(2009) 12 AHC CK 0054

In the Allahabad High Court

Smt. Nirmal Devi APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

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

Citation : (2010) 2 AWC 1205 : (2010) 28 VST 363

Hon'ble Judges : Subhash Chandra Nigam, J;Prakash Krishna, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—By means of the present petition, the petitioner has challenged the order of the District Magistrate, Azamgarh dated January 10, 2005 whereby the District Magistrate has asked the petitioner to deposit a sum of Rs. 19,95,890 as the same was unauthorisedly realised by her from the cinema goers.

2. The State Government, in order to provide entertainment and boost up cinema in the villages and remote areas promulgated schemes from time to time known as "grant-in-aid facility" to new cinema halls. By the Government orders dated November 9, 2004, December 7, 1998 and August 11, 2000, the State Government provided grant-in-aid facility to newly constructed permanent cinema buildings subject to the fulfilment of terms and conditions mentioned therein. The petitioner herein applied for and was granted exemption from deposit of entertainment tax under the scheme dated August 11, 2000. In pursuance of the said scheme, the petitioner was provided grant-in-aid facility by order dated September 10, 2001 for a period of five years under the scheme dated August 11, 2000, whereby the petitioner''s cinema hall was granted complete exemption from payment of entertainment tax for a period of five years. The licence having been granted to the petitioner, she started exhibition of films being licensee of Raj Palace Phoolpur, Azamgarh under the U. P. Cinematograph Rules, 1951. She was served with a notice dated July 31, 2004

by the Entertainment Tax Officer, Azamgarh, asking her to pay a sum of Rs. 19, 95, 890, the sum realised by her from the cinema goers as entertainment tax. The said notice was given on the ground that under the G. O. dated August 11, 2000, the petitioner was not authorised to collect entertainment tax from the cinema goers and the entertainment tax was unauthorisedly collected by her. A reply dated September 9, 2004 was submitted on the pleas, inter alia, that there is no fault on her part and the statements of realisation of entertainment tax were duly submitted to the officer concerned of the Entertainment Tax Department from time to time but no objection was raised there at any point of time. This being so, the amount thus realised by the petitioner from the cinema goers cannot be recovered from her and the matter be reconsidered. The said reply/representation was dismissed by the Entertainment Tax Commissioner on December 23, 2004. In consequence of the order passed by the Entertainment Tax Commissioner, a fresh demand notice dated January 10, 2005, impugned herein, was served on the petitioner by the District Magistrate, Azamgarh.

3. In the counter-affidavit, the stand taken is that under the G. O. dated August 11, 2000, the cinema owners were granted total exemption from payment of entertainment tax, but under the said G. O. such cinema owners were not entitled to realise the entertainment tax from the cinema goers. There being no provision with respect to entertainment tax realised by the cinema owners from the cinema goers by making adjustment entry in the treasury, the petitioner is not entitled to retain the entertainment tax realised by her. The petitioner has unauthorisedly realised a sum of Rs. 19,95,890 as entertainment tax from the cinema goers and the said amount is refundable to the State exchequer. The impugned demand notice has been sought to be justified in the light of the provisions contained in the G. O. dated September 11, 2000 as also the provisions as contained in U. P. Entertainments and Betting Tax Act, 1979 (hereafter referred to as "the Act").

4. In the rejoinder-affidavit, it is contended that on a close scrutiny of grant-in-aid scheme dated August 11, 2000, under which the petitioner has been permitted to raise complete construction of permanent cinema building and the petitioner is not liable to deposit the entertainment tax for the period mentioned therein. The petitioner has been provided the benefit of the said scheme by virtue of the order dated September 10, 1991. A conjoint reading of the scheme and the order clearly establishes that the benefit of grant-in-aid has been provided to the new entrepreneurs who have constructed cinema buildings after fulfilling the conditions laid down , therein, besides reiteration of the pleas raised in the writ petition.

5. Sri Govind Krishna, learned Counsel for the petitioner, submits that on a true and correct interpretation of the Government order dated August 11, 2000, the petitioner is entitled to retain the entertainment tax realised from the cinema goers. He submits that the pro forma of ticket showing the admission fee and the entertainment tax was approved by the Department. The petitioner realised the

entertainment tax as per the approved pro forma on form B and as such, the Department cannot take a turn around and ask the petitioner to pay the entertainment tax realised by her. We were taken through the scheme dated August 11, 2000 as also the order dated September 10, 2001 granting exemption for a period of five years u/s 11(2) of the Act and form B as provided under rule 13 of the Rules framed under the Act.

6. Sri A. C. Tripathi, learned standing counsel, on the other hand, submits that the petitioner was granted grant-in-aid under G. O. dated August 11, 2000. Under the said G. O., the cinema owners were not authorised to collect the entertainment tax and total exemption from entertainment tax for five years was granted thereunder, which was not so in the earlier G. Os. dated November 9, 1994 and December 7, 1998. Under G. O. dated August 11, 2000, there being no such provision permitting a cinema owner to realise entertainment tax from cinema goers or permitting a cinema owner whose picture hall has been exempted from levy of entertainment tax, to realise the entertainment tax from the cinema goers, the petitioner is not authorised to keep the entertainment tax realised from the cinema goers.

7. Considered the respective submissions of the learned Counsel for the parties and perused the record.

8. The controversy in the present case centres round the interpretation of G. O. dated August 11, 2000, but before coming to the said G. O., earlier G. Os. dated November 9, 1994 and December 7, 1998 may be noticed. G. O. dated November 9, 1994 provides certain benefit to the permanent picture halls constructed under the said scheme subject to the fulfilment of terms and conditions laid down therein, with which we are not presently concerned. It provides incentives by way of grant of exemption to such picture halls by granting aid to the extent of 50 per cent of entertainment tax collected for the first three years subject to the maximum limit of 50 per cent cost of construction excluding the cost of the land. It provides that while preparing form B, as required under rule 13 of the U. P. Entertainments and Betting Tax Rules, 1981, the respective amounts mentioned therein should be shown separately. It further provides a mechanism for making adjustment entry in the account books of the treasury which would show the payment of grant-in-aid amount given by the Government to the cinema owners without actually depositing the entertainment tax with the Government treasury and its repayment to the cinema goers. Emphasis in the scheme is on payment of certain amount by way of grant to the cinema goers out of the entertainment tax collected by it. Similarly, in the subsequent G. O. dated December 7, 1998, it is provided that the cinema owners shall collect the entertainment tax and will be entitled for specified percentage from the entertainment tax so collected by way of grant for a period of three years up to maximum limit of 50 per cent of the entertainment tax realised by it.

9. Now, we consider the G. O. dated August 11, 2000 involved in the writ petition. The said G. O. grants total exemption to a new cinema hall constructed

in a place having less than one lac population on the basis of 1991 census to the extent of 100 per cent exemption from entertainment tax for a period of five years. In respect of the other picture halls, i.e., constructed in an area having more than one lac population, 100 per cent exemption has been granted for the first three years and 50 per cent for the next two years. It may be noted that in this G. O. there is no corresponding provision for payment of any grant by way of aid to such picture hall owners. There is a conscious departure in the G. O. dated August 11, 2000 from the earlier G. Os. in this regard. The Government took a conscious decision under the said G. O. dated August 11, 2000 to grant total or partial exemption from entertainment tax to such new picture halls instead of giving any amount as grant-in-aid to the owners.

10. Entertainment tax is a tax, as is well known, a compulsory exaction. The State Government has been authorised to levy entertainment tax in pursuance of the powers conferred on it by entry 62 of State List of the Seventh Schedule of the Constitution of India.

11. The whole emphasis of the petitioner is on the fact that as there has been no concealment or misrepresentation by the licensee, the impugned demand is illegal. It was submitted that the petitioner prepared form B during the period of grant-in-aid facility as per direction given by the officials of the Entertainment Tax Department and prescribed by them. He submits that under the said form, the petitioner has clearly mentioned the entertainment tax realised by her from time to time, but no objection was raised by the Department. It was also submitted that no prudent businessman will establish a cinema hall in an area having population less than one lac or in remote areas if the grant-in-aid facility, as was granted by earlier G. Os., is not made available to such entrepreneurs, otherwise the business would not be viable. We are not at all impressed by the said argument. The G. O. should be read as it is. Nothing can be added in it nor anything can be subtracted from it. Learned Counsel for the petitioner could not point out any provision therefrom permitting a licensee to retain the entertainment tax wholly or in part by way of grant-in-aid. This being so, it cannot be provided by means of any interpretative process. The petitioner, like other licensees, preferred to establish a cinema hall with wide open eyes after fully understanding the contents of the G. O. dated August 11, 2000. So far as the inaction on the part of the officials of the respondent-Department in permitting the petitioner to realise the entertainment tax from the cinema goers is concerned, it will not in any manner entitle the petitioner to retain the entertainment tax unauthorisedly realised by her. There cannot be any estoppel against a statute. If a licensee, like the petitioner, under law is not entitled to realise and retain the entertainment tax, the said tax cannot be pocketed by her.

12. Section 3 of the Act, which is charging section, provides tax on payment for admission to entertainment. It says that there shall be levied and paid on all payments for admission to any entertainment, other than an entertainment to which Section 4 or Section 4A or Section 4B applies. Sections 4A and 4B relate to

tax on video cinema and tax on video show in public service vehicle or hotels with which we are not concerned presently. Section 3 further provides that the 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. It follows that a proprietor of cinema has been authorised to collect entertainment tax from the cinema goers and to deposit the same to the Government in the prescribed manner. A proprietor of cinema is not entitled to pocket the entertainment tax and he has to deposit it with the State Government.

13. In view of Section 3 of the Act, when a proprietor of cinema collects tax by way of entertainment tax from the cinema goers, it would be entitled to collect such tax which is subject to levy and collection by the State. The authority in this behalf is implicit. Only for the aforesaid purpose, the statute provides for the mode and manner in which the tax is to be collected. This being so, there is no reason for appropriation of entertainment tax by the proprietor of cinemas. The Government order under consideration was issued in conformity with the above principle and that is the reason that there was a conscious departure from the earlier Government orders.

14. It is not out of place to mention here that the apex court examined the scheme of a cognate Act, namely, the Bombay Entertainment Duty Act, 1923 and the Rules framed thereunder in the case of State of Maharashtra and Others Vs. Swanstone Multiplex Cinema (P) Ltd., and held that the State Government is entitled to recover entertainment tax collected by a proprietor of cinema from the cinema goers, subject to such exemption and concession as have been given to them. A proprietor of cinema when collects tax by way of entertainment tax from the cinema goers, it would be entitled to collect such tax which is subject to levy and collection by the State. Paragraph 24 (paragraph 41 in 24 VST) of the judgment is reproduced below (at page 595 of VST):

24. In absence of any express statutory provision, allowing the proprietors of the multiplex theatre to retain the benefit, it is difficult for us to arrive at such an inference. The State has power to impose tax. The State has a power to grant exemption or concession in respect of payment of tax. It has no power in terms of the provisions of the Constitution or otherwise to allow an assessee to collect the tax and retain the same. We will assume that to that effect the provisions are not very clear but the superior courts will not interpret the statute in such a way which will confer an unjust benefit to any of the parties, i.e., either the taxpayer or tax collector or the State. The statute must be interpreted reasonably. It must be so interpreted that it becomes workable. Interpretation of a statute must subserve a constitutional goal.

15. In the above case the apex court has held that in such a situation where the cinema goers had lost huge amount, it would be travesty of justice if the owners of the cinema theatres become eligible to appropriate the amount for its own benefits. To the aforementioned extent, the doctrine of unjust enrichment may be held to be applicable. A person who unjustly enriches himself cannot be

permitted to retain the same for its benefit except enrichment. Such licensee/ picture hall owners cannot and could not collect any entertainment tax from the cinema goers and if collected, they are liable to deposit the same with the State treasury, otherwise it would amount unjust enrichment.

16. This being so, the petitioner is liable to pay the amount unauthorisedly collected from the cinema goers as entertainment tax as per the impugned demand notice. There is no merit in the writ petition.

17. The writ petition is dismissed with costs of Rs. 5,000.