pay the tax. It was argued that nothing prevented the commercial taxes department to approach the licensing authority in this case under the provisions of the Act of

1952 and Section 11 of the Act of 1957 to get that condition of the license modified, altered, varied or even revoked or rectified. No such steps were taken by the commercial taxes department. Therefore, said condition of the license was still valid and would be binding on the Assessees. Levy and realization of tax being contrary to that condition of license would thus have amounted to violation of conditions of license. Even in exemption certificate granted by the various departments of the government, even though they may be different departments than the commercial taxes department; for example, the industries department, yet those exemption certificates have to be honored by the commercial taxes department until they have got it modified or canceled from the concerned authority, which can be done only after notice to the Assessees.

9. Shri Pankaj Ghiya, learned Counsel for the Assessees further argued that the Rajasthan Tax Board in the earlier batch of matters while allowing appeals rightly decided that ''multiplex cinema hall'' has not been defined anywhere and even if therefore there are more than one cinema halls in one particular building, that would still be treated as cinema hall and therefore normal definition of ''cinema'' as given in given in Rule 2 (iii) of the Rajasthan Cinemas (Regulation) Rules, 1959, would have to be relied on. The Tax Board was therefore not justified in taking a contrary view. Shri Pankaj Ghiya, learned Counsel for the Assessees argued that although composition of the bench of the Tax Board both in the earlier batch of cases and in subsequent appeals was Single Bench. If however, Single Bench of the Tax Board in subsequent batch of appeals differed with the opinion of the co-ordinate bench of the Board in earlier judgment, and judicial propriety demanded that it ought to have made a reference to the larger bench.

10. Without prejudice to his submission made above however, Shri Pankaj Ghiya, learned Counsel for the Assessees has alternatively argued that in so far as the period from March 2002 to February 2005 is concerned, revision petitions of either side have become infructuous as per the subsequent government notification dated 8/8/2002 read with amended notifications dated 18/8/2002 and 25/2/2008, according to which, the government itself has granted 100% tax exemption to the multiplex cinema halls upto first three years. Thus, no liability is accrued to the Assessees in so far as those cases are concerned. However, for the subsequent two years, tax exemption now is restricted only 90% in fourth year and 80% in fifth year. If tax exemption in that year is spread over the period of five years, it would come only to 6% of the total tax liability for the entire span of five years.

11. Shri Pankaj Ghiya, learned Counsel for the Assessees has cited the letter of the Commissioner, Commercial Taxes, Rajasthan, Jaipur dated 11/9/2007 issued in respect of New Kohinoor Twin Cinema, Jodhpur with regard to determination of composition amount under the provisions of the Scheme for composition of Entertainment Tax-2003, which was addressed by him to the Deputy Accountant General (State Revenues), Rajasthan, Jaipur wherein, it was mentioned that the scheme does not provide for any specific provision to the effect that separate

determination of composition amount has to be made in case a cinema have more than one auditoriums and thus the compositions made with regard thereto on existing provisions of scheme were rightly made.

12. Learned Counsel in support of his arguments has cited the judgments of Supreme Court in Vadilal Chemicals Ltd. Vs. The State of Andhra Pradesh and Others, State of Karnataka and Ors. v. Balaji Computers and Ors. (2007) 5 VST 120 (SC), Mauri Yeast India Pvt. Ltd. v. State of U.P. and Anr. (2008) 14 VST 259 (SC), Single Bench judgments of Principal Seat at Jodhpur in Arihant Solvex Pvt. Ltd. v. State of Rajasthan: Tax Up-Date Vol.11 Part 8 April 1-15, 2005 297 (2007) 10 VST 582 Raj and Laxmi Industries v. State of Rajasthan (1995) 99 STC 584 and Full Bench judgment of Andhra Pradesh High Court in Panchalingal Carbonic Gas Pvt. Ltd. v. State of Andhra Pradesh (2005) 141 STC 0161.

13. Per contra, Shri R.B. Mathur, learned Counsel for the revenue-Commercial Taxes Department has argued that any condition incorporated by the licensing authority viz. District Collector / Magistrate in the license does not bind the Commercial Taxes Department, which is authorized under the Act of 1957 to levy and realize the tax. The ''licensing authority'' defined in Section 4 of the Act of 1952 has to act in an entirely different sphere whereas, the Commercial Taxes Department for realization of entertainment tax derive its power to do so from the Act of 1957. Definition of "cinema" as given in Rule 2(iii) may be valid for the purpose of Rules of 1959 however the same would not be binding so far as the Commercial Taxes Department is concerned. Learned Counsel argued that the licensing authority could not have in the license indicated "nil" entertainment tax unless its interpretation of such a condition was not approved by the Commercial Taxes Department. Stipulation of that condition in license by the licensing authority was under ignorance of the correct notification of the government that was applicable viz. 8/8/2002 read with amended notification dated 25/2/2008. Even if subsequent notification dated 18/2/2002 has not superseded earlier notification dated 15/3/1996, that would not make any difference because earlier notification was general notification, which was issued for the cinema halls whereas, subsequent notification carves out an exception for special category of cases i.e. newly built multiplex cinema halls / drive-in-cinema / theaters, which have commenced their commercial exhibition from 31/3/2002. In the absence of definition of ''multiplex cinema hall'', one has to go by the common parlance meaning that is attached to the phraseology ''multiplex cinema houses'', which means multiple number of cinema halls situated together in one building, which may or may not have a mall and other shops facilities therein, whereas, normal ''cinema hall'' is understood as a unitary cinema hall without there being any mall or shopping facilities attached thereto.

14. Shri R.B. Mathur, learned Counsel argued that while normal law in revenue matters is that benefit of ambiguity in regard to interpretation of any rule, notification, circular should go to Assessees, however tax exemption notifications have to be construed strictly and therefore ambiguity even if there any, has to be

viewed in favour of the revenue.

15. Shri R.B. Mathur, learned Counsel for the revenue in support of his argument has cited the judgment of Supreme Court in Union of India and others Vs. M/s. Wood Papers Ltd. and another, . It was argued that there was no necessity for the commercial taxes department to approach the licensing authority/District Magistrate-cum-Collector to get that condition of the license changed because indication of admission fee and ''nil'' entertainment tax was in fact not a condition of license but mere reflection of the tax proposed by the Assessees. Learned Counsel submitted that if the notifications of 2008 are taken to be changed in the policy of the government with regard to exemption to be granted to the Assessees, having effect of retrospectivity, no fault can be found therewith because Section 7(2) of the Act of 1957 clearly provides that whenever in the opinion of the State Government, reasonable grounds exist for doing so in the public interest, the State Government may, by general or special order notified in the Official Gazette reduce or remit, whether prospectively or retrospectively, entertainment tax with which any entertainment or class of entertainments is chargeable. Learned counsel in support of his argument has placed reliance on the judgment of Supreme Court in Entertainment Tax Officer-I and Anr. v. Ambae Picture Palace (1995) 96 STC 338.

16. I have given my anxious consideration to the rival submissions and perused the material available on record.

17. What is not disputed and cannot be disputed is the fact that two sets of notifications, one each is relied by the Assessee and revenue in these cases imposes a similar condition that benefit of tax exemption would be available only if the commercial exhibition of the cinema was started from 31/3/2002. First notification dated 15/3/1996 was issued u/s 7(2) of the Act of 1957 extending benefit of exemption to the newly built cinema halls for a period of five years subject to the condition that commercial exhibition should start upto 31/3/2000. This date was then extended upto 31/3/2002 by the subsequent notification dated 30/3/2000.Curiously, when the new notification dated 18/2/2002 was issued with reference to the same provisions for newly built cinema hall /drive-in-cinema / theaters, no such condition was imposed and the period of benefit of tax exemption was restricted to three years and slab that was given was 75% in the first year, 50% in second year and 25% in third year. When however, subsequent notification dated 8/8/2002 was issued, the condition again was that commercial exhibition must begun before 31/3/2002 even for newly built cinema hall/drive-in-cinema/theater, which claims benefit of tax exemption under this notification dated 8/8/2002. This time, the State Government took specific care in superseding the earlier notification dated 18/2/2002 and period of exemption was extended upto five years with 100; remission of tax in first two years, 90%, 80% and 70%, respectively in third, fourth and fifth years. Later notification dated 25/2/2008, which was applicable w.e.f. 8/8/2002, which in fact would mean that for all practical purposes, notification dated 25/2/2008 would become

effective with retrospective effect from 8/8/2002 and thereby the slab was also changed by providing 100% exemption of tax for first three years and 90% and 80% respectively for fourth and fifth years.

18. In all these cases, the licensing authority under the Act of 1957 issued the licenses to the Assessees prior to issuance of notification dated 8/8/2002, which is important and significant date. Curiously, the subsequent notification dated 8/8/2002 had superseded earlier notification dated 18/2/2002, which would mean that till the notification dated 8/8/2002 was issued, it would be deemed that there was no specific notification for multiplex cinema/drive-in-cinema/ theater and the scheme of exemption that was affected by the notification dated 8/8/2002 for this category would be available from that day subject to the condition that commercial exhibition would start before 31/3/2002. By subsequent notification dated 25/2/2008, government modified this slab of tax exemption by granting 100% tax exemption not for first three years but also 90% and 80% for fourth and fifth years which was done by making an amendment in the earlier notification dated 8/8/2002. Neither in the notification dated 18/2/2002, which was superseded by subsequent notification dated 8/8/2002 nor in the notification dated 8/8/2002 itself, the government superseded or rescinded the earlier notification dated 15/3/1996 on which not only the Assessees acted and made a huge investment in construction of the multiplex cinema halls after obtaining NOC for construction but also the licensing authority held that notification to be applicable to such multiplex cinema halls, there being no other specific notification for this category. Therefore the general notification that was issued on 15/3/1996 for newly built cinema hall was held applicable to the multiplex cinema hall as well. It is surprising why the government did not supersede the notification dated 15/3/1996 on the strength of which licenses was issued by the licensing authority, while issuing subsequent notification for multiplex cinema house/drive-in-cinema/theaters in the mall dated 18/2/2002, which itself was superseded vide subsequent notification dated 8/8/2002. This was necessary because Assessees relied on this notification dated 15/3/1996 claiming 100% tax exemption for a period of five years and the licensing authority also relying thereon, issued the licenses containing stipulation with regard to admission fee and indicated therein nil entertainment tax.

19. Even if what is contended by the revenue that first notification dated 15/3/1996 issued by the government was general notification covering cinema hall and the subsequent notifications dated 18/2/2002 and 8/8/2002 covered multiplex cinema halls, being special in nature, is accepted, then also the fact remains that at the time when the benefit of first notification was extended to the revenue, there was no specific notification available for multiplex cinema halls and therefore newly built cinema hall was rightly understood to have been included multiplex cinema hall. Though definition of multiplex cinema hall has not been provided anywhere and this even if this Court were to uphold the contention that in the absence of any definition, common parlance meaning thereof has to be preferred, but that can be done if only there was no notification

for the earlier period whereas, in the present case, there is a general notification, which was issued for newly built cinema hall; at that time, there was no different notification till notification dated 18/2/2002 was issued, which stood superseded by the subsequent notification dated 8/8/2002. The only notification that was covering the field upto 8/8/2002 was the notification dated 15/3/1996, which was acted upon not only by the Assessees but also by the licensing authority.

20. Besides, there is no explanation why if the licensing authority had issued the license containing the stipulation of ''nil entertainment tax'' and renewal thereof was done on year to year basis, the commercial taxes department, which is authorized to collect entertainment tax, did not take any steps to get the said condition of the license modified, altered, varied or even revoked or rectified to indicate the amount of tax.

21. Section 11 of the Act of 1957 inter-alia provides that the District Magistrate was under an obligation not to renew any license unless the proprietor of an entertainment furnishes a certificate of clearance of tax issued by the Commercial Taxes Officer in the prescribed form or may by order revoke or suspend any license for an entertainment granted under any law for the time being in force. There was no reason why the Commercial Taxes Officer could not approach the District Magistrate for getting that condition of the license modified insisting upon the licensing authority to require the Assessees to start charging the entertainment tax. In those circumstances, the Assessees were justified in contending that since they were exhibiting the cinema as per conditions of license, which did not permit them to collect the tax. Had they had started realizing the tax, it would have amounted to violation of conditions of license thereby, entailing cancellation of license. Now that the Assessees have actually not charged the tax, they can possibly be not required to pay the same to the commercial taxes department.

22. There can be no quarrel with the proposition of law laid down by the Supreme Court in M/s. Wood Papers Ltd. supra on which reliance was placed by Shri R.B. Mathur that but ratio of the abovesaid judgment is not applicable in the facts situation obtaining in the present case. Even if those propositions are applied in the facts of this case, once the exemption notification dated 15/3/1996 was applied to the Assessee in the present case, unless it was specifically superseded or held to have been not been applicable or otherwise, condition of license granted to the Assessee to run the multiplex cinema hall was not altered, the question of levy of tax could not be arise. In the facts of the case, therefore the argument of strict construction may not be available to the revenue.

23. In Ambae Picture Palace supra, Government of Andhra Pradesh formulated scheme for levy of entertainment tax of gross collection capacity per show from 23/3/1984 to 6/9/1984. On change of government, the new government promulgated ordinance w.e.f. 7/9/1984 restoring thereby the tax to its original slab for admission to entertainment. Again, on change of government, new government issued ordinance dated 25/10/1984 making it applicable with

retrospective effect from 7/9/1984 reintroducing payment of entertainment on the basis of gross collection capacity of the show. The Andhra Pradesh High Court on a writ petition held the retrospective amendment vide ordinance dated 25/10/1984 to be unreasonable as the then government did not offer any explanation for retrospectivity of law. On appeal, the Supreme Court reversed the decision of the High Court holding that no explanation was required from the State for amending the law with retrospective effect from 7/9/1984. This argument perhaps would have been available to the revenue in the present case only if while issuing subsequent exemption notification for multiplex cinema hall dated 18/2/2002, it had superseded the notification dated 15/3/1996 or even while issuing notification dated 8/8/2002 it had made the same applicable w.e.f. 15/3/1996 or otherwise specifically held the notification dated 15/3/1996 inapplicable to the multiplex cinema halls. On the contrary, in the present case, licensing authority has throughout been relying on the notification dated 15/3/1996 while renewing the licenses of the Assessees in these matters and no effort was made by the commercial taxes department to get that condition of license altered according to subsequent notification dated 8/8/2002.

24. Contention of the revenue that condition incorporated in the license by the licensing authority would not be binding upon the commercial taxes department, can neither be appreciated nor approved of because they are both two organs of the State, which cannot be permitted to speak two different voices. Even though the licensing authority was under an obligation to act according to the Act of 1952, yet the licensing authority has been assigned certain duties u/s 11 of the Act of 1957 and both the authorities have to therefore act in tendom.

25. The Supreme Court in Vadilal Chemicals Ltd. supra, where different opinions were expressed by the commercial taxes department and industries department of the government on grant of certain benefit under the incentives scheme to the Assessee, held that the State, which was represented by different departments, could only speak with one voice.

26. The Supreme Court in Laxmi Industries supra, where despite exemption certificate issued, the tax was sought to be recovered by the commercial taxes department, held that if such department was aggrieved by the exemption certificate issued by the district level committee, appropriate course for it would be to get the certificate cancelled rather than conferring upon itself the jurisdiction to cancel the same.

27. Full Bench of Andhra Pradesh High Court in Panchalingal Carbonic Gas Pvt. Ltd. held that on account of subsequent cancellation of exemption certificate, the Assessee could not be held to pay the tax, which he had not collected because it was prohibited from collecting the tax. Assessee could not be compelled to pay the tax, which it did not collect. Liability to pay the said tax would arise only from the date initial orders become operative.

28. In Balaji Computers and Ors., exemption was granted to items in entry in

schedule relating to computers and computer peripherals. Thereafter, the authorities issued notices to the dealers proposing to levy turnover tax on parts of computers and parts of computer peripherals. High Court held them exempted from the levy of tax. Affirming High Court view, Supreme Court held that even assuming that there was a doubt that the language of the notification admitted of two views and was not clear, the view which was beneficial to the Assessees had to be taken. The Supreme Court has expressed similar view in Mauri Yeast India Pvt. Ltd. supra.

29. Lastly, alternative submission made by the learned Counsel for the Assessee must be considered, which is that stacks of the revenue in course of time have been due to subsequent notification dated 8/8/2002 rendered very negligible because for the relevant period of five years, it has already granted 100% tax exemption for first three years even as per subsequent notifications and for remaining two years, tax exemption has been granted to the extent of 90% and 80%, respectively which, if spread over the span of five years, comes to only 6% of the total tax payable during the period of entire five years. Otherwise, that would be 20% in fourth year and 10% in fifth year.

30. In view of above discussion, the revision petitions filed by the Assessees deserve to be allowed and those filed by the revenue deserve to be dismissed.

31. In the result, revision petitions filed by the revenue-Commercial Taxes Department are dismissed and the judgments of the Rajasthan Tax Board dated 18/6/2008, 27/6/2008, 22/7/2008 and 30/7/2008 are affirmed.

32. However revision petitions filed by the Assessees as per the schedule annexed herewith are allowed and the judgment of the Rajasthan Tax Board dated 29/10/2009 assailed in revision petitions filed by the Assessees is set-aside.

33. There will be no order as to costs.

