(1998) 12 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18663 of 1996 and Batch

V. Vijay Kumar APPELLANT

Vs

Commercial Tax Officer-II, Adoni, Kurnool District and another RESPONDENT

Date of Decision : 16-12-1998

Acts Referred:

Andhra Pradesh Cinemas (Regulation) Act, 1955 — Section 7
Andhra Pradesh Entertainment Tax Act, 1939 — Section 10(2), 4, 5(1)

Citation : (1999) 1 ALD 482 : (1999) 1 ALT 499

Hon'ble Judges : T. Ranga Rao, J;S.V. Maruthi, J

Bench : Division Bench

Advocate : Mr. P. Srinivasa Reddy, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Judgement

S.V. Maruthi, J

1. These writ petitions are disposed of by a common judgment as the issue involved is common to at] the writ petitions.

2. The petitioners are challenging the levy of entertainment tax for the pictures exhibited in Video Theatres by declaring the notices issued by the 2nd respondent as illegal, arbitrary and unconstitutional.

3. The facts in WP No. 18663 of 1996 are referred to in detail as the facts in other writ petitions are more or less similar.

4. The petitioner is an unemployed Graduate. He took on lease a theatre for the purpose of video theatre. He purchased a Projector, Video Cassettes Recorders, Chairs, Sound System and other required equipment for the purpose of projecting video films. The theatre has a capacity of 86 1st class seats and 62 2nd class seats. The petitioner started exhibiting films through video cassettes from 6th July, 1995. The petitioner is using 16 mm video film cassettes and projecting through VCRs and Video Projector (ENTEL) Sinclaire type. I le is

charging Rs.7/-per head for 1st class and Rs.5/- for 2nd class. The number of shows depends on variety of circumstances and if all the seats arc filled up, he would be getting Rs.912/-per show.

5. The respondents without issuing any demand notice started collecting Rs.50/- and Rs.21/- per show. The respondents calculated the amount for 21 shows in a week and came to the figure of Rs.1050/- and Rs.252/- per week. The amount was demanded u/s 4-A(l) and 4-A(l-A)(iii) of Andhra Pradesh Entertainments Tax Act, 1939 (for short ''Act of I9391). The petitioner has not disputed his liability to pay the tax.

6. While so, the 2nd respondent issued a notice dated 16-7-1996 directing the petitioner to pay the entertainment tax u/s 5(1) of the Act of 1939. The tax was calculated @ 18% on the gross collection of Rs.912/- per 21 shows and arrived at the figure of Rs.3,447/-. Since the petitioner was paying Rs.1,050/- instead of Rs.3,447/- from 8-7-1995 to 31-3-1996, he was directed to pay the difference amount failing which it was proposed to take coercive action. Aggrieved by the same, the present writ petition is filed.

7. In the counter-affidavit filed by the respondents, it is stated that though A.P. Exhibition of Films on Television Screen Through Video Cassette Recorders (Regulation) Act, 1993 (for short ''Act of 19931) came into force with effect from 3-8-1993. As no rules under Act of 1993 were issued, Government in their orders in G.O. Ms. No.541 Home (Genl. A) Department dated 12-7-1994 read with clarification orders issued in Govt. Memo No.636/Genl.A/94 dated 23-7-1994 and in exercise of the powers conferred u/s 7 of the Act of 1993 directed the licensing authorities to adopt the rules/formats of applications/certificate and licence etc., prescribed under the A.P. Cinemas (Regulation) Act, 1955 (for short ''Act of 1955'') for regulating the video theatres as a slop gap arrangement pending issue of rules under the new Act of 1993. Accordingly Form ''K'' licence was issued to the writ petitioner as he had filed the required applications (J) and other certificate, etc., under the Act of 1955 read with A.P. Cinemas (Regulation) Rules, 1970 and Appendix IX to the said Rules. Since the petitioners obtained licence, they are liable to pay entertainment tax under the Act of 1939 and as the petitioners have not paid the tax, the authorities are at liberty to collect the tax as an arrear of land revenue u/s 10(2) of the Act of 1939. From the respective contentions of the petitioners as well as the respondents, it appears that the petitioners are contending that since they are screening video films in the theatre using 16 mm video film cassettes and projecting through VCRs and video projectors (ENTEL) Sinclaire type, they are not liable to pay the entertainment tax under the Act of 1939. The reason being that though originally the licence was granted for screening the films under the Act of 1955, by virtue of passing of Act of 1993, the old Act of 1955 ceases to be applicable to them. Since the Act of 1955 is not applicable to the petitioners, the gross collection capacity cannot be calculated and, therefore, no tax u/s 4 can be levied or collected from the petitioners. While the Special Government Pleader for Revenue

contended that the petitioners are screening video films and the Act of 1939 is applicable to video films. When once the Act of 1939 is applicable to video films, u/s 4, the petitioners are liable to pay tax for the entertainments The question, therefore, is whether the petitioners are liable to pay entertainment tax under the Act of 1939.

8. If the Act of 1939 is applicable to video films, then the petitioners cannot avoid payment of entertainment tax notwithstanding the Act of 1993. If the Act of 1939 is applicable, then the petitioners cannot contend that they are not liable to pay tax on the ground that they are governed by Act of 1993. If the Act of 1939 is not applicable, then they are not liable to pay any entertainment tax under the Act of 1939. Let us now examine whether Act of 1939 applies to the petit loners or not.

9. Section 4 of the Act of 1939 is the Charging Section. It says that "there shall be levied and paid to the State Government a tax on the gross collection capacity on every show (hereinafter referred to as the Entertainments Tax) in respect of entertainments held in the theatres specified in column (2) of the Table below and located in the local areas specified in the corresponding entry in column (1) of the said ''fable, calculated at the rates specified in the corresponding entry in column (3) thereof." It is not necessary to extract the Table as it refers to the local area viz., category of municipality and the category of theatre and rate of tax on the gross collection capacity per show. Under the explanation 1, the term ''gross collection capacity per show'' is defined as the notional aggregate of all payments for admission and for this purpose, the proprietor would realise per show, if all the seats or accommodation as determined by the licensing authority under the Act of 1955 in respect of the place of entertainment are occupied and calculated at the maximum rate of payments for admission as determined by the said licensing authority.

10. Section 4-A of Act of 1939 levies tax in addition to Section 4. it reads as follows:

"4-A. Tax on entertainment shows:--(1) In addition to the tax u/s 4, there shall be levied and paid to the State Government in the case of entertainment held in the local area specified in column (1) of the Table below, a fax calculated at the rates specified in the corresponding entry in column (2) thereof.

Local Authority Rate of tax for every show, other than the show specified in sub-section (I -A)

(a) Municipal Corporations, the Secunderabad Canton ment Area, Selection Grade, Special Grade and First Grade Municipalities. Twelve rupees.

(b) Second Grade and Third Grade Municipalities. Eight rupees.

(c) Gram Panchayats, town ships and any other local authorities.

(d) with a population of 15,000 and above Four rupees

(e) with a population of less than 15,000 Two rupees

11. Sub-section (1-A) of Section 4A reads as follows:

"There shall be levied and paid to the State Government in addition to the tax u/ s 4 -

(i) ....

(ii) a tax of Rs.50/- on every show of 16 mm. Cinematograph film exhibited in any of the local authorities of the Stale;"

12. The expression ''Entertainment'' is defined as cinematography exhibition lo which persons are admitted on payment. Cinematograph includes any apparatus for the representation of moving pictures or series of pictures and Cinematograph film includes video films, the sound track and any work produced by any process analogous to cinematography.

13. From a reading of the definition of ''Entertainment'' read with Cinematograph film, it appears f hat exhibition of video films amounts to entertainment within the meaning of Act of 1939. When once exhibition of video films amounts to entertainment, Section 4 is applicable and the said entertainment is taxable. From a reading of Section 4, it appears that the said Section is applicable to entertainments held in theatres specified in Column (2) of the Table. The theatres specified arc (i) Air conditioned, (ii) Air cooled, (iii) Ordinary (other than air conditioned and air cooled), (iv) Permanent and Semi-Permanent; and (5) Touring and Temporary. In other words. Section 4 levies tax on screening of films or exhibition of cinematograph films in theatres. Evidently, the expression ''theatre'' has not been defined. However, the petitioners who are screening video film in theatres are using 16mm video film cassettes and projecting through VCRs and video projectors (ENTEL) Sinclaire type.

14. While Section 4A provides for the levy of tax in addition to Section 4 in the case of entertainment held in the local area specified in the table appended to the said Section. Under sub-section (1-A) of Section 4A entertainment tax shall be levied on every show of 16 mm Cinematograph film exhibited in any of the local authorities of the State.

15. The contention of the petitioners is that since the gross collection capacity is the basis for the levy of entertainment tax and similar gross collection capacity is to be calculated under the Act of 1955 and since the Act of 1955 is not applicable to the exhibition of video films and therefore they are not liable to pay tax under the Act, cannot be countenanced for the following reasons:

16. It is true that under the explanation the gross capacity per show means the realisation per show by the Proprietor the payments for admission of all the seats -determined by the Licensing Authority. The seating capacity is determined not under the Act of 1955. As far as video films are concerned the seating capacity is determined under Appendix IX of the Rules under the Act of 1955. After the

passing of Act of 1993, the rules under the Act of 1955 are not applicable. However by virtue of G.O. Ms. No.541 dated 17-7-1944 issued in exercise of powers u/s 7 of the Act of 1993, the Appendix IX of the A.P. Cinemas (Regulation) Rules of 1955 were adopted. In other words, Appendix IX of the A.P. Cinemas (Regulation) Rules have been incorporated as having been framed under Act of 1993. Therefore, the gross collection capacity is to be determined by taking into account the seating capacity determined by the licensing authority under Appendix IX of A.P. Cinemas (Regulation) Rules as incorporated under Act of 1993.

17. In other words, u/s 4 of the Act of 1939, the "gross collection capacity" in respect of theatres where video films are exhibited is determined by following the Rules under Appendix IX of the A.P. Cinemas (Regulation) Rules incorporated in Act of 1993. Therefore, the petitioners'' contention that they are not liable to pay entertainment tax cannot be sustained.

18. The contention of (he learned Counsel for the petitioners that in view of Act of 1993 they are not governed by the Act of 1955 and, therefore, they are not I fable to pay entertainment tax, cannot be countenanced. The reason being that Act of 1955 provides for the Regulation of Exhibitions by means of Cinematographs in the State of Andhra Pradesh. While the Act of 1993 provides for the Regulation of Exhibition of Films on Television Screen Through Video Cassette Recorders in the State of Andhra Pradesh and any matters incidental or ancillary thereto, the Act of 1939 provides for the levy of entertainment tax on exhibition of films in theatres and on exhibition of films on television screen through Video Cassette Recorders in the State of Andhra Pradesh and for the matters incidental or ancillary thereto.

19. It is true that originally the exhibition of films on television screen through Video Cassette Recorders was also governed by the Act of 1955. However, by virtue of Act of 1993, exhibition of films on television screen through Video Cassette Recorders was taken out of Act of 1955. The fact that the exhibition of films on television screen through Video Cassette Recorders is taken out of the purview of Act of i 955 and a separate Act of 1993 is enacted does not lead to the conclusion that the exhibition of films on television screen through Video Cassette Recorders are not liable to pay entertainment tax. Act of 1939 is an Act for levy and collection of tax on entertainment which is defined as cinematography exhibition which includes video films, the sound track and any work produced by any process analogous to cinematography. Therefore, as long as the exhibition of films by Video Cassette Recorders amounts to entertainment within the meaning of the Act of 1939, the petitioners cannot escape or avoid the liability to pay entertainment tax under the Act of 1939.

20. In view of the above, the writ petitions are devoid of merits and are dismissed. No costs.

21. At this stage, the learned Counsel for the petitioners submitted that since the

writ petitions were pending, they could not exercise !he option u/s 5 of the Act of 1939. Therefore, they may be permitted to exercise the option as per Rules under the Act at this stage. We direct the Entertainment Tax Officer to consider the case of the petitioners for exercising option u/s 5 of the Act of 1939, if permissible, without any reference to the period of limitation upto the financial year 1998-99.