

Court No. - 8

Case :- WRIT - C No. - 4276 of 2017

Petitioner :- Krishna Raj Singh

Respondent :- State Of U.P. Thru Prin.Secy.Entertainment Tax
Lucknow Andors.

Counsel for Petitioner :- Akhilesh Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Heard learned Counsel for the petitioner and learned Standing Counsel.

2. The present petition has been filed challenging the order dated 09.10.2012, whereby a direction for recovery of amount of Rs.5,46,425/- was assessed and was directed to be paid towards the entertainment tax as well as the appellate order dated 31.08.2013, whereby the appeal preferred by the petitioner was dismissed as also the order dated 31.01.2017 passed in the review application preferred by the petitioner.

3. The facts in brief are that the petitioner who was running a Cable TV business and allegedly was charging Rs.100/- per connection from the connection holders and on the basis of some survey, a show cause notice dated 14.09.2011 and 26.12.2011 was issued to the petitioner alleging that the petitioner was actually charging Rs.150/- per connection in place of Rs.100/-. The petitioner gave a reply to the said show cause notice by denying the allegations along with the said reply. The petitioner placed on record two affidavits of the consumers. The District Magistrate by means of the order dated 09.10.2012, disbelieving the version of the petitioner and quantified the demand of entertainment tax treating the rate per consumer at the rate of Rs.150/- instead of Rs.100/-. The appeal against the said order was also dismissed.

4. The contention of the Counsel for the petitioner is that the entire quantification has been done based upon a survey report whereas the affidavits filed by the petitioner has been ignored.

5. In paragraph 8 of the writ petition, it has been specifically pleaded that no survey report was even filed before the District Magistrate. The said paragraph 8 of the writ petition has been replied to in paragraph 9 of the counter affidavit, to which, there is no reply that the survey report was ever produced before the

adjudicating authority whereas the evidence in the form of affidavits filed by the petitioner were available and were disbelieved solely on the basis of survey report which cannot be termed as proper exercise of powers. There is no dispute that the petitioner had paid the entertainment tax calculating the per house connection at the rate of Rs100/- whereas, the difference has been assessed, treating per connection @ Rs.150/-. As the quantification @ Rs.150/- per connection is without any basis whatsoever and the survey report, which is the foundation was not even filed, the manner in which the deficiency has been assessed cannot be sustained, thus, the orders impugned are liable to be quashed.

6. Accordingly, the order dated 09.10.2012 passed by the District Magistrate as well as the appellate order dated 31.08.2013 and the order dated 31.01.2017 are quashed.

7. The writ petition is *allowed*.

Order Date :- 14.12.2023

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