
(2006) 03 KL CK 0057

In the High Court Of Kerala

Case No : O.P. No's. 10395, 11016, 12400, 25848 and 25849 of 1999

P.S. Padmanabhana

APPELLANT

Vs

Corpn. of Thiruvananthapuram

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Kerala Local Authorities Entertainments Tax Act, 1961 — Section 2, 2(7), 2(7A), 3, 5

Citation : AIR 2006 Ker 258 : (2006) 2 KLJ 218 : (2006) 2 KLT 603

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P. Gopalakrishnan Nair, S. Sreekumar, V. Chitambaresh and P. Jayabal Menon, for the Appellant; N. Nandakumara Menon and John Joseph Vettikkad (GP), for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—The issues of law arising for decision in all these writ petitions are the same. Hence, these writ petitions are heard and are being disposed of by this common judgment. The issue posed for consideration is as to whether tax levied on any payment by way of charges received by the proprietor of an entertainment, cinema in these cases, for advance reservation of seat is liable to be included for the purpose of determining the amount on which tax is leviable under the Kerala Local Authorities Entertainments Tax Act, 1961, for short, hereinafter, the "Act".

2. Before proceeding further, it has to be immediately noticed that the period failing for consideration in these writ petitions is from the coming into force of the Kerala Local Authorities Entertainment Tax (Amendment) Act, 1975 but before the coming into force of the Kerala Local Authorities Entertainments Tax (Amendment) Act 16 of 2000.

3. Before its amendment in 1975, the charging section, namely, Section 3 of the Act, provided for levy of entertainments tax on each "payment for admission" to

any entertainment. By the Amending Act of 1975, Section 3 was submitted by making the levy permissible on each price for admission"". The changes made by the Amending Act of 1975 to Section 5 and Section 6(1) of the Act were also to give effect to the aforesaid amendment brought to Section 3. By such amendment, the admission of a person for the entertainment became subject of the condition that the "price for admission" is subjected to entertainments tax and the manner of payment of tax u/s 6(1) was also modified accordingly. Thus, on and after the coming into force of the Amending Act 1975, the admission of persons to any entertainment was controlled by Section 5(1) by ensuring the imposition of entertainments tax only on "the price for admission" and mode of such levy is provided for by Section 6(1).

4. To decide the question as to whether the reservation charges are to be treated as part of "price for admission" for levy or entertainments tax during the relevant period, sub-sections (7) and (7A) of Section 2, the definition clause, as they stood after the amendment of 1975, are relevant. They read as follows:

2. Definitions.- In this Act, unless the context otherwise requires-

(7) "payment for admission" means-

(a) the price for admission, and

(b) any payment for any purpose whatsoever connected with an entertainment (including any tax) which a person is required to make as a condition for attending or continuing to attend the entertainment in addition to the price for admission;

(7A) "price for admission" means the cost of a ticket (excluding any tax) for a seat or other accommodation in a place of entertainment and includes in respect of any 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 higher payment is required.

5. Sub-sections (7) and (7A) as above brought into the Act by substitution, of sub-section (7) of Section 2, as it earlier stood, by the amendment of 1975, Section 3 of the Act before the amendment of 1975 read with Section 2(7) as it then stood, provided for levy on the "payment for admission" which was an inclusive term, of all elements enumerated in Section 2(7) as it then stood.

6. After the amendment of 1975, "price for admission" as defined in Section 2(7A) means the cost of a ticket for a seat or other accommodation and includes in respect of any 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 higher payment is required, while in contrast thereto, Section 2(7) provides that "payment for admission" means the price for admission and any payment for any purpose whatsoever connected with an entertainment (including any tax) which a person is required to make as a condition for attending or continuing to attend the entertainment in addition to the price for admission.

7. The undisputed situation is that if a person purchases a ticket across the counter and proceeds for the entertainment, he is entitled to be admitted for the entertainment subject to the restriction in Section 5(1) that the price of the said ticket has to be subject to levy of entertainments tax. This shows that the price for admission is the cost of the ticket that one pays for a seat or accommodation in the place of entertainment. Price for admission is one of the limbs that go into the making of the component "payment for admission", going by Section 2(7). The levy of tax after the 1975 amendment is only on the "price for admission" and not on the payment for admission. Any payment that a person makes to the proprietor of an entertainment in excess of the "price for admission" could only be an additional amount that he pays for the purpose of purchasing the ticket for admission in advance, thereby, to ensure for himself that he does not miss the ticket while he reaches the counter, immediately before the entertainment commences. Such payment cannot be treated as part of "price for admission", because those persons who do not pay such reservation charges are also admitted for the entertainment on payment of the price for admission, i.e., the price of the ticket. So much so, going by the Act, as it stood after the 1975 amendment, until the amendments of 2000, the levy of entertainments tax can be only on the "price for admission", meaning thereby, the price of the ticket for admission, and not only any other payment by way of reservation charges or otherwise, which essentially is a payment for any purpose connected with the entertainment and falling within clause (b) of sub-section (7) of Section 2, however, not falling within the term "price for admission" defined in Section 2(7A). Even if two interpretations are possible, being a fiscal matter, that which weighs in favour of the assessee has to be preferred.

8. The learned counsel for the respondents, however, relied on a decision of the Apex Court in *Ashoka Talkies, Badagara Vs. Badagara Municipality, Badagara and others*, . The judgment, going by the report, was delivered on a civil appeal of 1977 and the provisions considered therein were essentially Section 3 and Section 2 as they stood before the 1975 amendment. So much so, that decision does not govern the situation in hand. The impugned decisions apparently proceed to invoke a power to reopen an assessment or trace escaped assessment. That issue also stands squarely covered in favour of the petitioners by the decision of this Court in *Chekkunni v. Kalikavu Panchayat* (1993 (3) KLT 648) with which I am in complete agreement. Incidentally, it has to be noticed that after the said decision, by Act 16/2000, the parent Act has been further amended to reach at the escaped assessment and also for imposition of penalty. However, such provisions would not govern the situations in hand which are all before the amendments by Act 16/2000.

In the aforesaid circumstances, the writ petitioners are entitled to succeed. All orders and decisions impugned in these writ petitions are accordingly quashed. The writ petitions are allowed as prayed for. No costs.