

(1989) 11 AP CK 0019

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1632 of 1987

Vijaya Talkies

APPELLANT

Vs

Appellate Deputy Commissioner (E.T.), Kurnool and Another

RESPONDENT

Date of Decision : 16-11-1989

Acts Referred:

Andhra Pradesh Entertainment Tax Act, 1939 — Section 4, 4
Andhra Pradesh Entertainment Tax Rules, 1939 — Rule 27(12), 27(2)

Citation : (1990) 77 STC 333

Hon'ble Judges : S.S. Mohammed Quadri, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi, for the Appellant; The Government pleader for Commercial Taxes, for the Respondent

Judgement

B.P. Jeevan Reddy, J.—This revision is preferred u/s 9-D of the A.P. Entertainments Tax Act (for short, "the Act").

2. The petitioner - M/s. Vijaya Talkies - is a permanent theatre at Kadiri. An assessment order was made on 30th January, 1987, u/s 9-A of the Act, by the Assistant Commercial Tax Officer, Kadiri, respondent No. 2 herein. By this assessment order, the petitioner was made liable to a total sum of Rs. 76,898 which is made up of two amounts, namely, Rs. 36,018 being the difference of tax payable by the petitioner for the period 1st January, 1984 to 23rd March, 1984, and the other Rs. 40,880 being the difference of the sum payable by the petitioner for the period 16th June, 1984 to 31st March, 1985.

3. Section 4 is the charging section in the Act. Up to 1st January, 1984, the tax was collected on the basis of number of tickets actually sold for each show except in cases where a theatre was eligible to and did enter a composition agreement as contemplated by section 5. Section 4 underwent a radical change on and with effect from 1st January, 1984, by virtue of an Ordinance which was later replaced by an Amendment Act. According to the system of taxation enforced from 1st January, 1984 the tax is collected on the basis of gross

collection capacity of the theatre - and not on the number of tickets actually sold. The gross collection capacity of a theatre is ascertained in the specified manner and a particular percentage thereof is collected on the tax for each show. The percentage varies with the gradation of local authority - the highest in municipal corporations areas and the lowest in gram panchayats. Section 5 (as amended), however, provides an alternate mode of collection of tax. If an exhibitor opts to be governed by section 5, the tax payable is determined on a weekly basis. The weekly tax is determined in the manner prescribed in section 5 - which works out at a rate lesser than the rate in section 4. The exhibitor is free to screen as many number of shows as he wishes - the weekly tax remains constant. The option once given remains in force till the end of the financial year in which the option is permitted.

4. In this case we are concerned with the financial year 1984-85. The petitioner did not opt for section 5 arrangement on and with effect from 1st April, 1984 - with the result he was governed by section 4, and paid tax accordingly up to 16th June, 1984. Meanwhile, the petitioner-theatre applied for reduction of seating capacity which was allowed by the competent authority by its order dated 14th June, 1984. As a result of this, the gross collection capacity came down from Rs. 1,647 to Rs. 1,246 per day. Having obtained the order of reduction in the seating capacity, and having effected the reduction, the petitioner opted to be governed by section 5 of the Act, with effect from 16th June, 1984. The option was accepted and from 16th June, 1984 till 31st March, 1985, the weekly tax calculated according to the table contained in section 5 of the Act, was being collected. Long after the financial year was over, the assessment was reopened on the ground that that the reduction in the seating capacity, effected on 16th June, 1984, cannot be taken into account and that the weekly amount payable u/s 5 must be calculated without taking into account the said reduction, i.e., with reference to the seating capacity obtaining on 1st April, 1984. On this basis, the authorities are demanding the differential tax of Rs. 40,880 for the period 16th June, 1984, to 31st March, 1985 - the second component of the amount demanded. We must at once say that this demand is unsustainable in law. The Act does not say that the option to be governed by section 5 should be exercised, necessarily before the commencement of the financial year, or, on the first day of the financial year. It is open to an exhibitor to opt to be governed by section 5 at any time during the financial year. This fact is evident from sub-rule (2) of rule 27 and also clause (9) of form III referred to in the said sub-rule. This is equally evident from a reading of section 5 and it was so held in a Bench decision of this Court in W.P. No. 14695/87 and batch disposed of on 20th October, 1989. The Bench observed as follows :

"Section 5 only enables an exhibitor to exercise option and pay tax at a fixed rate throughout the currency of the permit which is till the end of the financial year. The exhibitor is not compelled to pay the tax under the scheme provided by section 5 and it is for him to exercise option or not. It cannot be disputed that the tax payable u/s 5 is generally lower than what is payable u/s 4. It is to be

noticed that he can exercise option even after the financial year is commenced. But once the option is exercised it will be pending till the end of the financial year. If the circumstances so require, he may opt out of the scheme u/s 5 at the end of the financial year and come over again at an appropriate time even during the financial year. The exhibitor expects reduction in gross collection capacity pursuant to his application to the licensing authority for a reduction in the seating capacity or may keep out of the option since the commencement of that financial year till such reduction is effected and then come over under the scheme contemplated by section 5."

5. We must, therefore, hold that the authorities were not justified in law in demanding the said amount of Rs. 40,880 on the aforesaid ground for the period 16th June, 1984 to 31st March, 1985.

6. The learned Government Pleader contended on the basis of sub-rule (12) of rule 27, that it is not open to an exhibitor to opt to be governed by section 5 of the Act in the middle of the financial year. Sub-rule (12) of rule 27 reads as follows :

"The proprietor who has been permitted to pay tax under sub-section (1) of section 5 of the Act may after giving fifteen days notice to the Entertainment Tax Officer apply to him for permission to pay such tax for the succeeding financial year also provided that the Entertainment Tax Officer may for sufficient reasons condone the delay in filing the application for renewal of his option if it is presented at least twenty four hours before the expiry of the financial year."

7. This rule applies only in a case where the theatre is governed by section 5 and wants to continue to pay tax under the above arrangement for the succeeding financial year. But this rule cannot be read to say that the option to be governed by section 5 should necessarily be exercised at the beginning of the financial year - or that it cannot be exercised thereafter. Any such construction would be contrary to section 5 and sub-rule (2) of rule 27, as well as clause (9) of form III. Sub-rule (2) of rule 27 reads :

"Every proprietor who opts to pay tax under sub-section (1) of section 5 of the Act shall signify his intention to do so by applying to the Entertainment Tax Officer in form III furnishing all the information required therein at least seven days prior to the commencement of the week from which he desires to make such payment :

Provided that the Entertainment Tax Officer may, for special reasons admit an application if such application is presented at least twenty-four hours prior to the commencement of the entertainment."

8. Form III prescribed by the Rules reads :

"FORM III

Application for permission to pay tax under sub-section (1) of section 5 in lieu of

tax payable u/s 4 under the Andhra Pradesh Entertainments Tax Act, 1939.

To

The Entertainment Tax Officer.

.....

Sir,

I, proprietor (place of entertainment) situated in taluk, whose particulars are furnished below hereby signify my intention to opt for the payment of a fixed amount of tax payable under sub-section (1) of section 5 in respect of the shows to be held in the said theatre. I hereby apply for permission to pay tax under the above-mentioned section and agree to abide by the rules and conditions prescribed in this behalf :

(1) Name of the proprietor and his residential address :

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9) Date from which the applicant opts to pay the amount of tax u/s 5.

Signature of the proprietor."

the above provisions show that week is the unit and that an exhibitor can come u/s 5 arrangement at any time during the financial year, and that such option shall be in force till the end of the relevant financial year. The contention of the learned Government Pleader is accordingly rejected. However, in case a theatre governed by section 5 does not exercise its option to be governed by the said arrangement for the succeeding financial year within the time prescribed in rule 27(12), it is deprived of the benefit of section 5 from the commencement of the next financial year. But it is always open to the exhibitor to opt to be governed by section 5 at any time he chooses as contemplated by sub-rule (2) of rule 27. For example, he can do so even on the first day of the financial year, in which case, he will be governed by section 5 with effect from the second week of the said financial year.

9. Now, so far as the demand of Rs. 36,018 (being the differential tax for the period 1st January, 1984 to 22nd March, 1984) is concerned, the position is this : While both the original and the appellate authorities say that the petitioner-

theatre was governed by section 4-C of the Act, prior to 1st January, 1984, the petitioner denies the same. Be that as it may, counsel for the petitioner agrees that on and from 1st April, 1984, only the amended provision governs his theatre. Now it is not the case of the petitioner that he opted to be governed by section 5 on and from 1st January, 1984, or, at any time till 23rd March, 1984. If so, he is liable to pay tax u/s 4, that is, the normal mode of taxation. The authorities say that instead of paying u/s 4 (amended section 4) the petitioner continued to pay tax u/s 4-C even after 1st January, 1984 up to 23rd March, 1984. On that basis, they have demanded the said differential tax. In our opinion, the correct legal position is that from 1st January, 1984 to 22nd March, 1984 (both days inclusive) the petitioner is liable to pay tax under amended section 4. Since both the authorities have merely affirmed the said position, we see no reason to interfere with the said demand.

10. For the above reasons, this revision is allowed in part. The demand to the extent of Rs. 40,880 is quashed. The demand in respect of the remaining amount shall stand. No costs. Advocate's fee Rs. 200.

11. Petition partly allowed.