(2008) 08 GUJ CK 0023

In the Gujarat High Court

Case No : Special Civil Application No. 6563 of 2008

Shirin Estates Pvt. Ltd. APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Entertainment Tax Act, 1977 — Section 29(1)

Citation : (2008) 08 GUJ CK 0023

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : M.B. Gandhi, for the Appellant; U.R. Bhatt, AGP for Respondents 1 - 2, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—This petition has been filed primarily on the ground that the petitioner is being discriminated against by respondent State Government by virtue of circular dated 20.2.2004 (Annexure A) and by virtue of New Package Scheme of Incentives For Tourism Projects 1995-2000 (Annexure C).

2. The petitioner, a private limited company has constructed a cinema theatre known as Priya Cinema at Sevasi, Vadodara after investing Rs. 3.5 crores. That the petitioner is liable to pay entertainment tax at the prescribed Rules as provided in the Gujarat Entertainment Tax Act, 1977 (the Act) and the Rules framed thereunder.

3. The learned advocate for the petitioner has assailed in the first instance the Scheme by submitting that an inequality has resulted between theatres which are having single screen and theatres having multiple screens by virtue of the Scheme whereunder such multiplexes have been granted exemption from entertainment tax apart from other taxes while cinema houses like the petitioner have been excluded from such benefits. That the Scheme has been floated dehors the provisions of the Act as there is no provision in the Act to grant such

exemption to multiplex cinemas.

The second contention was that the impugned circular dated 20.2.2004 is contrary to the provisions of the Act and the Rules thereunder when the benefit of non levy of entertainment tax on the service charge component collected by the cinema owner not being granted the said concessional benefit merely because there is delay in payment of entertainment tax which has already been taken care of by providing for levy of interest and penalty under the provisions of the Act.

The third contention was to the effect that the rate of interest provided under the Act for belated payment of tax is exorbitant and though subsequently by an amendment the rate of interest has been reduced from 24% to 18%, the petitioner is not being granted the said benefit and is required to pay interest at the rate of 24% only.

4. It is in light of the aforesaid three contentions that it was urged that the Scheme and the circular create a hostile discrimination insofar as cinema halls like the petitioner are concerned.

5. On behalf of the respondent State, the learned AGP has placed reliance on the affidavit-in-reply and submitted that not only there is no discrimination but there is no hostile discrimination so as to warrant any intervention by the Court in exercise of jurisdiction under Article 226 of the Constitution.

6. Section 29(1)(b) of the Act provides for powers to the State Government to either wholly or partly exempt any entertainment or class of entertainments from payment of tax where the State Government considers it necessary so to do in public interest. Only caveat being such exemption has to be notified in the Official Gazette and is subject to such conditions as may be prescribed in the notification.

7. At this stage, when the attention of the learned advocate for the petitioner was invited to the aforesaid provision, it was submitted that the decision taken by virtue of the Scheme cannot be termed to be in public interest as no public interest element was shown to be involved and hence, the entire exercise by the State Government was not warranted.

8. In light of the provisions of Section 29(1)(b) of the Act, the contention that the State Government has no power to grant wholly or partly any exemption cannot be accepted. In fact, the State Government is only required to comply with the requirements specified in the provisions namely to establish that the decision is for exempting any entertainment or class of entertainments from payment of tax and such exemption has to be notified in the Official Gazette coupled with the conditions that the State Government may impose for claiming such an exemption. Insofar the requirement of Clause (b) of Sub-section (1) of Section 29 of the Act is concerned, as to what would constitute to be public interest would always be an issue which will turn on the facts and circumstances

of each case and the backdrop in which a policy decision has been arrived at. The position in law is well settled that the concept of public interest does not necessarily mean the entire mass but the same could be restricted to a specified class which is distinct and identifiable. Therefore, no interference is warranted in the aforesaid policy decision taken by the State Government.

9. The second challenge to the circular dated 20.2.2004 also does not merit acceptance. It is an admitted position that every ticket issued to a customer by a cinema house has to be comprised of components like the basic value, the tax(es) levied by the Government, service charge levied towards facilities provided by the cinema houses to the customers etc. By virtue of the impugned circular, the State Government has provided that the service charge component in the value of the ticket shall not bear entertainment tax under the Act and the specified percentage of the same shall be permitted to be retained by the cinema hall for maintenance of such facilities and services subject to the cinema hall owner/manager maintaining accounts in the prescribed format and producing the same annually before the District Magistrate. The circular thereafter further goes to provide that in a case where entertainment tax collected from the customers is paid belatedly the person liable to pay the entertainment tax and who has collected the tax free component of service charge shall not be entitled to retain the prescribed percentage of such service charge component but shall be required to part with the same.

10. Thus, on a plain reading of the circular, it is apparent that a concession which has been granted by the circular has an inbuilt restriction so as to ensure that the entertainment tax collected by a cinema house owner is paid over to the Government if the owner wants to avail of the concessional benefit granted by virtue of the circular. Hence, on this count also, no infirmity can be found in the impugned circular which provides for a concession but also provides for an overriding condition whereby concession gets withdrawn on failure of the person concerned not fulfilling the specified condition in the circular, namely payment of entertainment tax within the stipulated time. The levy of interest and penalty under the Act are entirely unrelated to the concession granted under the circular namely non levy of entertainment tax on the service charge component in the total value of cinema ticket and therefore, merely because the Act permits levy of interest and/or penalty the circular cannot be treated to be bad in law when it provides for withdrawing of concession upon non-fulfilling of the prescribed condition.

11. The last contention regarding the rate of interest being exorbitant does not merit consideration in light of the fact that a statutory provision has been made under the Act and if subsequently the statutory provision has been modified in accordance with law whether the petitioner would be entitled to seek application of such modified provision or not will depend on the provisions and the same cannot be modified by virtue of a direction in the writ petition. No case is made out for intervention in statutory provisions.

12. The petition being devoid of merits on all the grounds pleaded is rejected. Notice discharged.