
(2016) 08 AHC CK 0106
In the Allahabad High Court
Case No : Writ Tax No. 1238 of 2010

Bulbul Banerjee

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 3

Citation : (2016) 10 ADJ 45

Hon'ble Judges : Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.

Bench : Division Bench

Advocate : Govind Krishna, Advocate, for the Petitioner; C.S.C, for the Respondent; Ashok Kumar Pandey, Advocate, for the Petitioner; C.S.C, for the Respondent; Ashok Kumar Pandey, Advocate, for the Petitioner; C.S.C, S. Upadhayay, for the Respondent; Purusottam Upa

Final Decision : Disposed Off

Judgement

1. Heard Sri Govind Krishna, Sri Vipin Kumar and Sri N.S. Chahar, Advocates for petitioners in all the writ petitions and learned Standing Counsel for respondents.
2. Though validity of Section 3 of U.P. Entertainment and Betting Tax Act, 1979 (hereinafter referred to as the "Act, 1979") as amended by U.P. Entertainment and Betting Tax (Amendment) Act, 2009 (Act No. 25 of 2009) (hereinafter referred to as the "Amendment Act, 2009") has been challenged in all these writ petitions but during course of argument we find that as a matter of fact dispute relates to Explanation (2) inserted by Amendment Act, 2009 at the end of Section 3 only and not entire Section 3 as amended by Amendment Act, 2009. We further find during course of argument that dispute was confined to interpretation of meaning of Explanation (2), whether it contemplates computation and demand of entertainment tax on the amount of entertainment tax already computed under Section 3(1) or is only clarificatory in nature.
3. Section 3 as it stood prior to Amendment Act, 2009 and after said amendment are reproduced as under:

Before Amendment Act, 2009

After Amendment Act, 2009

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 subsection, 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:

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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 subsection, 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.

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 subsection, 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.

Provided further that in the case of cable service, the proprietor of the cable service control room/multi system operator shall be liable to pay the tax, irrespective of the fact whether he collect it directly from the person making the payment for admission or indirectly through an associate or franchise cable operator or an agent, who in turn collects it from the person making the payment: Provided also that a proprietor of a cinema, in lieu of payment under this subsection, shall make a lump sum payment to the State Government on such conditions and restrictions 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 lump sum payments may be notified for different categories of local

areas or cinemas or for different payment for admission.

(2) Nothing in subsection (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.

(2) Nothing in subsection (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 aggregate payment required for admission to entertainment.

(2a) It shall be lawful for the State Government to notify lump sum rate of entertainment tax for any entertainment or class of entertainments or for different payment for admission to entertainment or for different area.

(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 subsection (1) or subsection (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 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.

(3) Where the aggregate payment required for admission to an entertainment together with any other charge leviable under this Act, is not a multiple of one rupee then notwithstanding anything to the contrary contained in subsection (1) or subsection (2) or any notification issued thereunder, the tax shall be increased to such extent and be so computed that the aggregate of such aggregate payment and other charges is rounded off to the next higher multiply of one rupee and such increased tax shall also be collected by the proprietor and paid to the State Government in such manner as may be prescribed.

(4) If in any entertainment, referred to in subsection (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.

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(5) Where the payment for admission to an entertainment, referred to in subsection (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.

(5) Where the aggregate payment required for admission to an entertainment, referred to in subsection (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 such entertainment and the tax shall be levied and paid accordingly.

(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 aggregate payment required for admission is charged distinctly for such entertainment, thirty 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 aggregate payment required for admission to 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 he levied and paid on the basis of such subscription:

(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 he 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.

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Explanation. - For the purposes of this subsection 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 me State Government.

Explanation 1. - For the purposes of this subsection 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 me State Government."

Explanation (2)—For the purposes of this Act, the expression aggregate payment shall mean a sum paid by a person for admission to the entertainment which shall include entertainment tax and any other amount required to be paid under this Act but does not include any fee or other charges which is not a part of entertainment tax under this Act."

4. The charging Section 3 contemplates levy of tax on all aggregate payments required for admission to any entertainment at such rate not exceeding 150 per cent of each such payment as the State Government may notify from time to time in this behalf. Aforesaid levy of tax is other than entertainment to which Sections 4, 4A, 4B, 4C apply or to a compounded payment made under provision to Section 3(1). Petitioners before us are not covered by Sections 4, 4A, 4B, 4C, or proviso to Section 3(1). They are thus liable to pay "entertainment tax" at the rate prescribed by Government under Section 3(1).

5. Payment of admission is defined in Section 2(l), which reads as under:

"(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 ;

(vi) any payment made by a person by way of contribution or subscription or installation and connection charges or any other charges collected in any manner whatsoever, by whatever name called, for television exhibition through cable television network or any other such network by whatever name called, attached to television set or any other device at a residential or nonresidential place of a connection holder; or

(vii) any payment made by person to the proprietor of a Direct-to-Home service or any other service by whatever name called, by way of contribution or subscription or installation and connection charges or any charges collected in any manner by whatever name called either directly or through any agency established for the purpose for Direct-to-Home service with the aid of set top box or any other device of like nature which connects television set or any other device at a residential or nonresidential place of a connection holder directly to the satellite without passing through an intermediary such as cable operator:

Explanation - For the purposes of subclauses (vi) and (vii) any expenditure incurred by any cooperative society including a cooperative housing society or by the management of any factory, hotel, lodge, bar, permit room, pub or by a person or group of persons for the purchase of any type of antenna or any other apparatus for securing transmission through cable television network, Direct-to-Home service or any other service by whatever name called, for its member or for workers or customers or for himself or themselves, as the case may be shall be deemed to be the payment made under the sub-clause;

(viii) Where in any entertainment admission has been allowed on a gross payment, such gross payment shall be deemed to be aggregate payment."

(emphasis added)

6. It is contended that by virtue of Section 3A(1) the proprietors of Cinema have been authorised to realise from the person making payment to admission to entertainment in such Cinema, an extra charge which shall be utilised for maintaining Cinema premises and also in case of a centrally air-cooled or centrally air-conditioned Cinema a further extra charge. This extra charge under Section 3A(1)(a) is not permissible to Cinema owners receiving grant-in-aid from State Government under any scheme. Section 3A(2) provides that amount charged under subsection (1) shall not be deemed to be payment to an admission to an entertainment.

7. Section 3A has also been amended by Amendment Act, 2009 and now it reads as under:

"3A Extra charges for maintenance of cinemas and for air-cooled and air-conditioned facility - (1) Notwithstanding anything to the contrary contained in any other provision of this Act, the proprietor of a cinema shall utilise such amount of ticket value excluding entertainment tax and in such manner as may be notified by the State Government from time to time for maintenance of the cinema premises and for air cooling or air conditioning facilities."

(emphasis added)

8. Therefore, exclusion allowed earlier with respect to extra charge under Section 3A(1) now stand omitted. Petitioners have stated that prior to Amendment Act, 2009, Cinema owners used to collect price of a ticket comprising of following:

- (a) Payment for admission;
- (b) Tax on payment for admission;
- (c) Cinema maintenance charge;
- (d) Air-cooling/air-conditioning charge; and,
- (e) Film development fund.

9. It is argued that in view of Explanation (2) now entertainment tax computed on various other items is again liable to be subjected to entertainment tax and thus such tax would now be computed twice.

10. This has been controverted by learned Standing Counsel stating that there is no duplicacy of entertainment tax inasmuch as tax would be computed only on various components charged by Cinema owners and once various components of admission charge for entertainment tax are computed, there is no question or occasion to calculate entertainment tax again on the amount of entertainment tax. This stand taken by learned Standing Counsel, we find, is consistent with a combined reading of Section 3(1) along with Explanation (2) of Amendment Act, 2009.

11. State is authorised to levy tax on all aggregate payments required for admission on any entertainment at a rate not exceeding 150 per cent of each such payments. Meaning thereby, payment for admission, when comprises of various components, on each such payment or component, an entertainment tax is leviable at a rate not exceeding 150 per cent as prescribed by State Government. Prescription of rate of tax is subsequent to various payments which have been termed as "aggregate payment required for admission" to tax.

12. Section 3(1) further authorizes a proprietor of Cinema to collect tax from the person making payment for admission. It is in this context Explanation (2) has clarified that aggregate payment shall mean a sum paid by a person for admission to entertainment and it shall include "entertainment tax" and other amount required to be paid under this Act but for the purpose of attracting "entertainment tax" under Section 3(1) at the rate prescribed by State

Government, the words are qualified that "all aggregate payment requirement for admission to any entertainment". Thus, Explanation (2) cannot be read so as to permit respondents firstly to compute tax on various components of payments made for admission to entertainment and thereafter further compute entertainment tax on entertainment tax so arrived at.

13. Learned Standing Counsel fairly stated that there is no case of such double taxation and impression otherwise gathered by respondents is neither justified, nor correct, nor otherwise so provided in Amendment Act, 2009.

14. Further, the fact that earlier amount charged for maintenance etc. under Section 3A even if utilised for maintenance etc. but still has been subjected to entertainment tax would not make Section 3A, as amended by Amendment Act, 2009, bad or ultra vires for the reason that legislature can always frame its policy in the manner it likes and a legislative enactment can be challenged only on the ground of violation of constitutional provisions or legislative competence but not for the reason that a benefit otherwise provided in earlier provision has been taken away by new provision.

15. Impugned circulars issued by Commissioner (Entertainment Tax) is only for guidance of field authorities but we do not find anything therein which permits field authorities to compute and levy "entertainment tax" on the amount of "entertainment tax" computed under Section 3(1) of Act, 1979.

16. Even otherwise an explanation to a provision is normally clarificatory to explain some kind of ambiguity, if there may be any occasion but what is not contemplated under principal charging Section cannot be supplied by way of an explanation. We, therefore, make it clear that by taking recourse to Explanation (2) respondents cannot compute entertainment tax on the amount of entertainment tax computed on various payments authorised for admission for an entertainment. Entertainment tax once computed under Section 3(1) will not attract further computation of entertainment tax on already computed entertainment tax.

17. It is argued that Commissioner (Entertainment Tax) vide circulars impugned in this writ petitions has provided that after amendment of Section 3A by Amendment Act, 2009 the authority to charge extra charges for maintaining and for air-cooling and air-conditioning facilities has been stopped and now Cinema owners cannot charge such amount and wherever it has been charged must be refunded.

18. To this extent it is said that direction issued by Commissioner (Entertainment Tax) are contrary to statute inasmuch as Section 3A, as amended now, provides that amount of ticket value charged by Cinema owners shall be utilised in such manner as may be notified by State Government from time to time for maintenance of Cinema premises and for air-cooling and air-conditioning facilities. This shows that amount of ticket value is not restricted and instead Cinema owners may merge the same in the value of ticket and it would attract

entertainment tax also but out of such amount of ticket value some part can be directed by State Government to be utilised for maintenance of Cinema premises and for air-cooling and air-conditioning facilities. The intention is very clear. Earlier a separate provision was made entitling Cinema owners to raise extra charge on these two heads and the same was not subjected to "entertainment tax" when utilised for the purpose the same were charged but now that authority to charge and exemption has gone. A new provision has come in a different way. Cinema owners now may value the amount of their ticket in such manner so as to cover expenses, if any, they may require for maintenance of Cinema premises and for air-cooling and air-conditioning facilities. In fact now it would be a part of payments required for admission to any entertainment. This is also evident from the fact that definition of "payment for admission" has also been amended by Amendment Act, 2009 and Clauses (vi), (vii) and (viii) have been inserted. In Clause (viii) it is said that any entertainment admission if allowed on gross payment such gross payment shall be deemed to be aggregate payment.

19. Cinema owners, therefore, are not justified to continue to charge additional charge/extra charge by referring to Section 3A of Act, 1979 after its amendment by substitution and enactment of a different provision in which such authorisation of extra charge has been taken away. Circulars, impugned in these writ petitions, therefore, cannot be said to be bad or contrary to statute and Section 3A as amended by Amendment Act, 2009 also cannot be said to be ultra vires simply because it is a different provision that what it was earlier. A principal legislation cannot be challenged on the ground that it is contrary to what it was earlier. It is within the realm of legislation and unless want of legislative competent or violation of constitutional provision is shown, a principal legislation cannot be challenged as invalid or ultra vires.

20. In the light of clarifications/observations made above all the writ petitions are disposed of.