

(1966) 11 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No's. 57, 71, 595, 634, 636, 693, 694, 695 and 696 of 1962, 82 and 128 of 1963 and 99 of 1964

Liberty Talkies

APPELLANT

Vs

The State of Gujarat and Another

RESPONDENT

Date of Decision : 09-11-1966

Acts Referred:

Bombay Entertainments Duty Act, 1923 — Section 2, 3, 3(1), 4, 4(1)
Bombay Entertainments Duty Rules, 1952 — Rule 11, 13, 3, 4, 7
Evidence Act, 1872 — Section 115

Citation : AIR 1968 Guj 280 : (1967) GLR 609

Hon'ble Judges : P.N. Bhagwati, J;N.G. Shelat, J

Bench : Division Bench

Advocate : I.M. Nanavathi, V.G. Hathi, P.V. Hathi and D.D. Kakkad, in Spl. Civil appln. No. 595 of 1962, I.M. Nanavathi, V.G. Hathi, P.V. Hathi and D.D. Kakkad, in Spl. Civil applns. Nos. 634 and 636 of 1962, I.M. Nanavathi, V.G. Hathi, D.D. Kakkad, P.V. Hathi and M.N. Dhandha, in Spl. Civil appln. No. 22 of 1963, R. Nanavathi, in Spl. Civil applns. Nos. 693 to 696 and 771 of 1962 and 57 of 1963 and 99 of 1964, H.C. Mankad, in Spl. Civil appln. No. 128 of 1963, for the Appellant; G.M. Vidyarthi, Asst. Govt. Pleader and K.L. Talsanai, Addl. Govt. Pleader in Spl. Civil Appln. No. 595 of 1962, G.M. Vidhyarthi, Asst. Govt. Pleader and K.L. Talsania, Addl. Govt. Pleader in Spl. Civil Appln. No. 22 of 1963, M.G. Vidyarthi, Asst. Govt. Pleader and K.L. Talsania, Addl. Govt. Pleader in Spl. Civil Applns. Nos. 693 to 696 and 771 of 1962 and 57 of 1963 and 99 of 1964, G.M. Vidyarthi, Asst. Govt. Pleader and K.L. Talsania, Addl. Govt. Pleader, for the Respondent

Judgement

Bhagwati, J.

(1) A short question of considerable importance relating to the construction of the Bombay Entertainments Duty Act, 1923, arises in the present petitions. The petitions are twelve in number and the facts giving rise to the petitions are only the difference in the amounts of entertainments duty demanded by the Collector and the periods for which they are so demanded. It will, therefore, be sufficient

to state the facts of petition No. 595 of 1962 in so far as they bear upon the question in controversy in the present petitions. The petitioners are proprietors of a Cinema Theatre in the town of Junagarh and they trues at the said theatre. Prior to 30th April 1960 the entertainments duty was charged by applying the statutory percentage to the total amount received by the petitioners from the cinema-goers both in respect of admission to the cinema theatre as also on account of entertainments duty. As a result of a circular issued by the Collector was levied from and after 30th April 1960 by applying the statutory percentage only to the amount received by the petitioners from the cinema-goers for admission to the cinema theatre without taking into account the amount collected an account of entertainments duty. This state of affairs continued until 11th January 1962 when the Governing out that the method that was being followed by the Collector was wrong and that total entertainments duty was leviable on the total amount received by the petitioners from the cinema-goers inclusive of the amount collected on account of entertainments duty. The result was that from 31st January 1962 the mamlatdar insisted that the entertainments duty was leviable on the total amount received by the petitioners from the cinema-goers and since then the petitioners have been paying entertainments duty on the basis that it is leviable on the total amount received from the cinema-goers. The Mamlatdar also in pursuance of the memorandum of the Government demanded from the petitioners a sum of Rs. 18,215.59 P. Being the difference in the amount of entertainments duty actually paid by the petitioners and the amount of entertainments duty leviable on the basis of the view set out in the Government Memorandum. The petitioners thereupon preferred the present petition challenging the correctness of the view taken in the Government Memorandum as also the validity of the notice issued by the Mamlatdar demanding payment of the sum of Rs. 18,215.59P. from the petitioners. Similar petitions were also filed by the proprietors of other cinema-theatres. These petitions raise a common question of law relating to the interpretation of the provisions of the Bombay Entertainments Duty Act, 1923 and the question is whether on a true construction of the said provisions, the entertainments duty is leviable only on the amount charged by the petitioners specifically for admission to the cinema-theatre or it is leviable also on the amount collected by the petitioners on account of entertainments duty.

(2) In order to arrive at a proper determination of this question, it is necessary to understand the scheme of the Bombay Entertainments Duty Act, 1923. The Act as the preamble show, was enacted to provide fro the levy of a duty in respect of admission to entertainments. Section 2 Clause (a) defines "entertainment" to include any exhibition, performance, amusement, game or sport to which persons are admitted for payment and the exhibition of motion pictures in the cinema theatres of the petitioners was admittedly an entertainment within the meaning of this definition. Section 2 clause (b) gives an inclusive definition of "payment for admission" in the following terms:-

"(b) "Payment for admission includes-

(i) 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 duty or more duty is required.

(ii) any payment for seats or other accommodation in a place of entertainment,

(iii) any payment for a programmed or synopsis of an entertainment,

(iii-a) 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 of the entertainment which, without the aid of such instrument or contrivance, such person would not get: and

(iv) any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment in addition to the payment, if any for admission to the entertainments;"

"Proprietor" in relation to any entertainment is defined in Section 2 Clause (c) to include any person responsible for, or for the time being in charge of, the management thereof. Then comes Section 3 which is the charging Section and it provides for the levy of entertainments duty in the following terms:-

"3. (1) There shall be levied and paid to the State Government on all payments for admission to any entertainment a duty (hereinafter referred to as "entertainments duty") at the following rate, namely:-

(a) Where the payment, excluding the amount of duty, is made for admission to a race-course licensed under the Bombay Race-Courses Licensing Act. 1912. 37 1/2 percent of such payment, and

(b) in any other case,-

(I) within the limits of the cities and cantonments of Ahmedabad, Surat, Baroda, Bhavnagar, Rajkot and Jamnagar. If the payment for admission-

(i) does not exceed 40 naye paise, 25 percent of such payment:

(ii) exceeds 40 naye paise, but does not exceed one rupee and forty naye paise, 30 per cent of such payment:

(ii) exceeds one rupee and forty naye paise, but does not exceed three rupees, 40 per cent of such payment:

(iv) exceeds three rupees, 50 per cent of such payment: and

It may be pointed out at this stage that prior to the amendment made by Bombay Act 53 of 1956, Section 3(1) did not contain Clauses (a) and (b) but instead thereof, there was the following provision prescribing the rate of duty :-

"Where the payment, excluding the amount of duty, is made for admission to a race-course licensed under the Bombay Race Courses Licensing Act. 1912, 25 per

cent of such payment, and in any other case,

Where the payment, excluding the amount of duty -

(i) does not exceed four annas, one anna.

*** ***(vii) exceeds ten rupees, for every five rupees or part thereof in excess of the first ten rupees in addition to the payment of ten rupees, two rupees"

Section 3A which was introduced by Bombay Act 38 of 1950 provides for the levy of a duty on complimentary ticket there shall be levied and paid to the State Government on every complimentary ticket issued by the proprietor the entertainment duty at the appropriate rate prescribed u/s 3, as if full payment had been made for admission to the entertainment according to the class of seat or accommodation which the holder of such ticket is entitled to occupy or use and the holder of such ticket shall or deemed to have been admitted for payment for the purposes of the Act. The method of levying the entertainments duty is prescribed by Section 4 and that section provides.

"4 (1) Save as otherwise provided by this Act, no person other than a person who has to perform some duty in connection with him by any law, shall be admitted to any entertainment, except, with a ticket stamped with an impressed embossed, issued by the State Government for the purposes of revenue and denoting that the proper entertainments duty has been paid.

(2) The State Government may, on the application of a proprietor of any entertainment in respect of which the entertainment duty is payable u/s 3, allow the proprietor on such conditions as the State Government may prescribe to pay the amount of the duty due-

(a) 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 the duty;

(b) In accordance with returns of the payments for admission to the entertainment and on account of the duty;

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

(3) The provisions of sub-section (1) of this section and of Section 5 shall not apply to any entertainment in respect of which the duty due is payable in accordance with the provisions of sub-section (2)"

Section 5 declares that if any person is admitted to any place of entertainment and the provisions of section 4 are not complied with, the proprietor of the entertainment to which such person is admitted shall, on conviction before a Magistrate, be liable in respect of each offence to a fine which may extend to rupees five hundred and shall be liable to pay any duty which should have been

paid. Section 6(2) provides for refund of the entertainments duty in the following circumstances :-

"6 (2) Where the Commissioner of Police or the District Magistrate, as the case may be, is satisfied that the whole of the net proceeds of an entertainment are devoted to philanthropic or charitable purposes, and that the whole of the expenses of the entertainment do not exceed twenty percent of the receipts, the amount of the entertainments duty paid in respect of the entertainment shall be refunded to the proprietor."

Section 7 confers power on the State Government to make rules for securing the payment of the entertainments duty and generally for carrying into effect the provisions of the Act and in the exercise of this power the State Government has made the Bombay Entertainments Duty rules, 1952. Though reference to some of the Rules was made in the Course of arguments. It is not necessary to set them out in extense. We shall have occasion to refer to them while dealing with the arguments of the parties.

(3) It will be seen that Section 3 which is the charge section provides for the levy of entertainments duty on "all payments for admission" to an entertainment. The word "all" preceding the words "payments for admission" is an all embracing word intended to bring within the scope and ambit of the words it governs. All the can possibly be included in them. This word is intended to remove any imitative or restrictive inhibition which might otherwise affect the full and natural content of the words it. Governs and it is, therefore, clear that the Legislature meant to include within the subject matter of the charge all payments for admission and did not intend that any payment for admission should be left out from the charge of the duty. But that raises the question; what is included within the connotation of the expression "payment for admission"? "Payment for admission" is defined in Section 2(b) but that is an inclusive definition and what is set out in the inclusive clause cannot prevent the expression receiving its ordinary popular and natural sense wherever that would be properly applicable. The inclusive definition is given for the purpose of enlarging and not restricting the meaning of "payment for admission" and that which, independently of the inclusive definition, in ordinary language, would properly be regarded as payment for admission does not cease to be so because it does not fall within the inclusive clause. It is, therefore, necessary to understand what the expression "payment for admission" means according to the plain natural connotation realised from the purchaser on account of the entertainments duty? Now there is no doubt that where the proprietor charges to the purchaser an amount on account of the entertainments duty, the purchaser is required to pay such amount to the proprietor for the purpose of gaining admission to the entertainment and it is, therefore, as much a payment for admission to the proprietor specifically for admission to the entertainment. The amount charged by the proprietor on account of the entertainments duty is an amount which has to be paid by the purchaser for securing admission to the entertainment and it is,

therefore, a payment for admission within the plain natural connotation of the expression. Taking the illustration given in the course of the argument, where the proprietor charges one rupee 20 paise to the purchaser, out of which rupee one is specifically for admission to the entertainment and 20 paise is an account of the entertainments duty, not only is rupee one a payment for admission but 20 paise is also a payment for admission, for without payment of 20 paise the proprietor would not admit the purchaser to the entertainment and the payment of 20 paise is made by the purchase for securing admission to the entertainment. Both the payments, one of rupee one and the other of 20 paise are, therefore, payments for admission and u/s 3 entertainments duty would be leviable on both the payments. It is also possible to regard payment on account of the entertainments duty as a payment falling within section 2(b) (iv). Section 2(b) (iv). refers to a payment for any purpose whatsoever connected with an entertainment which a person is required to make attend the entertainment in addition to the payment, if any for admission to the entertainment. Now entertainments duty would, therefore, be a payment for a purpose connected with the entertainment and since the purchaser is required to make such payment as a condition of attending the entertainment, it would be a payment for admission within the meaning of section 2 (b) (iv) Moreover it may be noticed that if the amount charged on account of entertainments duty is not shown separately but is merged in the price of admission and the price of admission is fixed as one single composite amount, the whole of it would admittedly be a payment for admission; then on principle why should it make any difference if the price of admission is split up and the amount charged on account of entertainments duty is separately shown. The character of the payment cannot change according as it included as part of the price of admission or is shown as a separate item. If it is payment for admission in the one case, it must be payment for admission in the other.

(4) There is also considerable inherent evidence in the Act to support this view. If payment for admission does not include payment of an amount separately charged by the proprietor on account of entertainments duty, there is no reason why the Legislature should have used the expression "... payment excluding the amount of the duty in section 3 as it stood prior to its amendment by Bombay Act 53 of 1956. The expression "....payment excluding the amount of the duty" clearly postulates that the payment for admission would include the amount of the duty and, therefore, for the purpose of applying the statutory percentage as provided in section 3. The payment to be taken into account should be the payment excluding the amount of the duty. The Legislature contemplated that the proprietor would try to pass on the burden of entertainments duty to the purchaser and the price for admission charged by him would to that extent be enhanced and the Legislature, therefore, provided that the entertainments duty should be computed by applying the statutory percentage to the price of admission after excluding the price of admission after excluding the amount of the duty. But the Legislature amended this provision by Bombay Act 53 of 1956

and by the amendment recast the original provision into two clauses, namely. (A) and (b) the statutory percentage is to be applied to the payment for the duty and this would clearly suggest the duty and this would clearly suggest the duty and this would clearly suggest that the amount charged by the proprietor on account of entertainments duty is included in "payment for admission" and it is not to be excluded in the application of the statutory percentage and entertainments duty is, therefore, leviable on such payment.

(5) But it was contended on behalf of the petitioners that the proprietor merely Acts as an agent of the Government for collecting the entertainments duty from the purchaser and that the payment made by the purchaser is, therefore, a payment of the entertainment duty and it is accordingly not liable to be regarded as a payment for admission so as to attract the charge of entertainments duty under 8 3 of the Act. The argument was that if this payment were allowed to be charged to entertainments duty. It would amount to permitting the State to levy duty on duty. Now this argument would have considerable force if the premise on which it is based were well founded but the State challenged the validity of the premise and proprietor charges an amount to the purchaser on account of entertainments duty the purchaser as agent of the State. The liability to pay entertainments duty which the State, is not that of the purchaser proprietor and when the proprietor recovers an amount from the purchaser on account of entertainments duty, he does so not as an agent of the State recovering liable to pay the same but merely as part of the price for admission which he seeks to cover the entertainments duty payable or of the petitioners conceded that if the liability to make payment is the entertainments it would not be possible for him to contend from the purchaser on account of entertainments duty would be anything but the price for admission but he urged that when entertainments duty is paid by stamps u/s 4(1), the liability to pay entertainments the proprietor. The proprietor, according to him, is, in such a case, merely an agent of the State for the recovery of entertainments duty from the purchaser and not that of the proprietor. The proprietor, according to him, is, in such a case, merely an agentments duty from the purchase by sale of the stamp to be affixed to the ticket issued for admission to the entertainment. The argument was rested primarily on the construction of Section 4(1) but support for it was also sought to be drawn from some of the rules, particularly rules 3,4 and 13. It is, therefore, necessary to consider the true meaning and effect of section 4 (1) and the relevant rules dealing with payment of duty by stamps.

(6) Before, however, we do so, it is necessary to make a few general observations which are helpful in the determinations of the question before us. The entertainments duty which is levied by the Act is a duty on entertainments and it is, therefore, reasonable to assume, unless of course there is any provision in the Act

Which militates against such assumption, that the incidence of entertainments

duty must be intended to fall on the person responsible for entertainment. Moreover, even the requirement of convenience would suggest that the incidence of the duty would be intended by the legislature to fall on the Proprietor who would be readily and immediately available for enforcement of the duty rather than on the indefinable and indeterminate class of members of the public who come to the entertainment for being entertained and then disappear into anonymity. It is against the background of these observations that we must proceed to examine the validity of the contention urged on behalf of the petitioners.

(7) Turning to section 4, it will be seen that the section is not a charging section. The charge of entertainments duty is imposed by section 3 and section 4 merely provides the method of levy of entertainments duty. There are two modes of section (1) and the other in sub-section (2), Section 4(1) provides for payment of duty by stamps affixed to the tickets issued for admission to the entertainment while section 4(2) provides for payment of duty otherwise than by affixation of stamps. Section 4(1) is couched in negative language and it injuncts the proprietor not to admit any person to an entertainment except with a ticket duly stamped denoting that the proper entertainments duty has been paid. Now the ticket contemplated is obviously a ticket issued by the proprietor, for otherwise it would, from a practical point of view, be impossible to work out this provision. Section 3A which deals with tickets states that the ticket would be issued by the proprietor. And u/s 4(1) the stamp issued by the State Government and denoting that the proper entertainments duty has been paid, before the purchaser much was not disputed on behalf of the S. 4(1) does not state that the stamping of the ticket must be done by the proprietor. All that is required by section 4(1) is that the ticket must be stamped and the stamping can also be done by the purchaser to show that entertainments duty is payable by the proprietor. This argument is in our view without substance for it overlooks not only the considerations which we have set out above but also the provisions enacted in section 4(2), 5 and 6 (2). It is an elementary rule of construction that no provision of an Act should be read in isolation but that all the provisions of the Act must be read together so as to make a consistent and harmonious enactment of the whole statute. If section 4(1) is read with Ss. 4 that the liability to pay entertainments duty by stamping the ticket is that of the proprietor and this liability is not imposed on to the proprietor to adopt the method of payment of entertainments duty set out in that sub-section in place of the method set out in section 4(1) if the State Government permits him to do so on an application made by him in that behalf and this provision clearly shows that the liability to pay entertainments duty, whether by the method set out in section 4(1) or by the method set out in section 4 (2), is that of the proprietor. The provision enacted in section 4 (2) that the State Government may on the application of the proprietor allow him to pay the amount of the duty in one of the three ways specified in the sub-section would be liable to pay the amount of the duty by following the method set out in section 4(1) but he may be allowed by the State Government to pay the duty according to the method set out in section 4 (2). It is to be noted that if the

proprietor admits any person to entertainment without a stamped ticket, that is, ie. Without payment of entertainments duty, it is the proprietor and not the purchaser who is made liable for an offence and who is declared to be liable to pay the duty which should have been paid by stamping the ticket. (Vide Section 5). This provision clearly emphasises that the liability to pay the entertainments duty by stamping the ticket as provided in section 4(1), the amount of entertainments duty shall be recoverable from him. There is no provision in the Act which makes it an offence for the purchaser to visit a place of entertainment without payment of entertainment's duty or make him liable to pay entertainments duty. But quite apart from these provisions, there is one provision which in our view clinched the decision of this point in favour of the State and it is that contained in section b (2). That section provides that if the conditions set out in that section are satisfied, the amount of the entertainments duty in respect of the entertainment shall be refunded to the proprietor and this provision would operate not only in cases falling within section 4 (2) but also in cases falling within section 4 (1). Now the legislature could not have provided for refund of the entertainments duty payable by the proprietor. The liability to pay the entertainments duty is that of the proprietor whether the method of payment followed is that set out in section 4(1) or section 4(2) and it is, therefore, not possible to say that in recovering an amount from the purchaser on account of entertainments agent of the State. When the proprietor recovers such amount from the purchaser he does not levy or collect entertainments duty from the purchaser but what he does is to increase the price for admission so as to ensure that he will not be the loser by having to pay entertainments duty levied upon him by the Act. He passes on the entertainments duty to the purchaser and the purchaser pays it not as entertainments duty but as part of the price for admission and it is, therefore, chargeable to entertainments duty u/s 3.

(8) In view of this construction which we are inclined to place on the various provisions of the Act, it is not necessary to make any reference to the rules but since reliance was placed on behalf of the petitioners on some of the rules in support of their plea that where the method of payment set out in section 4(!) is followed, the proprietor is acting as agent of the proprietor is acting as agent of the State for the purpose of recovering entertainments duty from the purchaser by selling the stamp to him along with the ticket we will briefly refer to these rules. We may at once point out that the rules relied upon by the petitioners do not support the construction contended for by them and the rules read as a whole clearly bear out the view which we are taking but even if the rules purported to throw the incidence of duty on the purchaser and constituted the proprietor agent of the state for the purpose of recovering entertainments duty from the purchaser, they cannot affect the construction of the provisions of the Act and in case of conflict between the Act and the Rules, we must give effect to the Act and ignore the rules But, as

pointed out by us above, the rules confirm the view as to the construction of the Act and Rules. We must give effect to the Act and ignore the rules But, as pointed out by us above, the rules confirm the view as to the construction of the Act which we have set out above. Rules 3 to 13 deal with payment of duty by stamps and the procedure which is devised by these rules is that the stamps required for the purpose of the Act are to be purchased by the proprietor from the prescribed officer and proprietor has to affix on the ticket a stamp of the value of the duty payable on the price of admission. The ticket has to be in three parts: one part is to remaining two parts are to be detached from the ticket books and issued to the purchaser. The two parts which are to be detached and issued to the purchaser are to be so detached that the stamp is defaced thereby so that the portion of the stamp which bears the word "Bombay" remains on the ticket book and the remaining portion goes out with one of the parts of the ticket issued to the purchaser. Vide Rule 7 and Rule 11 (1). It is, therefore, clear that the tickets are to be issued by the proprietor, the stamps are to be purchased by the proprietor and stamp of the value of the duty payable on the price of admission is to be affixed on the ticket by the proprietor and the proprietor has to deface the stamp when he issued two parts of the ticket to the purchaser. When the ticket is sold to the purchaser, the stamp is used by the proprietor by defacing it and the entertainments duty is, therefore, paid by means of the stamp by the proprietor. It is not possible to say that the stamp is sold by the proprietor to the purchaser along with the ticket and the purchaser uses the stamp by defacing it. What the purchaser receives from the proprietor is the ticket with the defaced stamp and the ticket entitles him to admission to the entertainment. The amount that is paid by the purchaser to the proprietor is, therefore, the price for the admission and it is immaterial as to how that price is arrived at by the proprietor. The price may have been fixed by the proprietor as one integral amount after taking into account the entertainments duty constituted of the amount charged speed ed on account of entertainments duty. The argument that the stamp is sold by the chaser uses the stamp by defacing it is therefore not justified by the rules a case where the price of admission charged by the proprietor is a composite amount not showing separately any amount an account of entertainments duty. In such a case also if the method of payment followed is that set out in section 4(1), the proprietor would have to affix a stamp of the value of the entertainments duty payable on the price of admission. Can it be said in such a case that the purchaser has purchased the stamp and that the payment for admission the price of admission less the value of the stamp? To take once again the illustration given above let us suppose that the composite price of admission charged by the proprietor is Rs. 1.20ps. On this price of admission he would have to affix stamp of the value of ticket stamped with a stamp of this denomination, can it be said that he purchases the payment for admission would be not Rs. 1.20 by is, 96 paise. But in that event the stamp affixable by the proprietor would be for entertainments duty payable on 96 paise and not on Rel. on. . 1.20 ps. The only proper construction of the rules in the context of the provisions of the Act therefore seems to be that the proprietor is

required to affix on the ticket stamp of the value of the entertainments duty payable on the price of admission and the price of admission may be a composite amount or it may be an amount charged specifically for admission plus an amount on account of entertainments duty. The proprietor in either case pays the entertainments duty by defacing the stamp at the time of issuing the ticket to the purchaser

(9) the petitioners, however, relied on Rules 3, 5 and 13 they urged that these rules show that when the stamp is affixed to the ticket and the ticket is issued to the purchaser, the purchaser purchases the stamp from the proprietor and the proprietor issues it to the purchaser.

But this contention is based on a misreading of Rules 3, 4 and 13. Rules 3, 4 and 13 form part of the fascicles of rules dealing with payment of duty by stamps and they must be read along with the other rules in the fasciculus and particularly Rules 7 and 11 to which we have already referred. All that is intended to be conveyed by rules 3 and 4 is that the stamps issued for the purposes of the Act shall be used only for the purpose of affixing to tickets issued for the purpose of admission to an entertainment. Under Rule 3 no person can purchase a stamp except from the prescribed officer and the first proviso declares that if the stamp is affixed to a ticket for the purpose of admission to an entertainment, the prohibition shall not apply. Similarly R. 4 prohibits the proprietor from issuing any stamp purchased by him and makes it clear that he can use it only for the purpose of affixing to a ticket issued for the purpose of admission to an entertainment. These two rules are intended to ensure that the stamp is used only for the purpose of affixing to the ticket and is not purchased or issued otherwise than for such purpose. Rule 13 requires the proprietor to submit to the prescribed officer a return in Form A showing the number of stamps purchased and issued by him. It is not doubt true that the word used here is "issued" but if we turn to form A it is clear that what the rule-making authority had in mind was the use of the stamps. We do not, therefore, see anything in the rules which supports the construction contended for on behalf of the petitioners. On the contrary the rules clearly reinforce what we have already pointed out to be the correct construction of the provisions of the Act.

(10) It must, therefore, be concluded that the entertainments duty was payable by the peittioners not only on the amount shown by them in the tickets as the charge for admission but also on the amount charged by them to the purchasers on account of the entertainments duty. The view set out in the Government Memorandum dated 11th January 1962 was, therefore, correct and the demand made by the Mamlatdar against the petitioners for the difference in duty was justified. The petitioners, however, urged that even if the stand adopted in the Government Memorandum dated 11th January 1962 was right, the State was in any event not entitled to recover the difference in entertainments duty from the petitioners since the amount already paid by the petitioners was in pursuance of the Circular of the Collector dated 18th March 1960. The plea was in substance

and effect a plea of estoppel but it is now well settled that an estoppel cannot be pleaded against a statute. This contention urged on behalf of the petitioners must, thereof, be rejected and it must be held that the State was entitled to demand the difference in entertainments duty from the petitioners on a correct obstruction of the provisions of the Act. The petitioners in some of the petitions also challenged the vires of section 3 of the Act but in view of the decision of the Supreme Court in *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment*, the contention as to vires was not pressed on behalf of those petitioners. Nothing, therefore, need be said about that contention

(11) The result therefore is that the petitions fall and the rules are discharged with costs.

(12) Rules discharged.