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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 25th November, 2013

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Writ Petition (Civil) 4599/2013

FASHION DESIGN COUNCIL OF INDIA Petitioner

Through Mr. Sandeep Sethi, Sr. Advocate with
Mr. Rajiv Bansal, Mr. Jitendra Singh, Mr. Saurabh
S. Sinha, Ms. Anushree Kapadia and Ms. Rashmi
Singh, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS Respondent

Through Mr. Parag Tripathi, Sr. Advocate with
Ms. Ruchi Sindhwani, Additional Standing
Counsel, Ms. Bandana Shukla and Ms. Megha
Bharara, Advocates for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL)

On 23rd July, 2013, the following interim order was passed in
this writ petition filed by Fashion Design Council of India:-

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(i) The petitioner has deposited a Fixed Deposit
Receipt of Rs.2.25 lacs as provided in Rule 30 of the
Delhi Entertainment and Betting Tax Rules, 1997.

(ii) As and when the petitioner receives sponsorship
money, he shall furnish security in terms of Rule 30 on
the entertainment tax payable thereon within a period of
seven days from receipt of the sponsorship money.

(iii) The petitioner will also pay on sponsorship
money tax as per Rule 25 and/or any other rule
applicable as per the time stipulated.

(iv) On the payment of taxes, the security furnished

will be released.

(v) In case there is any lapse or fault, the respondents can proceed in accordance with the Delhi Entertainment and Betting Tax Act, 1996.

(vi) The security deposit and/or payments made are subject to the final outcome of the present writ petition and the writ petition challenging the constitutional validity.

(vii) The petitioner will file an undertaking in this Court that they shall abide by this order and on the said undertaking being filed and on compliance of other conditions mentioned in letter dated 5th July, 2013, NOC will be issued by the respondents within two days of the receipt of the documents. The undertaking and documents can be submitted to the Standing Counsel for the Government of NCT of Delhi and the time limit of two days will begin from the said date.”

2. In terms of the aforesaid interim order dated 23rd July, 2013, the event has taken place and the petitioner has deposited payments with the respondent authorities.

3. In view of the aforesaid position, the present writ petition has become infructuous in respect of prayer clause (a). However, the petitioners have raised another contention in prayer (b) to the effect that the respondents do not have any power to insist that the petitioner should obtain “No Objection Certificate” (NOC) under The Delhi Entertainments and Betting Tax Act, 1996 (Act, for short) or Delhi Entertainments and Betting Tax Rules, 1997 (for short, the Rules). The petitioner submits that they organise events or fashion shows from time to time and have been forced to obtain “NOC” from the

respondent authorities. This, it is submitted, is contrary to provisions of the Act and the Rules, which do not prescribe any such stipulation or requirement.

4. In order to decide the contention, we would like to reproduce

Section 2(i) which defines the term “entertainment”:-

“(i) "entertainment" means any exhibition, performance, amusement, game, sport or race (including horse race) or in the case of cinematograph exhibitions, cover exhibition of news-reels, documentaries, cartoons, advertisement shorts or slides, whether before or during the exhibition of a feature film or separately, and also includes entertainment through cable service;”

5. Section 2(m) of the Act is also relevant and after amendment with effect from 1st October, 2012 reads as under:-

(m) "payment for admission" includes-

(i) any payment made by a person for seats or other accommodation in any form in a place of entertainment;

(ii) any payment for cable service;

(iii) any payment made for the loan or use of any instrument or contrivance which enables a person to get a normal or better view or hearing or enjoyment of the entertainment, which without the aid of such instrument or contrivance such person would not get;

(iv) any payment, by whatever name called for any purpose whatsoever, connected with an entertainment, which a person is required to make in any form as a condition of attending, or continuing to attend the entertainment, either in addition to the payment, if any, for admission to the entertainment or without any such payment for admission;

(v) any payment made by a person who having been admitted to one part of a place of entertainment is subsequently admitted to another part thereof, for admission to which a payment involving tax or more tax is required;

Explanation 1: Any subscription raised, contribution received or donation collected in connection with an entertainment, where admission is partly or entirely by tickets/ invitation specifying the amount of admission or reduced rate of ticket shall be deemed to be payment for admission;

Explanation 2: Any sponsorship amount paid or value of goods supplied or services rendered or benefits provided to the organizer of an entertainment programme in lieu of advertisement of sponsor's produce/brand name or otherwise shall be deemed to be payment for admission."

6. We notice that *Explanations* 1 and 2, which were inserted on 1st October, 2012, have retrospective effect from 1st April, 1998 and the petitioner has challenged the amendment and retrospective effect in W.P.(C) 2563/2013 and some other matters. By order dated 22nd April, 2013 passed in W.P.(C) 2563/2013, it has been directed that no coercive steps will be taken by the respondents. We clarify that this order will not affect the

interim order passed in W.P.(C) 2563/2013. This aspect has been also examined and dealt with in our order dated 23rd July, 2013.

7. The term “proprietor” has been defined in Section 2(o) which reads as under:-

“2(o) "proprietor" in relation to any entertainment includes any person-

- (i) connected with the organisation of the entertainment, of
- (ii) charged with the work of admission to the entertainment, or
- (iii) responsible for, or for the time being in charge of, the management thereof;”

8. The aforesaid clauses are definition clauses which define the terms “entertainment” “payment for admission” and “proprietor” in relation to any entertainment for the purposes of this Act. We are not required to elucidate and go into greater and specific details of the said provisions in order to decide the questions raised before us. However, the said provisions are relevant and have been given due notice to decide the controversy.

9. Section 6 is a part of the charging provisions and states:-

Section 6 - Tax on payment for admission to entertainment

(1) Subject to the provisions of this Act, there shall be levied and paid on all payments for admission to any entertainment, other than an entertainment to which section 7 applies, an entertainment tax at such rate not exceeding one hundred per cent of each such payment as the government may from time to time notify in this behalf, and the tax shall be collected by proprietor from the person making the payment for

admission and paid to the government in the manner prescribed.

(2) Nothing in sub-section (1) shall preclude the government from notifying different rates of entertainment tax for different classes of entertainment or for different payments for admission to entertainment

(3) Where the payment for admission to an entertainment together with the tax is not a multiple of fifty paise, then notwithstanding anything contained in sub-section (1) or sub-section (2) or any notification issued thereunder, the tax shall be increased to such extent and be so computed that the aggregate of such payment for admission to entertainment and the tax is round off to the next higher multiple of fifty paise, and such increased tax shall also be collected by the proprietor and paid to the government in the manner prescribed.

(4) If in any entertainment, referred to in sub-section (1), to which admission is generally on payment, any person is admitted free of charge or on a concessional rate, the same amount of tax shall be payable as if such person was admitted on full payment.

(5) Where the admission to a place of entertainment is generally on payment, and if any entertainment is held in lieu of the regular entertainment programme without payment of admission or with payment of admission less than what would have been paid in the normal course, the proprietor shall be liable to pay tax which would have been payable in a normal course at full house capacity or the tax for the programme held in lieu of the regular entertainment programme whichever is higher.

(6) Where the payment for admission to an entertainment, referred to in sub-section (1), is made wholly or partly, the means of a lump sum paid as subscription, contribution, donation or otherwise, the tax shall be paid on the amount of such lump sum and of the amount of the payment for admission, if any, made otherwise

(7) Where in a hotel or a restaurant, or a club,

entertainment is provided by way of cabarets, floor shows, or entertainment is organised on special occasion along with any meal or refreshment with a view to attract customers, the same shall be taxed at a rate to be notified under sub-section (1).”

10. Section 8 relates to information, which has to be provided by a person, who holds entertainment. The said section reads:-

“Section 8 - Information before holding entertainment

1) No entertainment on which tax is leviable shall be held without prior information being given to the Commissioner in the manner prescribed.

(2) No proprietor of a cable television network or video cinema shall provide entertainment unless he obtains permission from the Commissioner in the manner prescribed.

(3) Notwithstanding anything contained in this Act or any other law for the time being in force, the Commissioner, or any other officer authorised by the government in this behalf, may after giving reasonable opportunity of hearing to the proprietor, prohibit the holding of such entertainment and may also take all reasonable steps to ensure that order of prohibition is complied with, if he is satisfied that-

(a) the proprietor has given any false information which is likely to result in the evasion of tax;

(b) the proprietor has failed to deposit the security due;

(c) the proprietor has committed breach of any of the provisions of this Act or the rules made thereunder.

11. Sub-section (1) to Section 8 of the Act stipulates that no entertainment on which tax is leviable shall be held without prior information to the Commissioner in the prescribed form. It mandates furnishing of prior information by a person who wants to hold “entertainment” on which tax is

leviable. For this purpose, in Rule 11 of the Rules, Form 5 and 6 have been prescribed. The said Rule reads as under:-

“11. Form and manner of information before holding an entertainment

A person or society desirous of holding an entertainment shall submit to the Commissioner an application in Form “5” where it is a ticketed programme and in Form “6” where the admission to the entertainment is exclusively by invitation, at least seven clear days before the date of such entertainment: PROVIDED that, the Commissioner may accept the application at a shorter period if he is satisfied that there were cogent grounds or difficulties for not submitting the application earlier and there is sufficient time for depositing the security, getting the tickets attested, obtaining Form “7” register and for completing other necessary formalities before starting the show. ”

12. A reading of the aforesaid Rule elucidates that in cases of ticketed programmes/events, information in Form 5 has to be submitted and in cases of non-ticketed programmes/events, information in application Form 6 has to be submitted. The said information has to be provided at least seven clear days before the date of such event i.e. holidays have to be excluded. The Commissioner, however, has option to entertain the aforesaid applications at a shorter time period, provided the applicant makes an application in Form 7 giving cogent grounds or difficulties for not submitting the application

earlier. A perusal of Form 5 indicates that in Form 5 an applicant has to give details of place or places where shows are proposed to be held, specify the number of shows including special shows, if any, to be held on a daily basis, etc. In Form 6 an applicant has to give details of place or places where shows are proposed to be held, details of expenses, sources for meeting the expenses, name of sponsors and the amount sponsored by them, advertiser and the amount received from them. Details with regard to number of shows daily held, number of seats in each class, number of each kind of tickets, etc. are also required to be furnished. Form 6 stipulates that an applicant should give details of the amount of security deposit, if any, lying with the department if shows were previously held and amount of arrears of tax, if any, to be deposited in respect of shows previously held.

13. After submission of the said forms, the same have to be processed and dealt with by the authorities under Section 13 of the Act read with Rules 30 and 31. Section 13 reads as under:-

“Section 13 - **Deposit and forfeiture of security**

(1) Every proprietor before holding an entertainment on which tax is leviable shall deposit such security and in such manner as may be prescribed. The Commissioner may deduct any arrears of tax from the security and may vary or forfeit the security in such manner as may be prescribed.

(2) No order to forfeit the security shall be made under sub-section (1) unless, after giving the proprietor reasonable opportunity of being heard, the Commissioner is satisfied for reasons to be recorded that the proprietor has evaded the tax or violated the provisions of this Act or rules made thereunder.

(3) Any person aggrieved by an order forfeiting the security may, within thirty days from the date of service of such order prefer an appeal to the appellate authority in such manner as may be prescribed and the order of the appellate authority shall be final.”

14. Sub-section (1) to Section 13 stipulates that every proprietor before holding an entertainment on which tax is leviable shall deposit security in such a manner as may be prescribed. The Commissioner can deduct arrears of tax from the security and may vary or forfeit the security in a manner as prescribed. Sub-section (2) postulates that no order of forfeiture of security under sub-section (1) could be made before giving reasonable opportunity of hearing to the proprietor or applicant. It stipulates that Commissioner can order forfeiture of security for reasons to be recorded upon satisfaction that the proprietor has evaded tax or violated the provisions of the Act or Rules made thereunder. An order under sub-section (1) and (2) is appealable within 30 days before the appellate authority in such a manner as may be prescribed and the order of the appellate authority shall be final. It is noticeable that sub-section (2) is only applicable in cases of an order forfeiting the security and not to any other order.

15. Rules 30 and 31 are also relevant and read:-

“30. Manner of depositing security

The proprietor is required to deposit security under sub-section (1) of section 13 of the Act shall furnish a security in the form of bank draft or pay order or bank guarantee or a fixed deposit receipt, for such amount as may be specified by the Commissioner under rule 31.

31. Amount of security

[(1)] The amount of security shall be fixed by the Commissioner and shall not be more than the amount of the total tax chargeable for the full house capacity. In case of cinemas and other regular programmes of entertainment it shall be before seven days as calculated with reference to the number of maximum shows to be held during seven days and shall not be less than fifty per cent of such amount:

PROVIDED that in case of a cinema which has not defaulted in the deposit of tax during the preceding three years, the Commissioner may on application in this behalf, reduce the minimum amount of security as he may deem fit. He may, however, re-fix the amount of security as prescribed under this rule in case of any subsequent default in the deposit of tax:

PROVIDED FURTHER that the amount of security may be fixed at an amount higher than the full house capacity, if the Commissioner deems it fit in the interest of revenue.

[(2)] The amount of security for a direct-to-home (DTH) service shall be fixed by the Commissioner and shall not be more than the total tax chargeable for a period of three months.]”

16. Under Rule 31, the Commissioner is entitled to fix the amount of security which shall not exceed the amount of the total tax chargeable for the full house capacity. The proprietor is required to deposit security in terms of Rule 30 (1) by way of bank draft or pay order or bank guarantee or a fixed deposit receipt, for such amount as may be specified by the Commissioner under Rule 31. The second proviso stipulates that the amount of security may be higher than the full house capacity, if the Commissioner deems it fit in the interest of revenue.

17. It would be important and relevant here to reproduce the exemption provisions incorporated in Section 14 of the Act, which reads:-

“Section 14 - Exemption

(1) The government may, for promotion of arts, culture or sports, by general or special order, exempt any individual entertainment programme or class or entertainments from liability to pay tax under this Act.

(2) The 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,

(3) Without prejudice to the generality of the provisions of sub-section (1) where the government is satisfied that any entertainment,-

(a) is wholly of an educational character; or

(b) is provided partly for educational or partly for scientific purposes by a society not conducted or established for profit; or

(c) is provided by a society not conducted for profit

and established solely for the purpose of promoting public health or the interests of agriculture, or a manufacturing industry, and consists solely of an exhibition of articles which are of material interest in connection with questions relating to public health or agriculture or are the products of the industry for promoting the interest whereof the society exists, or the materials, machinery appliances or foodstuff used in the production of such products;

it may, subject to such terms and conditions as it may deem fit to impose, grant exemption to such entertainment from payment of tax under this Act:

PROVIDED that the government may cancel such exemption if it is satisfied that the exemption was obtained through fraud or misrepresentation, or that the proprietor of such entertainment has failed to comply with any of the terms or conditions imposed or directions issued in this behalf and thereafter the proprietor shall be liable to pay the tax which would have been payable had not the entertainment been so exempted.

(4) Where the government is satisfied that the entertainment programme is not conducted for profit and the entire gross proceeds from payment for admission as defined in clause (1) of section 2 of an entertainment are to be devoted to philanthropic, religious or charitable purposes, without any deductions whatsoever on account of the expenses of the entertainment, it may, subject to the rules made under this Act, grant exemption to such entertainment from payment of tax under this Act on such terms and conditions as it may deem fit to impose.

(5) Where any exemption from payment of tax is granted under sub-section (4), the proprietor of such entertainment shall furnish to the Commissioner such documents and records and in such in manner as may be prescribed.

(6) If the proprietor of an entertainment exempted under sub-section (4) fails to furnish the documents and records required under sub-section (5), or fails to comply with any conditions imposed or directions issued in this behalf, or if the government is not satisfied with the correctness of such documents or records, the government may cancel the exemption so granted and thereupon the proprietor shall be liable to pay the tax which would have been payable had not the entertainment been so exempted.

(7) The government may for reasons to be recorded in writing grant export facto exemption from payment of entertainment tax in respect of any programme.

18. The aforesaid provision authorises and permits Government to grant exemption to certain classes of programmes from part or full payment of entertainment tax. Conditions including conditions for submission of documents and records can be imposed. Rules 35 and 36 prescribe procedure which has to be followed for availing exemption under Section 14 of the Act. Rules 35 and 36 are as under:-

“35. Exemption by Government under section 14(3) of the Act

(1) An application for exemption under sub-section (3) of section 14 of the Act shall be presented to the Commissioner at least fifteen days before the proposed date of entertainment stating the full description and nature of entertainment and any other details which may be required by the Commissioner with necessary proof as also the

particular clause of sub-section (3) of section 14 of the Act under which exemption is sought:

PROVIDED that an application may be admitted after the expiry of the period thereof, if the applicant satisfies the Commissioner or any other office authorised by him that he had sufficient cause for not preferring the application within that period.

- (2) The Government may grant exemption on such terms and conditions as it may deem fit to impose in the particular case.
- (3) Where exemption is granted a certificate shall be issued to the applicant by the Commissioner or any other officer authorised by him and the same shall, on demand be produced before an inspecting officer. The proprietor shall comply with the condition stated in the certificate.
- (4) Where the Government is satisfied, it may grant the exemption after taking such security as it may consider necessary to secure payment of the tax due in case the exemption is cancelled under the proviso to sub-section (3) of section 14 of the Act.
- (5) The proprietor of the exempted entertainment shall submit to the Commissioner all tickets for admission for attestation in the manner required by the Commissioner before bringing them into use. He shall also prepare and submit to the Commissioner or any other officer authorised by him, within fifteen days from the date of entertainment a full and true account of the tickets issued at different rates and the gross amount collected from the sale thereof along with the counterfoils of used tickets and all the unused ticket books. He shall also furnish a full and true account of the expenditure incurred along with the vouchers, if so required by the Commissioner or any other office authorised by him, within fifteen days from the date of entertainment.

36. Exemption by Government under section 14(4) of the Act.

- (1) The application for exemption under sub-section (4) of section 14 of the Act shall be

presented to the Commissioner, at least, fifteen days before the date of the entertainment stating clearly the full description, the nature of entertainment and the purposes of entertainment with necessary proof:

PROVIDED that the application may be admitted after the expiry of the period thereof, if the applicant satisfies the Commissioner or any other office authorised by him that he had sufficient cause for not preferring it within that period.

(2) The application for exemption shall be made in the manner required by the Commissioner.

(3) Where the Government is satisfied it may grant the exemption after taking such security as it may consider necessary to secure payment of the due tax in case the exemption is cancelled under sub-section (6) of section 14 of the Act.

(4) Where exemption is granted a certificate shall be issued to the applicant by the Commissioner or the officer authorised by him and the same shall, on demand, be produced before an inspection officer.

(5) The proprietor of the exempted entertainment shall submit to the Commissioner all tickets for admission for attestation in the manner required by the Commissioner before bringing them into use. He shall also prepare and submit to the Commissioner within fifteen days from the date of entertainment full and true account of the ticket issued at different rates and the gross amounts collected from the sale thereof along with the counterfoils of used tickets and all the unused ticket books. He shall also furnish a full and true account of the expenditure incurred along with the vouchers, if so required by the Commissioner, within fifteen days from the date of the entertainment.

(6) The proof of utilisation of the entire gross proceeds for philanthropic, religious or charitable purposes shall be furnished by the proprietor of the entertainment within thirty days from the date of entertainment in such manner as may be required by the Commissioner:

PROVIDED that if the proprietor satisfies the Commissioner that he had sufficient reasons for not submitting the proof of utilisation within the period prescribed, the Commissioner may extend the period of time to extent as he may deem fit.”

19. A reading of the aforesaid Rules indicates that even in cases where exemption is applied for and is granted, deposit of security can be asked.

20. The reason why we have reproduced in detail the provisions of the Act and the Rules is to highlight the scheme of the Act and object and purpose behind the provisions. The Act requires and mandates self compliance by the organisers/proprietors. Draftsmen were conscious and aware that after the event, it may be difficult to collect tax dues. Proprietors who hold entertainment shows may leave Delhi or may not be traceable. Respondent authorities would lose tax revenue in case precondition of security deposit is not imposed. Thus, the Act stipulates furnishing of prior information to the Commissioner in the manner prescribed in terms of Section 8(1) and there is a requirement to furnish security before the show is held on self appraisal or as per the directions given by the Commissioner.

21. At this stage, it would be important to refer sub-section (3) to Section 8 of the Act. The said provision stipulates that the Commissioner can pass an order prohibiting holding of such entertainment and can take reasonable steps to ensure that order of prohibition is complied with, after giving

reasonable opportunity to the proprietor. An order of prohibition can be passed by the Commissioner, if any of the three conditions stipulated in the said sub-section is satisfied. One of the conditions stipulated is when proprietor has failed to deposit the security due. The show can be also prohibited if the proprietor has given any false information which is likely to result in evasion of tax or the proprietor has committed breach of any of the provisions of the Act or the Rules made thereunder.

22. After the show is over, the proprietor is required to file return in Form 7 in terms of Rule 14, which reads as under:-

“14. Return for payment of tax

(1) The proprietor of every entertainment shall prepare separately for each show a return in Form “7” in duplicate, showing the number of each kind of ticket issued for various classes, the number of tickets cancelled and amount refunded, gross amount received from the sale of tickets and the amount of entertainment tax and surcharge collected.

(2) the account in Form “7” shall be completed within one hour from the commencement of the show or ten minutes before the commencement of the interval, whichever is earlier, and shall be kept readily available for inspection in the manager’s office, or in the booking office/counter which shall be treated as manager’s office for the purpose.

(3) No ticket shall be sold after the account in Form “7” has been prepared.

(4) Where it may be necessary to make corrections in the Form “7” no over-writing or correction in the figures shall be made and the corrections shall be made only by encircling the wrong figure and writing the correct figure above it neatly under the signature of manager. No erasion

or over-writing in the Form “7” shall be made.

(5) Contravention of sub-rules (2), (3) and (4) shall, unless proved to the contrary, be deemed to be the evasion of tax.”

23. Sub-rule (5) is important and stipulates that contravention of sub-rules (2), (3) and (4) unless proved to the contrary shall be deemed to be evasion of tax. The time limit for submission of Form 7 is stipulated in Rule 16. Rule 17 postulates preparation and submission of statement in Form 8, where any programme or synopsis is sold by the proprietor.

24. Rule 25 relates to payment of tax and stipulates as under:-

“25. Payment of tax

(1) Proprietor of every entertainment required to make the payment of tax in accordance with the provisions of clause (b), (c) or (d) of section 11 of the Act shall deposit the amount of tax into government account in the form of pay order/bank drafts within four days from the last day of each week ending with Thursday or within such period as may be specified for the purpose by the Commissioner and which shall correspond with the period prescribed under rule 16 for submission of Form “7” statements:

PROVIDED that where the fourth day is a public holiday under the Negotiable Instruments Act, 1881 that tax may be deposited on the next working day.

(2) The treasury challans shall be prepared separately for depositing the entertainment tax in triplicate bearing the words “Treasury Copy”, “Departmental Copy”, and “Depositor’s Copy” and

shall be presented, before the Entertainment and Betting Tax Officer along with the statements, for verification of amount of tax and head of account.

(3) The proprietor shall, immediately after the tax has been paid intimate the treasury challan or receipt number and the date of deposit to the Commissioner and shall also keep the depositor's copy of the treasury receipt received back after depositing the tax along with the weekly statement of the period to which the payment relates in a file strictly in chronological order and shall on demand, produce the same before an inspecting officer."

25. Under sub-rule (1), proprietor of every entertainment is required to make payment of tax in accordance with the provisions of Section 11 (b), (c) or (d) of the Act by way of pay order/bank draft into the requisite government account within such period as stipulated.

26. Section 15 of the Act deals with assessment of tax and reads as under:-

"Section 15 - Assessment of tax

(1) Where the assessing authority is satisfied that the proprietor of an entertainment -

(a) has failed to give information or take permission as required under sub-section (1) or as the case may be, under sub-section (2) of section 8; or

(b) has failed to submit true and full returns in the prescribed form; or

(c) has printed, distributed, possessed, sold or used duplicate tickets; or

(d) has fraudulently evaded or attempted to evade, the payment of tax due in any manner whatsoever; it shall, after giving the proprietor a reasonable opportunity of being heard, assess to the best of its judgment, the amount of the tax due from the proprietor, and may also impose a penalty not exceeding two times of the tax due.

(2) The amount of tax assessed by the assessing authority shall, together with any penalty that may be directed to be paid, be paid by the proprietor within a period of fifteen days from the date of service of notice of demand issued by the assessing authority,

(3) Any person aggrieved by an order under sub-sections (1) and (2) may, within one month from the date of service of such order, prefer an appeal to the Commissioner in such manner as may be prescribed.

(4) An appeal shall lie from an appellate order of the Commissioner passed under sub-section (3) to the appellate authority within one month from the date of service of such order, in such manner as may be prescribed, and the order of the appellate authority shall be final.”

27. Clause (d) of sub-section (1) to Section 15 is broad and includes cases where tax had been fraudulently evaded or attempted to be evaded. It covers cases of payment of tax due in any manner whatsoever. Clause (b) refers to cases where the proprietor has failed to submit full and true return. A return may be full but not true or true but not complete. Clause (b) will come into operation in either case. An order of assessment is to be passed after giving reasonable opportunity of hearing to the proprietor. The words “best of its

judgment” does not refer to “best judgment assessment” as we understand under the Income Tax Act, 1961 as it postulates hearing the party. It means and requires passing of an order when there is a dispute between the authority and the proprietor on levy, imposition, payment, quantum etc. The said words/expression refer to a reasoned and speaking order passed by the Assessing Authority after taking into consideration facts and law. Where required and mandated, tax payable may be estimated in a reasonable manner. Under Section 15, penalty not exceeding two times of the tax due can be imposed. An order under sub-section (1) and (2) are appealable to the Commissioner under sub-section (3). A further appeal lies from the order of the Commissioner under sub-section (4) to the Appellate Authority. Section 15A deals with the power of the assessing, appellate or revising authority to summon witnesses, ask for production of documents etc. to enable them to pass adjudication orders.

28. A reading of the aforesaid provisions reveal that there is no express requirement or stipulation in the Act or the Rules that every proprietor must obtain “NOC” from the respondent authorities. What is postulated and mandated by the Act is that every proprietor must, before the event is held, furnish the requisite information stipulated under Form 5 or 6 within the prescribed time. The applicant/proprietor at the time of submitting of Form 5 or 6 shall furnish security which may be prescribed, but in case no security

is furnished or the security furnished is inadequate, the Commissioner can pass an order under Rules 30 and 31 read with Section 13(1) of the Act. If there is non-compliance of the said order, a further order prohibiting the event can be passed under Section 8(3) of the Act. The aforesaid sections and applicable Rules provides a complete code as to the manner in which the Commissioner can proceed and how applications under Section 8(1) have to be dealt with. Section 8(1) can be contrasted from Section 8(2). Unlike Section 8(1), Section 8(2) requires prior approval from the Commissioner, but the said section applies to cable television network, video cinema or Direct-to-Home (DTH) services and does not apply to other categories/activities which may be covered by the term “entertainment”. Under Section 8(2), proprietor of a cable television network or video cinema or DTH cannot provide entertainment unless he obtains prior permission from the Commissioner in the manner prescribed. Thus, a prior information as mentioned in Section 8(1) is required to be submitted, but in a case covered by Section 8(1) prior approval is not required. What is required is furnishing of information in terms of Section 8(1) in Form 5 or 6. Thereupon, the Commissioner is entitled to pass an order prohibiting the event under Section 8(3) in case the proprietor has not furnished security or the security furnished is inadequate. An order for furnishing security is mandated and required, as noticed above, under Section 13(1) read with Rules 30 and 31.

There is no provision in Sections 8(1), 8 (3), 13 (1) or Rule 30 or 31 that “NOC” should be obtained for holding an event. What the relevant sections and rules postulate is that the Commissioner can pass an order directing the applicant to furnish security or enhanced security in terms of the Rules.

29. The security furnished is provisional and is subject to the final determination which takes place under Section 15, which provides for final assessment of tax. All persons, who hold entertainment, are required to file return as mandated under Rule 14 and other rules. Return under Rule 14 should be filed as per the time stipulated therein. Sub-Rule (5) to Rule 14 creates a deeming provision under which contravention of sub-rules (2) (3) and (4) is treated to be evasion of tax. Section 15 will cover and take in its scope and ambit cases of not only fraudulent evasion but also attempt to evade payment of tax due in any manner. It also covers cases where there is failure to make full and/or true returns. Section 15 has to be read with Rule 14. This is a reasonable and fair manner of reading of the said provision as there has to be an assessment or adjudication, when there are disputes and the proprietor contests levy, quantum of tax etc.

30. One of the contentions raised by the petitioner is that at the time of passing of an order under Section 13(1) read with Rules 30 and 31, the Commissioner must determine and decide whether the tax is actually due and payable i.e. whether the event would fall in the category of

“entertainment”. We do not think that any detailed or final order is required to be passed by the Commissioner at that stage. This is not the stage of assessment. A tentative or prima facie opinion is required to be taken by the Commissioner at this stage. An application under Section 8(1) is required to be filed at least 7 days before the event. It may not be feasible and practicable for the Commissioner to within a short time available, pass a detailed order, which can be and should be treated as the final adjudication order.

31. Section 15 is the only and sole provision for assessment. There is no other provision in the entire Act for assessment of tax. Assessing authority necessarily has power to determine exigibility to tax and decide a dispute whether tax can be levied under the charging provisions. This is an important facet of assessment in any tax legislation. The only provision of assessment in the main enactment (i.e. the Act) is Section 15. We do not think that sub-section (1) to Section 13 postulates and requires passing of an order of assessment. Section 13(1) postulates deposit of security in such manner as may be prescribed. We would certainly not like to read Rules 30 and 31 as provisions under which the Commissioner passes an order of assessment or finally determines the question of exigibility or levy of tax. The question of assessment and any determination on the question of levy or exigibility to tax is one of primary importance. It is an aspect, which is

normally dealt with under the main enactment and in the present case it is postulated in Section 15. We do not think delegated legislation in form of Rules 30 and 31 can be regarded and treated as the statutory provision empowering Commissioner to determine and decide the question of levy or exigibility of tax. It is difficult to accept that the main enactment i.e. the Act is silent and does not provide for decision on the said core questions and the question of exigibility or levy of tax is left out and not provided, but under the delegated legislation the said adjudicatory provision has been made.

32. Adjudication or assessment is required to be made under Section 15 of the Act, after organiser/applicant has filed return under Rule 14. At the initial stage, the application made and information furnished is required to be considered and thereupon security as furnished can be accepted or on basis of prima facie or tentative view/opinion, the proprietor can be asked to furnish security, or enhance the security furnished so that in case of a decision or adjudication under Section 15, the tax imposed can be collected and the respondents do not suffer due to non-payment of tax.

33. Learned counsel for the respondent during the course of hearing had relied upon the literature or policy downloaded from Delhi Police's licensing website. The said policy states that the Delhi Police licensing branch with the intention to facilitate the organisers has introduced a single window facility. The said policy facilitates issue of "NOC" by local police,

but requires furnishing of NOC from traffic, fire, electricity and entertainment tax office. In the present case, we are not concerned with the “NOCs” which are required to be issued by other organisations/authorities, but whether “NOC”, if any, required from the Entertainment Tax Office. As already seen, the Entertainment Tax Office need not issue and is not required to issue “NOC”. However, where they feel that security has not been furnished or the security furnished is inadequate, an order directing furnishing of security can be passed. When there is non-compliance of the said direction, an order prohibiting the event can be passed under Section 8(3) of the Act. We notice that the concept of single window clearance is not what is postulated and in fact envisaged in the policy. As per the policy, the Delhi Police licensing division requires an organiser to obtain “NOC” from the different authorities/offices. The policy and the rationale behind it has been explained. It deals with the cases where licenses from Delhi Police have to be renewed each year and hence it is recorded that it would be unduly harsh on the organiser to insist upon obtaining clearance from each agency. We do not think that the said policy requires us to take a different view from what we have taken. Delhi Police can insist that the applicant should furnish details of the application made in Form 5 and 6 under Section 8(1) or (2) before they issue clearance or ask the applicant to state whether he has received any order under Section 13(1) read with Rules 30 and 31 of the W.P.(C) 4599/2013

Rules. Delhi Police before issuing clearance can make inquiry from the Entertainment Tax Office to ascertain whether there has been compliance of the provisions of the Act.

34. With the aforesaid observations, the writ petition is disposed of. There will be no order as to costs.

SANJIV KHANNA, J

SANJEEV SACHDEVA, J

NOVEMBER 25, 2013
NA