(1988) 09 GUJ CK 0019

In the Gujarat High Court

Nathalal Bahechardas Patel APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 21-09-1988

Acts Referred:

Gujarat Entertainment Tax Act, 1977 — Section 10, 10, 8, 8, 8(1)
Gujarat Entertainment Tax Rules, 1979 — Rule 15, 15(2), 6, 7, 9(1)

Citation : (1989) 1 GLR 350

Hon'ble Judges : P.M. Chauhan, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

A.M. Ahmadi, J.—Rule. Mr. Hawa waives service of Rule on behalf of the respondents. By consent heard today.

2. The petitioner who was the proprietor of New Master Talkies, Sidhpur, (District Mehsana), has filed this petition challenging the demand notice issued by the Mamlatdar, Sidhpur, dated 5th May, 1988 demanding an amount of Rs. 18,319-20 ps. with interest at 24 per cent per annum for difference in entertainment tax paid for the movies ''Sampoorna Tirthyatra'' exhibited between 30th March, 1984 and 5th April, 1984 and ''Antim Ichha'' exhibited between 25th January, 1985 and 31st January, 1985 on the plea that the population of Sidhpur township exceeded 50,000 and was not under 50,000 on the basis of which exemption to be extent of 80 per cent was granted in respect of the aforesaid two movies. Unfortunately, no reply to this notice was sent on the grounds of sickness whereupon the Mamlatdar issued an attachment order dated 8th August, 1988 which is also the subject matter of challenge in this petition. The brief facts giving rise to this petition are as under.

3. By Notification No. SFC/1084/4391/F dated 21st April, 1984, the Government of Gujarat, granted exemption from the payment of entertainment tax to the extent of 90 per cent in respect of the Gujarati movie ''Sampoorna Tirthyatra'' for township having a population of less than 50,000. By a subsequent Notification No. SFC/1084/32534/F dated 25th January, 1985 similar exemption was granted

in respect of the Gujarati movie ''Antim Ichha''. In respect of that movie, the movement of the print exhibition programme was issued by the Directorate of Information, Government of Gujarat, of even date, copy whereof is produced at Annexure ''A'' to the petition. If we turn to that document we find that print No. 7 was allotted to New Master Talkies, Sidhpur, from 25th January, 1985. The population of Sidhpur has been shown to be below 50,000 in that document. The conditions set out in that document are five in number. The fourth condition reads as under :

In case of breach of any of the conditions of the exemption, it shall be open to the prescribed officer to take action u/s 10 of the Gujarat Entertainment Tax Act, 1977.

Admittedly the petitioner has not committed a breach of any of the conditions. However, the Mamlatdar-cum-Prescribed Officer, Sidhpur, issued a demand notice under Rule 9(2) of the Gujarat Entertainments Tax Rules, 1979 (''the Rules'' hereafter) stating that the exemption granted to the movies ''Sampoorna Tirthyatra'' and ''Antim Ichha'' exhibited in the petitioner''s theatre at Sidhpur was required to be revised as the population of Sidhpur was found to be more than 50,000. By the said notice the petitioner was asked to pay an additional amount of Rs. 10,931-40 ps. in respect of the movie ''Sampoorna Tirthyatra'' and Rs. 7,387-80 ps. in respect of the movie ''Antim Ichha'' totalling Rs. 18,319-20 ps. with 24 per cent interest within a period of one week from the receipt of the notice. It was also stated therein that if the petitioner fails to pay the amount as directed, action to recover the same as arrears of land revenue will be initiated. As pointed out above, the petitioner did not pay the duty or send a reply to this notice whereupon the Mamlatdar, Sidhpur, issued the attachment order dated 8th August, 1988 for the recovery of the amount by the attachment and sale of the movable properties found in the theatre. On receipt of this attachment order, the petitioner approached this Court.

4. The Gujarat Entertainments Tax Act, 1977, levies a tax on payments for admission to entertainments. Section 3 is the charging section. Section 4 deals with a tax on complimentary tickets. Section 7 provides for admission to entertainments. Section 8(i) states that every proprietor shall furnish such returns relating to payments for admission and complimentary tickets issued by him to such officer, in such manner and for such period before such date, not being earlier than ten days from the date on which the entertainment is held, as may be prescribed. Sub-section (2) next provides if the Prescribed Officer is satisfied that any return furnished under Sub-section (1) is correct and complete, he shall assess the tax due from the proprietor for the period concerned on the basis of such return. It will be seen from the above two sub-sections of Section 8 that a duty is cast on the proprietor to furnish returns relating to the payments for admission and complimentary tickets issued by him and the Prescribed Officer to whom the return is furnished is under an obligation to scrutinise the same and assess the tax due from the proprietor for the concerned period on the basis of

such return. Sub-section (3) of Section 8 next provides that if no return is furnished by the proprietor before the prescribed date or if the return furnished is incorrect or incomplete, the Prescribed Officer shall, after making such inquiry as he considers necessary, assess to the best of his judgment the tax due from the proprietor. The term ''Prescribed Officer'' means an officer prescribed under Sub-section (1) of Section 8. The proviso to the sub-section lays down that before taking any action the proprietor shall be given a reasonable opportunity of proving that no return was due from him or of proving the correctness and completeness of any return furnished by him. The scheme of Section 8, therefore, is that the proprietor must furnish a return and the Prescribed Officer must make an assessment on being satisfied about the correctness and completeness of the return. If no return is furnished or if an incorrect and incomplete return is furnished, the Prescribed Officer has to make an inquiry and after giving an opportunity to the proprietor of being heard in the matter, assess to the best of his judgment the tax due from the proprietor. Under Rule 6 the returns u/s 8(1) have to be furnished to the Entertainments Tax Officer appointed by the Collector of Entertainments Tax under the provisions of Section 11A. Section 11A enumerates the authorities for implementation of the provisions of the Act. Rule 7 refers to the returns.

5. Rule 8 sets out the manner and stipulates the period of payment of tax, penalty, interest and composition money. That brings us to Rule 9, Sub-rule (1) whereof provides that the assessment of tax in respect of an entertainment shall be made within fifteen days after the return in respect of such entertainment is furnished and Sub-rule (2) enjoins upon the Prescribed Officer to make an assessment and thereafter serve a notice for payment of tax in Form 7. In the present case the Mamlatdar issued the notice under Rule 9(2) and without making any assessment as required by Rule 9(1) called upon the petitioner to pay the amount of the difference of duty without hearing the petitioner and on the petitioner having failed to pay the same, the attachment order came to be issued. It is, therefore, obvious that the impugned order of 5th May, 1988 and the consequential attachment order of 8th August, 1988 are not in accordance with the scheme of Section 8 of the Act.

6. We may now turn to Section 9, Sub-section (1) whereof lays down that where for any reason any payment for admission to any entertainment or any complimentary ticket has escaped assessment to tax, the Prescribed Officer may, subject to the provisions of Sub-section (3) and at any time within such period as may be prescribed, assess to the best of his judgment the tax due on such payment of ticket after making such inquiry as he may consider necessary after giving the proprietor a reasonable opportunity to show cause against such assessment. Sub-section (3) authorises the Prescribed Officer to impose a penalty not exceeding one and a half times the tax so assessed or re-assessed in cases where the tax could not be levied due to wilful misstatement or suppression of facts by the proprietor. Sub-section (2) of Section 9 next provides that where for any reason any payment for admission to any entertainment or

any complimentary ticket has been assessed at a rate lower than the rate at which it is assessable u/s 3 or Section 4, at the case may be, the Prescribed Officer may, subject to the provisions of Sub-section (3) and at any time within such period as may be prescribed, re-assess the tax due on such payment or ticket, after making such inquiry as he may consider necessary and after giving the proprietor a reasonable opportunity to show cause against such assessment. We may now turn to Rule 15 which prescribes the period within which assessment or re-assessment u/s 9 may be made. It says that the assessment or re-assessment of the tax u/s 9 may be made within a period of three years from date the tax would have been payable. Sub-rule (2) of Rule 15 next provides that before assessing or reassessing the tax under Sub-rule (1) the Prescribed Officer shall issue a notice to the proprietor in Form No. 15. Admittedly no such notice was issued. All that was issued was a demand notice under Rule 9(2) in Form No. 7 without any prior assessment or re-assessment. So, even if the case is viewed in the context of Section 9, it is obvious that the demand notice is unsustainable. Further, the demand notice has been issued after a period of three years and, therefore, also, if Section 9 is invoked, the authority was not competent to issue the demand notice.

7. It may also be mentioned that the petitioner was not responsible for stating the population of Sidhpur. Infact, the population of Sidhpur was shown to be below 50,000 by the Directorate of Information of the State Government as is evident from Annexure ''A'' dated 28th January, 1985. If there was any mistake in this behalf, it was on the part of the Directorate of Information and not the petitioner. There was, therefore, no question of the petitioner having made any inaccurate or also statement or having suppressed information in that behalf. The petitioner cannot, therefore, be penalised for a mistake not committed by him and that too without giving him any opportunity of showing the cause.

8. In view of the above, we are of the opinion that the impugned demand notice, Annexure ''C'' dated 5th May, 1988 and the consequential attachment order, Annexure ''C'' dated 8th August, 1988 cannot be allowed to stand. We quash the same and make the rule absolute accordingly with no order as to costs.