
(2013) 01 RAJ CK 0257
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4828 of 2000

M/s. K.V. Palace

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Rajasthan Entertainments and Advertisements Tax Act, 1957 — Section 4, 5, 6, 6(3), 6(3)(a)

Citation : (2013) 2 WLN 241

Hon'ble Judges : Dinesh Maheshwari, J;Arun Bhansali, J

Bench : Division Bench

Advocate : J.L. Purohit, Assisted by Mr. Ajay Purohit, for the Appellant; Garima Chouhan for Mr. V.K. Mathur, for the Respondent

Final Decision : Partly Allowed

Judgement

Dinesh Maheshwari, J.—By way of this writ petition, the petitioner said to be a partnership firm and owning a place of entertainment viz., Cinema Hall, known as K.V. Palace at Raisinghnagar, has questioned the provisions as contained in Sub-Section (1A) of Section 4 and Sub-Section (3) of Section 6 of the Rajasthan Entertainments and Advertisements Tax Act, 1957 ("the Act"/"the Act of 1957"). The petitioner has also questioned the orders passed against it by the competent authority under Sub-Section (3) of Section 6 of the Act as regards the composition of tax payable. In brief, the relevant background aspects could be noticed in the following: The Act of 1957 is to provide for levy by the State Government of a tax in respect of admission to theatres, cinemas and other places of public entertainments etc.; and a tax in respect of certain forms of advertisements; and for ancillary matters. "Entertainment tax" means the tax levied and charged u/s 4 of the Act. Sub-Section (1A) was inserted in Section 4 of the Act by the Amendment Act No. 11 of 2000 with effect from 10.05.2000. After such insertion, the provisions of Sub-Section (1) and Sub-Section (1A) of Section 4 of the Act read as under (while omitting other sub-Sections for being not directly relevant):-

4. Levy of tax on payment for admission.-(1) There shall be levied, charged and paid to the State Government on all payments for admission to an entertainment, a tax at such rate not exceeding 100 percent of the payment for admission, as may be notified by the State Government, from time to time, subject to a minimum of five paise in any one case, the amount of tax wherever necessary shall be rounded off to the nearest multiple of five paise, fractions of two and half paise or more being counted as five paise, and less than two and half paise being ignored.

(1A) The entertainment tax as payable under Sub-Section (1) shall generally not be less than the amount calculated and arrived at on such percentage of occupancy of the authorized sitting capacity as may be notified by the State Government from time to time.

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2. Section 5 of the Act of 1957 provides the manner of payment of tax and reads as under:-

5. Manner of payment of tax.-(1) Subject to other provisions of this Act, the entertainment tax shall be levied in respect of each person admitted on payment and shall be calculated and paid on the number of admission.

(2) The entertainments tax shall be due and recoverable from the proprietor.

(3) The proprietor shall submit such returns relating to payments for admission to an entertainment to such authority, in such manner and within such period as may be prescribed.

3. Section 6 of the Act of 1957 regulates the entry of the persons to an entertainment while making provisions for admission through tickets. In Sub-Section (3) thereof, special provisions have been made, notwithstanding anything contained in Sub-Section (1) and (2), that the State Government may allow a proprietor of any entertainment to compound the tax payable; or to pay the amount of tax by a consolidated payment of the gross sum received, or in accordance with the returns of the payment for admission etc. The provisions as contained in Section 6 read as under:-

6. Admission to entertainments.-(1) Save as otherwise provided by the Act, no person other than a person who has to perform some duty in connection with an entertainment imposed upon him by any law or otherwise shall be admitted for payment to an entertainment where the payment is subject to the entertainments tax, except with a ticket stamped with an impressed, embossed, engraved or adhesive stamp (not before used) issued by the State Government for the purpose of revenue and denoting that the proper entertainment tax has been paid.

(2) No proprietor shall admit any person to an entertainment without payment for admission thereof or at concessional rates except in accordance with the

prescribed conditions.

(3) Notwithstanding anything contained in subsections (1) and (2), the State Government may, on the application of the proprietor of any entertainment in respect of which the entertainment tax is payable under this Act, allow such proprietor, on such conditions, as may be prescribed,-

(a) to compound the tax payable in respect of such entertainment for a fixed sum, or

(b) to pay the amount of the tax due

(i) by a consolidated payment of such percentage of the gross sum received by the proprietor or on account of payments for admission to the entertainment and on account of the tax, as the State Government may fix, or

(ii) in accordance with returns of the payments for admission to the entertainment and on account of the tax, or

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

(4) The restrictions imposed by sub-Sections (1) and (2) shall not apply to any entertainment in respect of which the tax due is payable in accordance with the provisions of sub-Section (3),

4. In exercise of the powers under Sub-Section (3) of Section 6 of the Act, the State Government earlier prescribed a Scheme that was in force upto 21.05.1999 and then, another Scheme was framed on 22.05.1999 superseding the earlier one. Thereunder, the State Government delegated the powers u/s 6(3) in favour of the Dy. Commissioner (Administration), Commercial Taxes for passing the orders for compounding in appropriate cases.

5. In regard to the petitioner-firm, composition was allowed for the period from 01.4.1999 to 31.03.2000 u/s 6(3) (a) *ibid.*, on an amount of Rs. 17,360/- per month by an order dt. 07.04.1999 (Annex. 2). The order was passed with reference to the capacity of the cinema hall, number of shows and the rates of admission. Later on, the petitioner, by an application dt. 12.10.1999 applied for reducing the number of seats in the cinema hall; and the Sub-Divisional Magistrate, Raisinghnagar granted this prayer by an order dt. 06.01.2000 (Annex. 3) that reads as under:-

6. The case of the petitioner is that after the order dt. 06.01.2000, an application was made to the respondent No. 2 for revising the composition amount with reference to the reduced sitting capacity but the Dy. Commissioner refused to revise by his letter dt. 22.07.2000. Then, the respondent No. 2 passed a fresh order on 16.08.2000 (Annex. 4) for the period from 01.4.2000 to 31.03.2001 assessing the composition amount at Rs. 19,046/- per month. Thereafter, a revised order was passed on 30.08.2000 but, with reference to the earlier sitting capacity, whereby the composition amount was fixed at Rs. 33,415/- per month.

7. Not satisfied with the aforesaid, the petitioner made an application on 15.09.2000 (Annex. 6) requesting for assessing the composition amount on the basis of the reduced sitting capacity. In this application, the petitioner also made a request for allowing it to make payment by return system, instead of composition system. Thereafter, the respondent No. 2 passed an order dt. 16.09.2000 (Annex. 7) revising the composition amount to Rs. 31,867/- per month. The petitioner again made a representation dt. 22.09.2000 (Annex. 8) for recall of the composition order and for permission to make payment of tax by return system.

8. Faced with the position that the respondents were not agreeing to its request and were seeking to recover the amount as per the composition order dt. 16.09.2000, the petitioner preferred this writ petition questioning the provisions of Subsection (1A) of Section 4 and of Sub-Section (3) of Section 6 of the Act of 1957.

9. This writ petition was considered for admission on 11.01.2001, when it was pointed out by the learned counsel for the petitioner that on the issue involved in the matter, a similar writ petition had already been admitted at the Jaipur Bench of this Court, being D.B. Civil Writ Petition No. 1497/2000: Jaipur Chalchitra (Pvt.) Ltd. & Anr. vs. State of Rajasthan & Ors. In view of the submissions, this petition was admitted for consideration with the interim order as follows:-

Meanwhile, no recovery shall be made on the basis of the order of composition for the period after which the assessee has given a notice that he may be subjected to the payment of regular tax by assessment and has shown unwillingness to continue with the composition.

10. On 30.10.2001, the aforesaid interim order was confirmed to last until the decision of this writ petition.

11. On 08.01.2013, when this matter was taken up for hearing, a coordinate Bench granted time to the learned counsel for the petitioner to find out the result of the said CWP No. 1497/2000, on the basis whereof the present petition was admitted.

12. It has now been given out by the learned counsel for the parties that the said petition bearing No. 1497/2000 at the Jaipur Bench of this Court was considered on 20.09.2002 when the submissions were made that the referred provisions had not finally taken the shape as Sub-Section (1A) of Section 4 of the Act and a new provision was being made in place of earlier proposed Sub-Section (1A). The said petitioner was given liberty to challenge the new provision and the said petition was dismissed as infructuous. However, the learned counsel for the parties herein maintained that the provision of Sub-Section (1A) of Section 4, as referred in this writ petition, had been inserted in the statute and they have not come across any other provision in place thereof. Thus, we have considered the matter on its merits with reference to the provisions as referred above.

13. It has been contended on behalf of the petitioner that the provisions of Sub-Section (1A) of Section 4 and Sub-Section (3) of Section 6 of the Act are of unauthorised delegation where the State Legislature has abdicated its authority and authorised the State Government to prescribe the rates of composition without fixing the maximum and minimum rates; and where the State Government could fix the composition rates even higher than the tax payable under Sub-Section (1) of Section 4. It is further contended that the respondents were not justified in proceeding with the composition system when the petitioner made the request of permitting it to take recourse to the return system. It is submitted that even the composition order had been entirely unjustified where the respondent No. 2 proceeded to ignore the reduced sitting capacity, as sanctioned in the order dt. 06.01.2000.

14. Per contra, it has been contended on behalf of the respondents that the power to provide for tax structure and mode of calculation of tax can always be delegated to the State Government and it was not necessary to provide for maximum and minimum limits for composition. It is submitted that nothing of invalidity or infirmity could be imputed on the questioned provisions of the Act. It is further submitted that the petitioner had been continuing under the old composition scheme and having opted for the new composition scheme, was required to pay the composition amount not less than what was being paid or payable under the old scheme. Hence, according to the respondent, the alleged reduced sitting capacity was not of any relevance for computing the composition amount payable by the petitioner for the period 01.04.2000 to 31.03.2001. It is submitted that the petitioner having applied for composition and having obtained the order according to the scheme, cannot be permitted to revoke the composition order and to start paying tax by return system at its sweet will; rather it was precluded from adopting such a course under the provisions of the applicable scheme.

15. We have given thoughtful consideration to the rival submissions and have examined the record.

16. So far the challenge to the provisions of sub-Section (1A) of Section 4 and sub-Section (3) of Section 6 of the Act is concerned, we are unable to find any infirmity in the referred provisions so as to consider them invalid. As noticed, the Act is to provide for levy by the State Government of the taxes in respect of admission to theaters and certain forms of advertisements. The respondents appear correct in their submissions that the power to provide for tax structure and mode of calculation of tax could have always been delegated to the State Government under the scheme of the Act. Even if it be assumed for the sake of arguments that the provisions of subsection (1A) of Section 4 result in some hardship to the petitioner, for that reason alone, the provisions are not rendered invalid.

17. However, so far the aspects of quantification of tax payable by the petitioner and the method of payment available to it are concerned, in our view, the stand

as taken by the respondents cannot be accepted in toto. Even if the petitioner had earlier opted for composition system, apparent it is that the composition amount was to be calculated at 10% of the sitting capacity, for the cinema hall being in category "D", per Clause (4) of the scheme framed on 22.05.1999. In this regard, when reduction of the sitting capacity of the petitioner's cinema hall was sanctioned under the order dt. 06.01.2000, the redacted sitting capacity could not have been ignored altogether. Noteworthy it is that under Sec. 5 of the Act, the entertainment tax is to be levied in respect of each person admitted on payment and is to be calculated and paid on the number of admission. When the number of admission itself had been reduced under a valid order passed by the competent authority, we are unable to countenance the submissions that such reduced capacity was of no relevance. It appears from the order dt. 30.08.2000 (Annex. 5) that the assessment of the composition amount was made with reference to the earlier sitting capacity of the cinema hall and not the reduced sitting capacity. Moreover, when the petitioner had made the request in his application dt. 15.09.2000 for being permitted to make payment by way of return system, this prayer too could not have been ignored.

18. The suggestion of the respondents that once having chosen for the composition system, the petitioner could not have revoked the same and change to other system has its own shortcomings. Even if it be assumed that the petitioner could not have revoked the option suo moto at its own will before the end of the composition period, the scheme nowhere prohibited the petitioner from making a request to allow it to switch over to return system; and we are unable to find any binding statutory provision whereby such a request when made was not to be considered at all. In our view, when such a request was made, the same ought to have been given due consideration. The respondents having failed to consider the request made by the petitioner and the request when otherwise does not appear unjustified or unwarranted, we are inclined to accept the same. In fact, the interim order as passed in this matter had been of prima facie satisfaction of this Court that such a request was not to be declined.

19. As noticed, while admitting this writ petition for consideration, this Court restrained the respondents from making any recovery on the basis of order of composition for the period after which the petitioner had given the notice showing its unwillingness to continue with the composition system and seeking payment of tax by assessment. Such a position has hitherto continued and, in our view, should not be altered.

20. In view of what has been noticed and discussed above, we are of the view that the interest of justice shall be served if the interim order as passed in this matter is made absolute and the matter of quantification of the composition amount for the previous period is restored for re-examination of the authorities concerned while setting aside the impugned orders dt. 30.08.2000 and 16.09.2000.

21. Accordingly and in view of the above, the challenge to the provisions of sub-

Section (1A) of Section 4 and sub-Section (3) of Section 6 of the Act of 1957 stands rejected. However, the respondent No. 2 is required to reexamine the matter so far as quantification of the composition amount is concerned; and hence, the impugned orders dt. 30.08.2000 and dt. 16.09.2000 (Annexures-5 and 7) are set aside and the matter stands restored for reconsideration of the respondent No. 2 in accordance with law.

22. Moreover, the interim order dt. 11.01.2001 as passed in this writ petition is made absolute, meaning thereby that the respondents shall not recover any amount from the petitioner on the basis of the order of composition from the date the petitioner had given the notice for being subjected to the payment of regular tax by assessment and had shown unwillingness to continue with the composition. In other words, the quantification of the composition amount shall be carried out by the respondent No. 2 only for the period starting from 01.04.2000 and ending on the date when the assessee had given the notice for payment of tax by way of assessment. From the said date of notice, the petitioner's liability shall be in accordance with the returns. The petition stands partly allowed to the extent and in the manner indicated above. The petitioner through his counsel shall stand at notice to appear before the respondent No. 2 on 04.03.2013.