(2009) 07 AHC CK 0190

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 94 of 2008

Grand Surjit Cineplex, A Unit of M/s.Darshan Amusements Pvt.Ltd.Through its Director	APPELLANT
Vs	
State of U.P. Through its Special Secretary, Tax And Registration, Secretariat, U.P., Lucknow and others	RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 34A, 8
Uttar Pradesh Entertainments and Betting Tax Rules, 1981 — Rule 24

Citation : (2009) 07 AHC CK 0190

Hon'ble Judges : Rajes Kumar, J

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri Amol Ranjan, learned Counsel for the petitioner and Sri B.K. Pandey, learned Standing Counsel.

2. By means of present petition, the petitioner is challenging the demand of the penal interest under section 34A of the U.P. Entertainments and Betting Tax Act, 1979 (hereinafter referred to as the "Act").

3. The brief facts of the case are that the petitioner had established Cinema Hall and started exhibition of Cinema from 16.1.2004. The petitioner had applied for the licence under the Act which was granted. The petitioner had also applied for the exemption from the tax under the Scheme of the Government. The District Magistrate, Aligarh vide order dated 10.2.2004 granted exemption for the period of five years from the date of the order, the order of the District Magistrate is Annexure5 to the writ petition.

4. It appears that though the petitioner had exhibited Cinema but had not paid the tax for the period of 16.1.2004 to 9.2.2004 as required under section 8 read with Rule 24 of the U.P. Entertainments and Betting Tax Rules, 1981 (hereinafter referred to as the "Rule"). It also appears that for a long period, no demand had been raised for the aforesaid period. Thereafter, the respondent No. 2, on

4.8.2006 issued the notice, demanded a sum of Rs. 7,74,666.57 P. plus interest thereon at the rate of 2% per month from 16.1.2004 to 9.2.2004. It appears that the petitioner has deposited the principal amount of the tax demanded as per notice, however, disputing the demand of the interest.

5. Learned Counsel for the petitioner submitted that the demand of interest is wholly unjustified. He submitted that the petitioner has moved exemption application on 17.12.2003 in a proper format and, therefore, the exemption should have been allowed from the date of the application and under this bona fide belief the tax could not be deposited for the aforesaid period and, therefore, the demand of interest is unjustified.

6. Learned Standing Counsel submitted that the order of the District Magistrate dated 10.2.2004 granting exemption for the period of five years is clear wherein it has been stated that the exemption is being granted from the date of the order. In case, if the petitioner had any grievance against the order, the same should have been challenged but the petitioner has not preferred to challenge the order dated 10.2.2004, therefore, the same has become final and even after 10.2.2004 the petitioner ought to have deposited the tax for the period of 16.1,2004 to 9.2.2004 immediately but the petitioner has deliberately avoided the deposit of the amount and, therefore, the petitioner is rightly held liable for interest. He submitted that as per Rule 24 the amount of tax was liable to be deposited within three day from the last day of each week ending with Sunday, otherwise the owner is liable for interest under section 34A of the Act.

7. Having heard learned Counsel for the parties, I have given my anxious consideration to the rival submissions.

8. Section 8 and section 34A of the Act and Rule 24 (1) read as follows;

"8. Manner of payment.The State Government may, on such conditions as may be prescribed, require the proprietor to pay the amount of the tax payable under section 4,

(a) by stamping the tickets with an impressed, embossed, engraved or adhesive stamp, issued by the State Government for the purpose, denoting that the proper entertainment tax payable under section 3 has been paid; or

(b) in accordance with returns of the payment for admission to the entertainment and on account of tax; or

(c) by a consolidated payment of a percentage, to be fixed by the State Government, of the gross sum received by the proprietor on account of payments for admission to the entertainment and on account of tax; or

(d) in accordance with results recorded by the mechanical contrivance which automatically registers the number of persons admitted.

34A. Interest,If the tax payable under any provision of the Act remains unpaid after the expiration of the period specified in the rules made thereunder for payment of tax by the proprietor of an entertainment, simple interest at the rate of one and a half per cent per mensem up to three months and thereafter at the rate of two per cent per mensem on the unpaid amount of tax calculated from the date of such expiration shall become due and be payable.

1. Payment of tax in cash.(1) Proprietor of every entertainment is required to make the payment of tax in cash in accordance with the provisions of Clauses (b), (c) and (d) of section 8 and extra charges in accordance with the provisions of subsection (2) of section 3B, shall deposit the amount into Government account in State Bank of India conducting Government business or treasury, as the case may be, within three days from the last day of each week ending with Sunday or within such period as may be specified for the purpose by the Commissioner and which shall correspond with the period prescribed under Rule 15 for admission of Form ''B'' statements ;

Provided that where the third day is a public holiday under the Negotiable Instruments Act, 1881 the tax may be deposited on the next working day:

Provided further that where the payment is made by cheque, which shall invariably be drawn on a local nationalised or scheduled bank, the same shall be handed over to the State Bank or the Treasury, as the case may be, within the two days from the end of the period to which the payment relates:

Provided also that where the proprietor of an entertainment has been sanctioned a grantinaid under a scheme launched by Government he shall deposit the amount of tax in Government account in accordance with the Government Orders issued from time to time in this behalf, after deducting the amount of grantinaid due and the amount so deducted from the tax shall be deemed to have been deposited into Government account."

9. Under section 8 read with Rule 24 the tax was liable to be deposited within three days from the last day of each week ending with Sunday failing which there is liability of interest under section 34A of the Act at the rate of one and a half per cent for the period of three months and thereafter @ 2% for the subsequent period. The order of the District Magistrate dated 10.2.2004 granting exemption for the period of 5 years is clear, wherein it is stated that the exemption is being granted from the date of the order. If the petitioner was aggrieved by the order of the District Magistrate, the same should have been challenged but admittedly the same has not been challenged and the order has become final. Therefore, there is no dispute that the exemption has been granted from 10.2.2004. Since the petitioner has not deposited the tax for the period of 16.1.2004 to 9.2.2004 in accordance to the Rules as stated hereinabove, the petitioner is liable for the interest which has been rightly demanded. In my opinion under section 34A accrual of interest is automatic and there is no scope of any consideration of bona fide or any explanation for nondeposit or delayed deposit.

10. I do not see any illegality in demanding interest from the petitioner.

11. In view of the above, the writ petition has no merit and is accordingly dismissed.