(1989) 11 GUJ CK 0003

In the Gujarat High Court

Manubhai Kalidas Patel APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 16-11-1989

Acts Referred:
Constitution of India, 1950 — Article 226, 226
Gujarat Entertainment Tax Act, 1977 — Section 13, 13

Citation : (1990) 2 GLR 742

Hon'ble Judges : V.H. Bhairavia, J;S.B. Majmudar, J

Bench : Division Bench

Judgement

S.B. Majmudar, J.—In this petition under Article 226 of the Constitution of India, the only contention raised is that in exercise of the powers u/s 13 of the Gujarat Entertainments Tax Act, 1977, the State Government had no jurisdiction to order remand of the proceedings for re-examining the question as to whether the petitioner-owner of the Cinema Theatre, had committed breach of the provisions of the said Act and had defaulted in payment of tax by induging in alleged irregularities in connection with the sale of tickets. We are not concerned with the merits of the controversy between the parties. The fact remains that the first authority being Deputy Commissioner, Entertainments, imposed penalty on the petitioner to the tune of Rs. 1,07,776-00 and the petitioner''s appeal was partly allowed by the Collector, Kheda who reassessed the liability to the extent of Rs. 37,688-20 ps. including the penalty. These proceedings were taken in suo motu revision by the State Government in exercise of the powers u/s 13 of the said Act and having heard the petitioner, it was found by the appellate authority that the proceedings required to be remanded to the first authority for reconsideration in light of appropriate evidence which may be brought on record.

2. The contention of the learned Counsel for the petitioner is that u/s 13 of the Gujarat Entertainments Tax Act, 1977, the revisional authority can modify, annual or reverse the order, but has no power to remand the proceedings for fresh inquiry by subordinate authority. It is not possible to agree with this contention as in our view, Section 13 is very clear on the point. Said section

reads as under:

13. Revision of Orders:

(1) The State Government may, of its own motion, call for and examine the record of any proceedings under this Act for the purpose of satisfying itself as to the legality or propriety of any order passed therein by the prescribed Officer, or as the case may be, the appellate authority and if it shall appear to it that any order passed therein requires to be modified, annulled, or reversed, it may, after giving the proprietor affected by such order an opportunity of being heard and after making, or causing to be made, such inquiry as it deems necessary, pass such order thereon as the circumstances of the case justify.

3. It is true that it has been provided in the first part of the section that the State Government can call for the record and proceedings for the purpose of satisfying itself as to the legality or propriety of any order made by the subordinate authority, if it appears that that order requires to be modified, annulled or reversed. But section does not stop at that stage and proceeds further to state the it may after giving the proprietor affected by such order an opportunity of being heard and after making, or causing to be made, such inquiry as it deems necessary, pass such order thereon as the circumstances of the case justify. These last words employed by the legislature in the section leave no room for doubt that after necessary inquiry, revisional authority may pass any appropriate order as the circumstances of the case may justify and if the revisional authority comes to the conclusion that the matter requires to be remanded to the subordinate authority for fresh inquiry, such a consequential order can be passed by it.

4. It is not possible to agree with the contention of the learned Counsel for the petitioner that even though the last part of the section enables revisional authority to pass such orders as the circumstances of the case may justify, that has to be read down in light of the earlier part of section enabling the revisional authority to modify, annual or reverse the order and nothing more. On the contrary, last part of the section enclothes the revisional authority with wider power enabling it to pass all appropriate consequential orders after modifying, annulling or reversing earlier orders of the subordinate authorities and if circumstances of the case require, it can certainly remand the matter in exercise of its powers as made available to it by the later part of the section. It is also not possible to countenance the submission of the learned Counsel for the petitioner that under later part of the section revisional authority itself can pass appropriate final order but cannot ask the subordinate authorities to reconsider the matter by remanding the proceedings. To say the least, jurisdiction to pass ultimate drastic order includes jurisdiction to pass less drastic order by way of fresh inquiry. We, therefore, do not find any substance in the contention of the learned Counsel for the petitioner that there is no power of remand available to the revisional authority u/s 13 of the said Act. So far as the merits of the matter are concerned, all adverse orders against the petitioner have been set aside and the

matter has been remanded for fresh inquiry, it is always open to the petitioner to challenge the orders after remand if they are adverse to the petitioner. Consequently, no case is made out for our interference. This petition is, therefore, summarily rejected.

