(2012) 09 AHC CK 0219

In the Allahabad High Court

Case No : Civil Miscellaneous Writ (Tax) Petition No. 155 of 2005

Smt. Nirmal Devi APPELLANT

Vs

State of U.P. and others RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Uttar Pradesh Entertainments And Betting Tax Act, 1979 — Section 11(1), 11(2), 3

Citation : (2012) 10 ADJ 547

Hon'ble Judges : Sunita Agarwal, J;Sunil Ambwani, J

Bench : Division Bench

Advocate : Govind Krishna and Rajeev Gupta, for the Appellant; C.B. Yadav, A.S. Tripathi and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Sri Rajeev Gupta for the petitioner. Sri A.S. Tripathi appears for State respondent. This writ petition, challenging the order of the District Magistrate, Azamgarh dated 10.4.2005, whereby the District Magistrate had asked the petitioner, to deposit a sum of Rs. 19.95, 890/- as the same was unauthorisedly realized by the petitioner from the cinema goers in contravention with the scheme in Government Order dated 11.8.2000, was dismissed by the Court on 8.12.2009, with directions to deposit the entire amount. The Court also imposed cost on the petitioner.

2. The petitioner filed a Civil Appeal No. 2988 of 2012. The Supreme Court has set aside the judgment of this Court, and remanded the matter, for fresh decision on the core issue that was canvassed before it. The Supreme Court observed in para 6 of the judgment that it had not expressed any opinion on the merits of the writ petition.

3. It is submitted by the counsel for the petitioner that during the pendency of the Civil Appeal before the Supreme Court, the petitioner deposited the entire amount.

4. In the judgment dated 8.12.2009, this Court considered and interpreted the Government Orders dated 9.11.1994 and 7.12.1998, that it were by way of ''grant-in-aid'' to compensate the cinema hall owners, established in thinly populated areas to meet the cost of constructions, including machinery and furniture. Under these schemes, the cinema hall owners were permitted to retain the entertainment tax collected by them from the viewers, and which was given to them as grant-in-aid.

5. The scheme in the Government Order dated 11.8.2000, made a departure from the earlier schemes in Government Orders dated 9.11.1994 and 7.12.1998, and provided for a new scheme, to encourage cinema goers. Under the new scheme, there was a total or partial exemption from paying entertainment tax. The exemption from collection, and payment of entertainment tax was for the purpose of encouraging both cinema owners as well as cinema goers, and to prepare a wider base for collection of entrainment tax. In the Government Order dated 11.8.2000, a total exemption was provided from payment of entertainment tax, for a period of five years, to the new cinema hall owners, established in a place where the population is less than one lac on the basis of 1991 census. In respect of other cinema halls, constructed in the areas having more than one lac population, 100% exemption was granted for the first three years, and 50% for the next two years.

6. The scheme in the Government Order dated 11.8.2000, did not have corresponding provisions, as in the case of the schemes in the Government Orders dated 9.11.1994 and 7.12.1998, for any grant-in-aid, to such cinema hall owners. This Court observed:

There is a conscious departure in the G.O. dated 11.8.2000, from the earlier G.Os in this regard. The Government took a conscious decision under the said G.O. dated 11.8.2000, to grant total or partial exemption from entertaining tax to such new picture hall instead of giving any amount as grant-in-aid to the owners.

7. This Court in its judgment dated 8.12.2009, did not accept the contention of the petitioner that since there was no concealment or misrepresentation by the licencee, the demand was illegal, and that the petitioner prepared form ''B'' during the period of grant-in-aid facility, as per the directions given by the officials of the entertainment tax department and prescribed by them. It was observed that even if the petitioner had clearly mentioned the entertainment tax realized, and no objection was raised by the department, the petitioner was not permitted to keep the amount for her benefit, and that the retention of the amount would amount to unjust enrichment.

8. It was observed by this Court that Section 3 of the Act, which is the charging section, provides tax on payment, for admission to entertainment. This Section further provides that entertainment tax shall be collected by the proprietor from the person making the payment for admission, and paid to the Government in

the manner prescribed. A proprietor of a cinema hall, is not entitled to keep the entertainment tax. He has to deposit it with the Government.

9. It is submitted by Sri Rajiv Gupta, learned counsel for the petitioner that the Government Order dated 11.8.2000, was in addition to the scheme in the Government Orders dated 9.11.1994 and 7.12.1998. All the three Government Orders were issued for the benefit of the cinema owners. The words ''grant-in-aid'' provided in the Government Orders dated 9.11.1994 and 7.12.1998, and the word ''exemption'' in the Government Order dated 11.8.2000, would not make any material difference in the scheme. The petitioner was given permission by the District Magistrate in his order dated 10.9.2001, while giving 100% exemption from entertainment tax for a period of five years. The petitioner was required to fill-up form-''B'' in a manner that the amount of entertainment tax for the period of exemption was to be shown separately at the end of the month, and the weekly statement regarding total sale of tickets, after deducting tax, was to be shown separately.

10. Sri Rajiv Gupta submits that the order of the District Magistrate dated 10.9.2001, clearly provided for charging entertainment tax, which was to be separately shown in form ''B'' but was not to be deposited in the manner prescribed under the Act in the Government Treasury. The petitioner was not liable to pay the entertainment tax collected from the cinema goers, as the facility was granted by the Government by way of incentive for establishing cinema hall in an area where the population is less than one lac. The change in the stand of the State Government by demanding the entertainment tax collected by the petitioner, which was exempted from being deposited in the Government Treasury, was grossly illegal and arbitrary.

11. Sri Rajiv Gupta further submits that the Supreme Court accepted the argument that the High Court has failed to consider that the petitioner entitled to retain certain percentage of tax collected by it, which is in the nature of grant for the cinema hall owners, which was constructed in thinly populated area, subject to certain conditions.

12. We have gone through the provisions of the U.P. Entertainments & Betting Tax Act 1979, and the scheme of ''grant-in-aid'' provided under the Government Orders dated 9.11.1994 and 7.12.1998, and the scheme of ''exemption'' provided under the Government Order dated 11.8.2000. We find that there was a complete departure in the new scheme provided in the Government Order dated 11.8.2000. The State Government, instead of allowing the cinema owners to charge the Entertainment Tax from the viewers, and keep it as ''grant-in-aid'' for compensating the cost of constructions of the cinema hall, provided an exemption u/s 11(2) of the Act, in the new scheme vide Government Order dated 11.8.2000, and in which there is no mention of the word ''grant-in-aid''. The earlier schemes, under the Government Orders dated 9.11.1994 and 7.12.1998, were not for the benefit of the cinema goers; whereas the new scheme was framed for the benefit of the cinema goers, situate in a thinly populated area. In

para 2 of the Government Order 11.8.2000, it was clearly stated that in order to encourage constructions of new cinema hall, and for the purposes of providing cinema hall in the thinly populated area, in sufficient numbers, a new incentive scheme is proposed for a period of five years, and by this scheme the viewers will be benefiting of the entertainment on cheaper price, and that the figure will become a base for the State, to increase the revenue on entertainment tax. The scheme was applicable to those areas, which has less than one lac population in accordance with census of 1991. Only new permanent cinema halls were provided with 100% exemption from paying entertainment tax for a period of five years. The cinema halls in the areas with population of more than one lac were provided with 100% exemption for a period of three years and thereafter with 50% exemption for the next two years. Clause 4 of the Government Order dated 11.8.2000 provided that those cinema halls, who are exempt from paying entertainment tax will not be allowed to realize extra charge for maintenance.

13. There is a marked difference between the concept of ''grant-in-aid'' and ''exemption''. The ''grant-in-aid'' is by way of special scheme for the purpose of compensating the cinema hall owners from the burden of costs of construction of the cinema hall; whereas exemption from paying entertainment tax is provided u/s 11(2) of the Uttar Pradesh Entertainments and Betting tax Act, 1979. Section 11(1) and (2) of the Act reads as follow :

11. Exemption.- (1) The State Government may, for promotion of peace, international goodwill, arts, sports or other public interest, by general or specific order, exempt any entertainment or class of entertainments form liability to pay tax under this Act.

(2) The State Government may, by general or special order, exempt in public interest any class of audience or spectators from liability to pay tax under this Act.

14. We do not find anything in the order of the District Magistrate dated 10.9.2001, which can be read or construed to permit the petitioner to charge entertainment tax from the cinema viewers, and keep it with her, after getting exemption u/s 11(2) of the Act. The order only provided for exemption with the condition that in form ''B'' the collection from the viewers in respect of ticket charge, and the entertainment tax will be shown separately. The condition of showing entertain tax separately is for the statistical purpose, for the assessment of scheme. It cannot be treated to have allowed the petitioner to collect entertain tax, and keep it by way of incentive.

15. In the present case, in pursuance to the order passed by this Court dated 8.12.2009, which was not stayed by the Supreme Court, the entertainment tax, which was illegally collected and not deposited in the State Treasury, has been realized from the petitioner. The writ petition is dismissed.