(2011) 06 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 190 of 2006

Sadhana Cinema APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 15-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Entertainment Tax Act, 1977 — Section 9(1), 9(3)

Citation : (2012) 47 VST 532

Hon'ble Judges : R.M. Chhaya, J;Harsha Devani, J

Bench : Division Bench

Advocate : C. M. Gandhi, for the Appellant; Maithili Mehta, Assistant Government Pleader, for the Respondent

Judgement

Ms. Harsha Devani, J.—By this petition under article 226 of the Constitution of India, the petitioner has challenged show-cause notice dated October 3, 2003 (annexure A to the petition), the order dated December 29, 2003 passed by respondent No. 2 as well as the order dated February 24, 2005, passed by the Commissioner (Entertainment Tax), Gujarat State, rejecting the revision application filed by the petitioner. The petitioner, Sadhana Cinema, is a registered partnership firm. The said theatre has been closed down from February 16, 2004. Respondent No. 2, Deputy Commissioner (Entertainment Tax), Surat, served a notice u/s 9(1) and 9(3) of the Gujarat Entertainments Tax Act, 1977 ("the Act") read with rule 15(2) of the Gujarat Entertainment Tax Rules, 1979 ("the Rules"), on October 3, 2003, wherein it was alleged that on July 15, 2003, the prescribed officer had visited in the second show between 3.30 to 6.30 p.m., along with other staff members and in the second show, 276 tickets were sold as shown in form No. 17. Various irregularities noticed during the course of visit were set out in the show-cause notice. It is the case of the petitioner that against the show-cause notice, the petitioner wanted to file a detailed reply but the Commissioner without providing any opportunity of being heard to the petitioner, straightaway without any date being given passed an order dated December 29,

2003. Against the said order, the petitioner preferred a revision application before respondent No. 1, which came to be rejected by the impugned order dated February 24, 2005. Being aggrieved, the petitioner has filed the present petition.

2. Mr. C. M. Gandhi, learned advocate for the petitioner, assailed the impugned orders on various grounds. It was, inter alia, contended that the respondent-authority did not take into consideration the aspect that it had no right to go beyond the date of past checking/previous checking and that what the authority was required to do is to check the situation that existed on the date of the visit, that is, on July 15, 2003. According to the learned advocate the authority could consider the period from the date of the last checking to the date of the current checking and had no authority in law to go beyond the date of the previous checking. However, the authority had taken into consideration a period of more than six months prior to the date of the checking and had come out with a case of issuance of duplicate tickets and parallel tickets and on that count assessment has been made. It was submitted that the respondents had taken into consideration alleged irregularities for the period between November 12, 2002 to January 7, 2003 whereas during the between January 7, 2003 to July 15, 2003 checking had been carried out on various dates and as such the respondents could not have assessed tax for a period prior to the date of the last previous checking.

3. Attention was invited to the unreported decision of this court in the case of Delux Cinema v. State of Gujarat, rendered on December 16, 1996 in Special Civil Application No. 9693 of 1996, wherein the court had held that the petition should succeed on the short question that the revisional authority had failed to consider the ground that there was a previous checking on or around 7th September or 8th September, 1996 and that working of entertainment tax and penalty for the period prior to that date could never have been made. Reliance was also placed upon an unreported decision of this court in the case of Shivam Cinema, Modasa v. Additional Chief Secretary, rendered on July 6, 2000 in Special Civil Application No. 3019 of 1999, wherein this court, following its earlier decision in the case of Delux Cinema v. State of Gujarat as well as the decision rendered on July 17, 1997 in Special Civil Application No. 1005 of 1997, remanded the matter to the revisional authority on the short ground that the revisional authority had failed to consider that there was a previous checking and that the working of entertainment tax and penalty for the period prior to that date could not have been made. That contention had found favour with this court and therefore, the revisional authority was required to consider the petitioner''s case in that respect. It was submitted that the aforesaid decisions would apply on all fours to the present case and as such, the authority could not have taken into consideration any period prior to the period of the last checking. Hence, the impugned orders are required to be quashed.

4. Opposing the petition, Ms. Maithili Mehta, learned Assistant Government

Pleader, reiterated the averments made in the affidavit-in-reply, and supported the impugned orders made by the respondent-authorities. It was submitted that the impugned orders being just, legal and proper, do not warrant any interference.

5. It may be pertinent to note that it is the specific case of the petitioner that during the period between January 7, 2003 to July 15, 2003 checking had taken place on various occasions from time to time. Thus, on the last date when the checking took place prior to the checking in question, it appears that nothing wrong was found. However, in relation to the checking carried out on July 15, 2003 the authority has considered a period of more than six months prior to the date of checking, for the purpose of computation of tax, despite the fact that previous checking had taken place in relation to the said period. Thus, in the light of the above referred decisions of this court, it was clearly not permissible for the respondents to work out the entertainment tax and penalty for the period prior to the date of the previous checking.

6. The learned Assistant Government Pleader is not in a position to dispute the aforesaid aspect.

7. In view of the above and following the above referred decisions of this court, the petition is partly allowed and the matter is remanded to the revisional authority for consideration of the revision, particularly the aforesaid contention and the principle laid down in the aforesaid orders of this court.

8. The impugned order dated February 24, 2005 passed by the revisional authority (annexure D to the petition) is hereby quashed and set aside. The revisional authority shall decide the revision application of the petitioner in accordance with law, as expeditiously as possible, and preferably within a period of three months from the date of receipt of this order or certified copy of this order, whichever is earlier. The petitioner shall be given an opportunity of being heard on all grounds including the aforesaid ground. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

