

(2023) 03 BOM CK 0026
In the Bombay High Court
Case No : Writ Petition No. 2318 Of 2019

Minakshi

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 08-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 142
Maharashtra Entertainment Duty Act, 1923 — Section 3, 3(1), 3(1)(b), 3(1)(c), 3(13), 3(13)(b), 9(1), 10A

Citation : (2023) 03 BOM CK 0026

Hon'ble Judges : Arun R. Pedneker, J

Bench : Single Bench

Advocate : P.F. Patni, S.P. Tiwari

Final Decision : Partly Allowed/Disposed Of

Judgement

Arun R. Pedneker, J

1) Rule. Rule made returnable forthwith. With the consent of parties, heard finally.

2) By the present writ petition, the petitioner is challenging the orders passed by the respondent No. 3 – Collector, Parbhani dated 15.3.2017, which was confirmed by respondent No. 2 – Divisional Commissioner, Aurangabad vide order dated 31.7.2017.

3) Brief facts, leading to filing of the present writ petition can be summarised as under :-

The petitioner is running a cinema hall, now multiplex cinema at Sailu, District Parbhani in the name and style as Minakshi Chitra Mandir, Sailu. The petitioner has a license for running the said theater. The entire theater was renovated and as per the available scheme of the State Government, the petitioner had applied for exemption from the payment of entertainment tax.

4) The respondent No. 2 - Divisional Commissioner Aurangabad granted exemption to the petitioner from the payment of entertainment tax under the Maharashtra Entertainment Duty Act for the period of five years from 26.6.2014 to 15.6.2019. During the period of exemption of entertainment tax, inspection of the theater was conducted and the inspector found that the tickets had the caption 'entertainment tax' and an amount was collected from the customers towards 'entertainment tax' and accordingly, the petitioner was held liable for the payment of entertainment tax. Respondent No. 3 - Collector assessed the said tax to the tune of Rs. 7,97,514/-. In addition to the same, the respondent No. 3 also imposed the penalty double the amount of liability and ordered to pay total amount of Rs.23,92,542/-. The said order came to be passed on 15.3.2017 by respondent No. 3.

5) The petitioner challenged the order passed by the respondent No. 3 - Collector before the respondent No. 2 - Divisional Commissioner, Aurangabad by filing appeal under section 10A of the Maharashtra Entertainment Duty Act, 1923. The respondent No. 2 dismissed the appeal filed by petitioner vide order dated 31.7.2017 by upholding the order passed by the respondent No. 3 - Collector.

6) It was held by the respondent No. 2 - Divisional Commissioner that although exemption on entertainment tax was granted to the petitioner, the ticket of the petitioner showed the amount towards the entertainment tax and the same was collected from the customers and therefore, the petitioner was duty bound to pay the same to the State Government. Being aggrieved by the aforesaid orders of respondent Nos. 2 and 3, the present writ petition is filed.

7) It is the contention of the petitioner that once the exemption is granted by invoking the provisions of section 9 (1) of the Maharashtra Entertainment Duty Act, the State is not entitled to recover it from the petitioner under section 3 of the said Act. The learned counsel for the petitioner submits that the ticket roles were approved from the competent authorities and therefore, the authorities are estopped from seeking deposit of the entertainment tax. The most important and primary contention of the petitioner is that once the exemption has been granted from entertainment tax, although the said tax was mentioned on the whole value of ticket, the respondent/State is not entitled to receive the entertainment tax and the entire amount collected as ticket price including the amount collected under the caption 'entertainment tax' from the customers, can lawfully be retained by the petitioner.

Consideration and Conclusion :-

8) This Court while issuing notice in the matter on 20.3.2019 has granted stay to the impugned orders on condition that the petitioner deposits an amount of Rs.7,97,514/- in this Court. While dealing with a similar case under the Maharashtra Entertainment Duty Act, in the case of State of Maharashtra Vs. Swanston Multiplex Conema (P.) Ltd. reported in (2009) 8 SCC 235, at para 14,

19 and 25, the Hon'ble Supreme Court has held as under :-

"14. Entertainment duty is a tax. Tax, as is well-known, is a compulsory exaction. There is, it is trite, no equity about tax. It is a common burden. The State levied the duty in exercise of its statutory power. Sub-section (1) of Section 3 of the Act talks in imperative terms. Sub-section (13) of Section 3 of the Act, wherewith we are concerned, provides for an exemption. It contains a non-obstante clause. Such exemption is granted wholly or partly and spread out over a period of five years. It is to be granted to the owner of the multiplex theatre complexes subject to the terms and conditions specified in Clause (b) of Section 3 (13) of the Act. The crucial words are "there shall be levied and collected by the State Government. Such levy and collection is to be made from the proprietor of a multiplex theatre complex. By reason of the said provision, no duty is to be paid. If no duty is to be paid by the multiplex theatre complex, the question of the same being levied and collected would not arise for a period of three years. Similarly, for subsequent period of two years, the levy and collection would be at the rate of 25% of the rate of duty leviable under Clauses (b) and (c) of Sub-section (1) of Section 3 of the Act. Indisputably, in terms of Clause (c) of Sub-section (1) of Section 3 of the Act, as noted hereinbefore, the rate of entertainment duty on payment of admission fixed by the proprietor within the limits of Brihan Mumbai Municipal Corporation would be 45% which amount would become payable from the sixth year.

19. A proprietor of a multiplex cinema theatre when collects tax by way of entertainment duty from the cinema-goers, it would be entitled to collect such tax which is subject to levy and collection by the State. The authority in this behalf is implicit. For the aforementioned purpose, only the statute provides for the mode and manner in which the tax is to be collected. Once it is held that the amount realizable from the cinema-goers by way of entertainment duty comes within the purview of the definition of 'tax', we see no reason to justify the conclusion of the High Court that the State Government for all intent and purport conferred the retention benefit. If the State intended to provide for a grant, the same should have expressly been stated. Respondent cannot be granted a huge amount by a welfare state indirectly which it cannot do directly.

25. A statue of this nature, in our considered opinion, cannot be interpreted in such a manner so as to enable an entrepreneur to get undue advantage to the effect that he would collect tax from the cinema-goers and appropriate the same. When a person collects tax illegally, he has to refund it to the taxpayers. If the taxpayers cannot be found, the court would either direct the same to be paid and/ or appropriated by the State. In a given case, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India may also issue other directions, as has been done in *Indian Banks' Association, Bombay and others Vs. Devkala Consultancy Service and others* [(2004) 11 SCC 1] in a similar situation where it was difficult for the court to direct refund of a huge amount to a large number of depositors from whom the bank had illegally collected, this

Court directed that the amount be spent for the benefit of the disabled in terms of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

This Court may take recourse to such a procedure as the State also having granted exemption was not entitled to collect the duty. In other words, it having granted an exemption, was not legally entitled thereto."

9) The issue raised in the present writ petition is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Swanstone (supra). The Hon'ble Supreme Court has considered the relevant provisions of the Act and the Rules and the judgment is squarely applicable to the facts of the present case. In the instant case, the exemption was granted by the State to the petitioner from payment of entertainment tax, however, the petitioner had collected the entertainment tax from it's customers. In such circumstances, Hon'ble Supreme Court in the Swanstone's Judgment has held that neither the petitioner is entitled to retain the money collected under the caption 'entertainment tax', nor the State is entitled to receive the amount collected under the caption 'entertainment tax', as there is exemption granted by the State. In view of the judgment of the Hon'ble Supreme Court in Swanston's case (supra), the impugned orders passed by the respondent Nos. 2 and 3 are liable to be quashed and set aside.

10) The Hon'ble Supreme Court has held that theater owner nor the State is entitled to receive the amount collected under the caption "entertainment tax" and thus, the Hon'ble Supreme Court in the case of Swanstone directed the State to collect the amount under the caption "entertainment tax" and hand it over to the NGO for special cause. Similarly, in the instant case neither the State nor the petitioner is entitled to the amount collected under the caption "entertainment tax". The said amount collected under the caption "entertainment tax" is deposited in this Court.

11) Since I have held that neither the State nor the petitioner is not entitled to receive the amount deposited by the petitioner in this Court, the question arise as to the appropriate manner of utilizing the said money deposited in this Court. The learned counsel appearing for the petitioner Mr. P.F. Patni has candidly submitted that the money deposited in this Court may be used for benefit of litigants travelling to the High Court from distant places. The learned counsel for the petitioner Mr. P.F. Patni as well as the President of the High Court Bar Association, Aurangabad Mr. N.L. Chaudhari along with the Secretary of Bar Association Mr. S.P. Urgunde, who remained present during the hearing of this case submitted that the litigants travel from long distance to reach the High Court. On various occasions, there is requirement of emergency medical treatment to the litigant travelling to the High Court. The petitioner as well as the Office bearers of the High Court Bar Association, Aurangabad submitted that the medical dispensary available at the High Court which is run by the State has basic facilities, but does not have defibrillator machine, which is expensive, but is required in emergent situation. For any person suffering an heart attack in the

High Court premises, it takes atleast 45 minutes to transport the patient to the nearby hospital and the valuable time is lost in the process. Medical Officer Mr. Sanjay Varade of High Court Medical Dispensary, on inquiry concurred to the suggestion of the office bearers of Bar Association, High Court at Aurangabad. Office bearers of the Bar Association also submitted that recently e-filing process has been started in the High Court and the litigants are finding it difficult to scan their petitions and therefore, some amount may be disbursed towards purchase of High speed scanning machines.

12) In view of the submission made, it is directed that the deposited amount in this case be paid towards the purchase of the defibrillator machine to be procured by a committee of three members consisting of President of Bar Association of High Court, Aurangabad, Dr. Sanjay Varade, Medical Officer of High Court Medical Dispensary and Registrar (Administration) of High Court Bench at Aurangabad. The Registry shall make the payment of the machine on direction of the Committee. The machine will remain in custody and under supervision of Medical Officer attached to the High Court Medical Dispensary and the machine would be utilized for any person requires emergent medical treatment.

13) The remaining amount, if any, to be disbursed to the High Court Bar Association, Aurangabad for procurement of two high speed scanner machines which will be used for the benefit of litigants for E-filing process.

14) Balance amount, if any, to be equally divided between the NGO "Shantivan", Arvi, Tq. Shirur Kasar, District Beed, an orphanage catering to the orphans, who have lost their parents and the Government Cancer Hospital, Aurangabad.

15) The writ petition is partly allowed. The impugned orders passed by the respondent No. 3 – Collector, Parbhani dated 15.3.2017 and respondent No. 2 – Divisional Commissioner, Aurangabad dated 31.7.2017 are quashed and set aside. Rule is made absolute in above terms.