
(1993) 10 MAD CK 0055
In the Madras High Court

Star Talkies

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 26-10-1993

Acts Referred:

Citation : (1994) 2 MLJ 245

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—The petitioner is a permanent cinema theatre having been licensed under the Tamil Nadu Cinemas Regulation Act, 1955 situated at Nagapattinam, Thanjavur District. The petitioner pays entertainment tax u/s 5(B) of the Tamil Nadu Entertainment Tax Act, herein after referred to as the Act, taking advantage of the compounding system. The Government by exercising its power u/s 8(2) of the Act passed G.O.Ms. No. 483, dated 3.5.1983 granting exemption from tax with regard to two films viz., "Circus Ulagam" and "Baktha Duruva Markandeya". Clauses 2 and 3, of the G.O. are relevant and they read as follows:

(2) Special tickets indicating the reduced price of admission after giving the benefit of tax exemption to the viewer, should be printed and used after getting them sealed by the entertainment tax officer concerned;

(3) The price of admission should be reduced to be notional rate of admission after deducting the notional tax element from the gross price of admission as given in "C" form license.

2. The petitioner reduced the rates of admission for balcony from Rs. 2.30 to Rs. 1.60, for 1st class from Rs. 1.80 to Rs. 1.25, for II class from Rs. 1.00 to 0.70 p. and for III class from 0.50 p. to 0.35 p. Accordingly, the petitioner made collections while exhibiting the two films.

3. By order dated 7.3.1984 in RC.832/84 D5, the Deputy Commercial Tax Officer held that the petitioner had not reduced the rates of admission property in

accordance with the terms of the G.O. and it should have collected only at the rates of Rs. 1.20, Rs. 0.90, Rs. 0.54 and Rs. 0.26 respectively for the various classes referred to above. On that basis, the petitioner's total collection should have been Rs. 7,846.86. But it had actually collected Rs. 10,429.85. The said order therefore directed the petitioner to remit the excess collection made viz. a sum of Rs. 2,582.99. A demand notice in form 17 followed the said order. A similar order was passed with regard to the film "Baktha Duruva Markandeya" and as per the order, the excess collection was Rs. 2735.06 which the petitioner was directed to remit. Both the orders were made on the same day, viz. 7.3.1984. Without challenging the validity of the two orders by appeals, the petitioner sent objections to the orders on 15.3.1984 and 23.4.1984 respectively to the Assistant Commissioner, Commercial Taxes, Kumbakonam and the Deputy Commercial Tax Officer, Nagapattinam. In the objections, the contention of the petitioner was that the tax was being paid u/s 5-B on compounding basis and the only tax that is to be reduced from the admission rates is the tax that is paid on the compounding basis at 30%. It was the contention of the petitioner that the reduction made in the admission rates by the petitioner was proper and there is no question of excess collection and the petitioner being liable to remit the same. The said objections were rejected by the authorities and an order was passed by the Deputy Commercial Tax Officer on 12.4.1984. By that order, the petitioner was informed that the amount made of excess collection would be adjusted as against the security deposit by the petitioner in a sum of Rs. 7,000. Another order was passed on 23.4.1984 calling upon the petitioner to remit a sum of Rs. 6,878.30 to make good the amount required for security deposit.

4. Challenging the aforesaid two orders of 12.4.1984 the present writ petition has been filed by the petitioner. It is the contention of the petitioner that once the petitioner is permitted to pay the tax on the compounding basis u/s 5-B, the tax payable under Sections 4, 4-A, 4-B, etc. is not applicable and for the purpose of calculating the reduction in the rate of admission, the tax which is payable under those sections cannot be taken into account. It is submitted that Section 5-B excludes the applicability of Sections 4, 4-A, 4-B and 4-C of the act. It is contended that the respondents have erroneously directed the deduction of the entire tax, which will be payable if Sections 4, 4(a), 4(b) and 4(c) are applicable to the petitioner and arrived at a conclusion that the petitioner has made excess collection by not properly reducing the rate of admission.

5. Per contra, it is submitted by learned Counsel appearing for the respondents that the exemption, which is granted by G.O.Ms. No. 483 clearly refers to the notional tax which is payable from out of the gross price of admission. Reliance is placed upon the wording of Clauses 2 and 3. It is argued that the petitioner cannot get a double benefit by paying a reduced tax u/s 5(B) on the compounding basis and also retain a part of the tax, which is collected from the film viewers. It is pointed out that the G.O. contemplated that the benefit of exemption from tax should go to the film viewers and that they should go to the film viewers and that they should be made to pay only the actual rates of

admission without paying any part of the tax. It is also submitted by learned Counsel for the respondents that the orders dated 7.3.1984 having become final without being challenged by the petitioner, it is not open to the petitioner to challenge the consequential orders dated 12.4.1984 and 23.4.1984 in the present writ petition.

6. I am of the view that the contentions of the respondents are well founded. Even without going into the merits of the contentions of the petitioners, it can be held that the writ petition is not maintainable in as much as the petitioner has allowed the orders dated 7.3.1984 to become final. The petitioner has not challenged the said orders by appropriate appeals before the authorities. Instead of doing that, the petitioner is raising objections to the consequential orders, which follow the orders dated 7.3.1984. So long as the orders dated 7.3.1984 remain unchallenged, the writ petition is not sustainable.

7. As regards the merits of the contentions, it is seen that the intention of the Government in granting exemption from tax to the two films is very clear. The person, who should get the benefit of the exemption is the film viewer. Clause 2 of the G.O. clearly refers to the viewer and says that the benefit of tax exemption should go to the viewer. It is contended by learned Counsel for the petitioner that the reduced rates of admission are entered in the tickets and the approval of the Entertainment Tax Officer has been obtained on such tickets by a seal and signature. But that will not certainly estop the officials from applying the correct principles of law. Just because the tickets have been signed with the rates prescribed by the petitioner, it does not mean that the petitioner is entitled to get a double benefit.

8. It is brought to my notice by learned Counsel for the respondents that the Government have passed G.O.Ms. No. 176, dated 18.2.1986, clarifying the position As per that G.O.Ms. No. 483, dated 3.5.1983 is substituted by the following clause.

The price of admission should be reduced to the notional net rate of admission, after deducting the notional tax element from the gross price of admission as given in the "C" form license. The rates should not be enhanced in any way taking advantage of exemption.

9. It is argued by learned Counsel for the petitioner that G.O.Ms. 176, dated 18.2.1986 will not apply to this case as the relevant orders were passed even in 1984 and the present writ petition was itself filed in 1985. The contention is not sustainable in view of the fact that even on 7.3.1984 on an interpretation of G.O.Ms. 483 the second respondent has passed an order against the petitioner taking the same view which is now clarified by the later G.O. of 1986. Apart from that, the later G.O. contains a clause that past cases already permitted will not be re-opened. In this case, the reduction of rates as done by the petitioner was not accepted by the authorities and an order was passed against the petitioner even on 7.3.1984. Hence, the provision contained in the G.O.Ms. 176, dated

18.2.1986 would certainly apply to the present case. Further, I am of the view that the later G.O. is only a clarification of the earlier G.O. and therefore, it will apply unless the assessment had already been completed in favour of the theatre owners.

10. Learned Counsel for the respondents also placed a reliance on the judgment of this Court in *K.S. Anandan Vs. Deputy Commercial Tax Officer, Ponneri Assessment Circle, Ponneri, Chengalpattu and Another*, . The question in that case was whether the owner of a cinema theatre who had opted to pay compounded tax every week u/s 5(B) of the Act can challenge levy of tax for whole weeks during which no shows were held at all. The question was answered in the affirmative by this Court and it was pointed out that Section 5B is only subject to Section 4. The relevant passage in the judgment reads thus:

Thus, a close reading of the provision of Section 4 clearly shows that there should be a show of entertainment wherein the customers are allowed inside the auditorium to see the cinema by paying the charge specified in the ticket that is issued to them, which includes also the entertainment tax. In other words, it is the cinema goers who pay the tax and the owner of the theatre collects the tax by issuing tickets to the customers, only as collecting agents. The owner of the theatre has to collect and pay what had been collected every week by way of entertainment tax.

In the instant case, Mr. R.Lokapriya, learned Government Advocate (Taxes) would vehemently contend that the petitioner has opted as an assessee u/s 5-B of the Act and as such, it is not open to him to raise such a contention. This contention is untenable because Section 5-B is subject to Section 4 of the Act. u/s 4 of the Act, it is only when admission or permission to a person who seeks entertainment by entering into the auditorium by paying the charge in the ticket, which includes the entertainment tax, the collection of the tax from the cinema theatre owner comes in

11. In the circumstances, there is no merit in the contentions of the petitioner and the orders impugned in this writ petition are unassailable. The writ petition fails and is dismissed. But, there will be no order as to costs.