

(1975) 12 KL CK 0010
In the High Court Of Kerala
Case No : O.P. 2314 of 1974

Rajasekharan Nair

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 11-12-1975

Acts Referred:

Kerala Additional Tax On Entertainments And Surcharge On Show Tax Act, 1963 —
Section 2, 3

Citation : (1976) 5 CTR 308

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Judgement

V. Balakrishna Eradi, J.—The writ petitioner is the owner of a Cinema theatre in Parur by name Radha Picture place. He has brought this writ petition challenging the order Ext. P3 passed by the Municipal Commissioner Parur (2nd respondent) holding that the amount of Addl. Tax on Entertainments in respect of admission tickets for the "Bench Class" in the petitioners theatre is 10 paise as per the Rules and that inasmuch as the petitioner has been making payments of the additional tax only at the rate of 5 paise, the short remittance of 5 paise per ticket has to be realised from the proprietor of the theatre. There is also a direction contained in Ext. P3 that further sealing of tickets will be allowed only on payment of the Additional Tax on Entertainment at the rate of 10 paise for the admission ticket of 50 paise in respect of "Bench Class" in respect of the petitioners theatre and that separate orders will be issued for the levy of short-remittance of tax made in the past. The petitioner contends that the view taken by the second respondent that the proper amount of additional tax payable in respect of the ticket of the face value of 50 paise sold in his there for the "Bench Class" is 10 paise and not 5 paise as calculated by the petitioner for purpose of making timely remittance is incorrect and the same is passed on a misconception of section 2 of the Kerala Additional Tax on Entertainments and surcharge on Show Tax Act, 1963 (Act 22 of 1963). There is also a further contention taken by the petitioner that there is no jurisdiction or power vested in the second

respondent under any or the provisions of the Kerala Local Authorities Entertainments Tax Act, 1961 or the Kerala Additional Tax on Entertainments and Surcharge on Show Tax Act, 1963 to initiate proceedings for rectification or reassessment on the ground that there has been an under-assessment or even a total escape from the assessment in the past.

2. Section 2 of the Kerala Additional Tax on Entertainments and Surcharge on Show Tax Act, 1963 reads:-

2 Levy of Additional tax on entertainments. Notwithstanding anything contained in the Kerala Local Authorities Entertainments Tax Act 1961 (Act 20 of 1961) with effect on and from the commencement of this Act, on each payment of admission to any entertainment which is subject to the levy of entertainments tax u/s 3 of the said Act there shall be levied an additional tax on entertainments calculated at the following rates, namely -

Rate of tax

Where such payment (inclusive of the amount of entertainment tax levied under the Kerala Local Authorities Entertainments Tax Act, 1961)

(i) is below fifty naye paise

five naye paise

(ii) is fifty naye paise and above but does not exceed one rupee

ten naye paise

(iii) exceeds one rupee

twenty naye paise

The stand taken on behalf of the second respondent is that for the purpose of computation of the rate of tax payable under this section the total sum collected from the entertaineer as payment for admission inclusive of the Additional Tax payable under Act 22 of 1963 should be taken as the basis. Accordingly it is contended that since the petitioner is charging 50 paise as the price of the "Bench Class" ticket (which amount is made up of 10 paise being the Entertainment tax payable under the Kerala Local Authorities Entertainments Tax Act, 1961 and 5 paise being the additional tax on entertainments payable under Act 22 of 1963), the entirety of the said amount of 50 paise is to be taken into account for determining the rate of additional tax on entertainments payable under sec. 2 of Act 22 of 1963. I do not find it possible to accept this contention. The mode of calculation to be employed for determining the rate of additional tax on entertainments payable under sec. 2 of the Kerala Additional Tax on Entertainments and Surcharge on Show Tax Act, 1963 is clearly indicated in the said section itself. For the purpose of this section the "payment of admission" is to include besides the actual amount charged by the theatre owner as the price of admission due to himself, the amount of entertainment tax levied under the

Kerala Local Authorities Entertainment Tax Act, 1961. The Legislature has taken care to specify clearly that the payment for admission inclusive of the entertainment tax payable under the Kerala Local Authorities Entertainments Tax Act, 1961 alone is to be treated as the basis for determining the rate of additional tax leviable under Act 22 of 1963. In the face such categorical specification there is no scope at all for treating the amount of additional tax leviable under Act 22 of 1963 also as part of the payment for admission for the purpose of computation of the rate of additional tax leviable under Act 22 of 1963. The scheme of Act 22 of 1963 is in this respect different from that of the Kerala Local Authorities Entertainments Tax Act, 1961 and hence the decisions rendered by this Court dealing with the mode of computation of the tax payable under the 1961 Act are of no assistance or relevance in interpreting sec. 2 of Act 22 of 1963. U/sec. 2 for determination of the rate of additional tax on entertainments payable thereunder the payment of admission is to consist only of the actual price for admission charged by the theatre owner and the amount of entertainment tax leviable under the Kerala Local Authorities Entertainments Tax Act, 1961. The amount of additional tax leviable under Act 22 of 1963 is not to be treated as part of the payment of admission for the purpose of determining the rate tax leviable under sec. 2 of Act 22 of 1963.

3. It follows from the above discussion that the additional tax on entertainments payable by the petitioner in respect of the "Bench Class" tickets, for which the price collected by the theatre owner as due to himself is 35 paise and the tax payable under the Kerala Local Authorities Entertainments Tax Act, 1961 is 10 paise, both aggregating to paise, is only 5 paise. The view taken by the second respondent in Ext. P3 regarding short remittance of 5 paise per ticket by the petitioner in respect of "Bench Class" ticket is therefore incorrect and illegal.

4. In the light of the conclusion reached by me that there has not been any short remittance at all by the petitioner, it is unnecessary for this Court to consider the further question raised by the petitioner regarding the power and jurisdiction of the second respondent to initiate proceedings for recovery of the alleged short remittance.

The original petition is allowed and Ext. P3 will stand quashed. The parties will bear their respective costs.