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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1364 of 2014**

1. Avinash Developers Private Limited, Through The Managing Director Anand Singhanian, R/o 'Avinash House', Maruti Business Park, G.E. Road, Raipur, PS Azad Chowk, Civil & Revenue Distt Raipur, CG
2. Anand Singhanian S/o Shri Santosh Singhanian Aged About 42 Years R/o Madhuban, Geeta Nagar, Bahind Barun Honda Showroom, G.E. Road, Raipur, PS Azad Chowk, Raipur, Civil & Revenue Distt Raipur, CG
3. PVR Limited, 61, Basant Lok, Vasant Vihar, New Delhi – 110 057.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through the Secretary, Department Of Excise, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, Dist Raipur, CG
2. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax (Excise), Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, Dist Raipur, CG
3. State Of Chhattisgarh Through The Secretary, Department Of Finance And Planning, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur Dist Raipur, CG
4. The Commissioner, Department Of Excise, Raipur, Dist Raipur, CG.
5. The Additional Commissioner, Department Of Excise, Raipur, Dist Raipur, CG.
6. The Assistant Commissioner, Department Of Excise, Raipur, Dist Raipur, CG.
7. The Collector (Excise) Raipur, Dist Raipur, CG.

8. The Sub Divisional Officer, Revenue, Raipur, Distt Raipur, CG.

---- Respondent

For Petitioners Shri Sumesh Bajaj, Advocate

For Respondent/State Shri P.K. Bhaduri, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

22/01/2016

1. In this writ petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order dated 30.04.2014 (Annexure-P-4) passed by the respondent No.2 and for declaration that the petitioners are duly qualified and entitled for the benefits/incentives/grant contained in the rules namely, the Chhattisgarh Cinema Gharon Ke Nirman Ko Protsahan Yojna Ke Sahayata Anudan Niyam, 1982 (for short 'the Rules, 1982'), for the multiplex cinema in question for the period 04.03.2010 onwards.
2. Facts of the case, briefly stated, are that the petitioner No.1 and its Managing Director, the petitioner No.2 have constructed a Mall in the name and style 'Magneto Mall' in Raipur City in the year 2008-09 investing an amount of Rs.19.00 crores. The Mall is also having a four screen multiplex cinema theater, which commenced its operation on 05.02.2010. Before commencement of operation,

the petitioners No.1 & 2 on one side and the petitioner No.3 on the other side have entered a Revenue Sharing and Co-ordination Agreement (for short 'the Agreement') dated 15.01.2009 at Raipur vide Annexure-P-1.

3. The State Government has enacted the Rules, 1982 for encouraging the construction of new cinema theaters/multiplexes. The Rules, 1982 provides incentive or grant or benefit for such construction made after 01.07.1991. Initially, the multiplexes were not covered under the Rules, as at that time i.e. in the year 1982 multiplexes have not taken birth. By amendment dated 30.08.2003, multiplex cinema theaters, whose construction started after 01.07.1991, were also included for availing the benefit of the Rules, 1982, however, such benefit was available to such cinema theater or multiplexes, where there is no existing cinema theater or multiplex within radius of 10 kms, however, this rider was done away with by notification dated 04.03.2010.
4. By another amendment vide notification dated 30.08.2003, it was provided that after commencement of operation, the multiplex cinema should continue to exhibit films for a period of 13 years, for which he has to execute an agreement in favour of the government. It also provided that the newly constructed multiplex cinema halls shall be entitled to the sum equal to the amount deposited for a period 8 years towards entertainment duty and

additional tax (if any), from the date of commencement of exhibition. Amendment to Rule 8 (c) further provided that in case of multiplex cinema house, the applicant shall execute an agreement that he shall operate the multiplex cinema house continuously for a period of 13 years and if he closes before this, the amount of grant-in-aid shall be recoverable from him as arrears of land revenue. He could not sale or donate the building of the multiplex cinema house and the land thereof during the period of 13 years.

5. The petitioner, considering itself to be entitled for the benefit under the Rules, 1982, applied for the same, which was favourably recommended by the Collector (Excise), Raipur vide its communication dated 02.04.2012 (Annexure-P-9), however, the Excise Commissioner, Chhattisgarh rejected the application on 30.03.2013 on the ground that although the petitioners No.1 and 2 are the owner/swami of the multiplexes, however, they have let out the multiplex to one Ajay Bijli, the proprietor of PVR Cinemas, therefore, the owner himself having not in-charge of exhibition of films, he is not entitled to avail the benefit of the Rules, 1982. The petitioner, thereafter, moved an application for reconsideration of the order by moving applications on 06.05.2013 and 09.12.2013, however, the prayer was again rejected by the impugned order dated 30.04.2014 mentioning that

on the date of commencement of exhibition of cinema i.e. 05.02.2010, the restriction of 10 kms was in operation and the petitioner having transferred the risk of operation of multiplex to some other entity, he is not entitled to the benefit of the Rules, 1982.

6. Assailing the order/action, Shri Sumesh Bajaj, learned counsel appearing for the petitioners, would submit that the Rules, 1982 has been enacted to provide incentive to multiplex owner to encourage construction of new multiplexes and not to the person who is exhibiting films on behalf of the multiplex owner, therefore, the petitioners No.1 & 2 are fully entitled to avail the benefit under the Rules, 1982. Shri Bajaj would further submit that the reasons assigned for rejection of the prayer by the impugned order is not sanctioned in law inasmuch as the Rules, 1982 do not provide for any such disqualification. Appointing an exhibitor for exhibition of films never amounts to transfer of risk. The Rules, 1982 envisages incurring of risk by constructing the multiplex, which is inherently available to owner, therefore, the benefit cannot be defeated if the owner engages an entity for exhibition of films.
7. Shri Bajaj would next argue that the restriction of not having any existing cinema theater or multiplex within a radius of 10 kms. has already been removed by notification dated 4-3-2010, therefore,

the legal consequence of the said amendment would be that there was no such restriction at all because restriction has been waived from the statute book. Shri Bajaj would lastly submit that the benefit under a taxing institute has to be interpreted liberally, however, the respondents have rejected the application of the petitioner on hyper-technical grounds by assigning reasons not envisaged under the Rules, 1982.

8. Per contra, Shri P.K. Bhaduri, learned Govt. Advocate appearing for the State, would submit that the petitioner is not the owner of the multiplex because the PVR being the licensee for exhibiting the films would be the owner as per the definition contained under the Chhattisgarh Cinemas (Regulation) Act, 1952 (for short 'the Act, 1952'), Chhattisgarh Cinemas (Regulation) Rules, 1972 (for short 'the Rules, 1972'), Chhattisgarh Entertainments Duty and Advertisements Tax Act, 1936 (for short 'the Act, 1936') and the Chhattisgarh Entertainment Duty Rules, 1942 (for short 'the Rules, 1942'). Shri Bhaduri would further submit that there being no clarity as to whether the petitioners No.1 & 2 are the owner or the petitioner No.3 is the owner of the multiplex, the petitioners are required to prefer a civil suit for determination of their title/ownership and the same being not done, the writ petition deserves to be dismissed. Shri Bhaduri would also argue that in any case, on the date of commencement of exhibition the rider of

10 kms. was operative, therefore, the petitioners are otherwise also not entitled for benefit of the Rules, 1982.

9. From what has been agitated before this Court, the points falling for determination would be as to :-

- A) who can be termed as owner of the multiplex ?
- B) whether appointment of an exhibitor for exhibition of films by way of execution of Revenue Sharing and Co-ordination Agreement would amount to creation of tenancy, which would disentitle the owner of multiplex from availing the benefit of incentive under the Rules, 1982 ?
- C) whether despite deletion of the rider of existence of a cinema theater/multiplex within radius of 10 kms. by amendment dated 4.3.2010 the petitioners would still be disentitled from availing the benefit flowing under the Rules, 1982 on the ground that the petitioners commenced exhibition of films prior to the amendment ?
- D) transfer of business risk and charging of higher rate of entry ticket; whether disentitles the petitioners No.1 & 2 to avail the benefit ?

(A) Ownership of the Multiplex :

10. Admittedly, construction of multiplex has been made by the petitioners No.1 & 2 and the petitioner No.3 is only an exhibitor/PVR operator. The Agreement, clearly stipulates that the petitioners No.1 & 2, referred in the Agreement as Developer, is the owner of the land and the shopping complex/mall including four screen multiplex/multi screen cinema/cinema. Necessary sanctions/ approval of the building plan including the multiplex has been obtained from the appropriate local/State Government authorities by the petitioners No.1 & 2 in accordance with the Cinematograph Rules. Under the agreement, the Developer is entitled to provide the entire multiplex space of the mall on long term revenue sharing basis to a party who is engaged in cinema exhibition business and has expertise of running/operating the cinema/multiplex.
11. Similarly, there is no disagreement between the parties that PVR is the leading multiplex operator/cinema exhibitor in the country. It further provides that the Developer shall obtain Entertainment Tax Exemption in its own name for which PVR shall extend its fullest cooperation and the cinema licence shall be obtained by the Developer in the name of PVR. The Revenue and Costs sharing methodology has been provided in clause 5 of the Agreement with which this Court is not concerned in this petition.

12. Clause 7 of the Agreement obliges the PVR to operate the multiplex and for that, to obtain, with the concurrence of the Developer, all approvals required under the applicable laws in relation to cinema. Clause 7.2 authorises the Developer to construct and develop the mall and the multi screen cinema and to obtain Entertainment Tax Exemption in its own name and the cinema licence and other approvals for exhibition in the name of PVR and, thereafter, to assist seeking of renewals in the name of PVR. Developer is also obliged to ensure that the permission to operate the Mall including the multi screen cinema are made available for the normal trading hours of the Multiplex and if it is required to be extended on the request of PVR, the full cost shall be borne by the PVRs.
13. The provisions for termination of the Agreement as provided in clause 10 reserves right to both the parties to terminate the Agreement on occurrence of certain contingencies, however, importantly, clause 10.3 provides that on termination or determination of the agreement, PVR shall take away all PVR's assets and hand over the vacant and peaceful possession of the Multiplex to the Developer and thereafter, the Developer shall be entitled to conduct the business of Multiplex.
14. The respondent neither dispute the petitioners title or ownership over the mall and the multiplex. The agreement in between the

parties also recognized the petitioners no. 1 & 2 as the owner of the Multiplex. The order passed by the Commissioner (Excise) on 30.03.2013 also refers the petitioners No.1 & 2 as the Swami (owner) of the multiplex cinema.

15. Shri Bhaduri, learned Government Advocate appearing for the State has referred to the judgments rendered in **Murlidhar Shankarlalji Rathi v. State of M.P. and Others**¹ and **Roopsingh Pritamsingh and Another v. Licensing Authority/District Magistrate, Tikamgarh and Others**² together with the provisions of the Act, 1952 and the Rules, 1972 framed thereunder as also the Act, 1936 and the Rules, 1942 framed thereunder, to contend that by legal fiction a person who is In-charge of exhibition of cinema will be the owner of the cinema theater and that the ownership of the building is different and distinct from ownership of a cinema. Shri Bhaduri has referred to Rules 99, 100, 108 and 120 of the Rules, 1972. Rule 99 of the Rules, 1972 provides that no places shall be opened or allowed to remain open for use as a cinema unless the person being the owner, tenant or occupier thereof shall have obtained a cinema license, whereas, Rule 100 provides for the manner of moving application for issuance of such license. Rule 108 requires the licensee or his nominee referred as Manager shall be present at the cinema to which the

¹ 1985 MPLJ 246

² 1988 MPLJ 262 = 1989 JLJ 182

license applies during the whole time for which such premises are open to the public. Under Rule 120 the cinema license has been made non-transferable.

16. Further reference is made by Shri Bhaduri to the provisions of the Act, 1936 which has been enacted to impose a duty in respect of admission to entertainment and a tax in respect of certain forms of advertisement exhibited at such entertainments. The liability to pay entertainment duty has been saddled upon the proprietor which includes any person responsible for or for the time being In-charge of the management of an entertainment and the word 'entertainment' includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment. Rule 5 of the Rules 1942 authorises the proprietor to admit any person to the entertainment who holds a ticket or a badge denoting that the persons is his employee.
17. A plain reading of the above referred provisions would make it clear that a cinema license can be obtained by the owner of the building or the tenant or the occupier and that liability to pay entertainment duty/tax is on the proprietor, who is responsible for or for the time being In-charge of management thereof. Thus, a owner of the building where the cinema/multiplex is located can also be a licensee and at the same time, a person who legally occupies the premises under some arrangement with the owner

of the building or the cinema can also obtain a license and thereafter, a person whether he is owner or tenant or occupier becomes the proprietor of the entertainment for the purpose of payment of entertainment duty/tax.

18. A combined reading of the above quoted provisions does not lead to any interpretation or inference that a person who holds cinema license shall necessary be the owner of the cinema theater or multiplex. Use of the expression 'owner' or 'tenant' or 'occupier' in Rule, 99 of the Rules, 1972 itself makes it clear that there are different of classes of persons who can be granted a cinema license and that merely because, a tenant or occupier is also entitled to obtain cinema license, such tenant or occupier does not automatically becomes the owner of the cinema/multiplex. There is absolutely no deeming expression used in the provision to cull out such meaning.
19. In **Murlidhar Shankarlalji Rathi** (supra) the dispute about ownership was between the legal representatives of the erstwhile licensee and in that context when after the death of original licensee the legal representatives started claiming right to continue the cinema licence, it was held that the licence being non-transferable under Rule 120, the legal representatives have to obtain fresh licence for running the cinema.

20. Similarly, in **Roopsingh Pritamsingh** (supra) the Division Bench of the High Court of Madhya Pradesh was considering a dispute raised before the licencing authority by persons other than the applicant that they are the owner of the cinema theater and in that background they were directed to get their ownership decided by the civil Court.
21. In the case at hand, there is no dispute between the petitioners, who are termed as Developer and the PVR, that the petitioners No.1 & 2 are the owner of the mall and the multiplex. The agreement stipulates, in no uncertain terms, that on determination of the agreement the PVR shall handover the vacant and peaceful possession of the multiplex space to the petitioners No.1 & 2. Thus, the petitioners No.1 & 2 are not only the owner of the mall and the multiplex in terms of their title, but the same is also recognized by the petitioner No.3. The provisions contained under the Act, 1952, Rules, 1972, Act, 1936 and the Rules, 1942 also do not make the occupier of the cinema who has obtained the licence as owner of the cinema building.
22. Learned counsel for the State has referred to the definition of the word entertainment, proprietor or the provision as to who would be entitled for the licence under the Act, 1952. Thus, effort has been made to read the definition of the word 'owner' provided in other statutes for interpreting the term 'owner' in the Rules, 1982.

This Court is afraid, such recourse is not permissible under the principles of interpretation because the Rules with which this Court concerned itself explains the word in Rule 5.

23. In **Maheshwari Fish Seed Farm v. T.N. Electricity Board and Another**³, the following has been held by the Supreme Court :

9.....The definition of the term in one statute does not afford a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally.

16. The learned Senior Counsel for the appellants invited our attention to the definition of the term “agriculture” as given in the definition sections or interpretation clauses of several other enactments such as sub-section (2) of Section 2 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, clause (b) of Section 2 of the Tamil Nadu Agricultural University Act, 1971, clause (a) of Section 2 of the Agricultural and Rural Debt Relief Scheme, 1990, so defining the term “agriculture” as to include therein “pisciculture”. These definitions were pressed into service by Shri Iyer, the learned Senior Counsel, to support his submission for a similar meaning being assigned in the present case. Suffice it to observe that the common-parlance meaning of the term “agriculture”, in the context in which it has been used and is arising for determination before us, cannot be determined by reference to definitions given in other statutes. This we say for more reasons than one. Firstly, none of the

3 (2004) 4 SCC 705

statutes referred to by Shri Iyer, the learned Senior Counsel, can be called statutes in *pari materia*. Secondly, it is common knowledge that the definition coined by the legislature for the purpose of a particular enactment is often an extended or artificial meaning so assigned as to fulfil the object of that enactment. Such definitions given in other enactments cannot be freely used for finding out meaning to be assigned to a term of common parlance used in an altogether different setting. And lastly, as Justice G.P. Singh points out in Principles of Statutory Interpretation (9th Edn., 2004, at p. 163):

“[I]t is hazardous to interpret a statute in accordance with a definition in another statute and more so when such statute is not dealing with any cognate subject or the statutes are not in *pari materia*.”

The same view has been taken in the decision of this Court in *CIT v. Benoy Kumar* which we have extensively referred to earlier in this judgment.

(emphasis supplied)

24. The Supreme Court in **Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited**⁴, held thus :

55. True it is that Section 3(a) of the Drugs and Cosmetics Act, 1940 defines “Ayurvedic, siddha or unani drug” but that definition is not necessary to be imported in the new Tariff Act. The definition of one statute having different object, purpose and scheme cannot be applied mechanically to another statute. As stated above, the object of the Excise Act is to raise revenue for

4 (2009) 12 SCC 419

which various products are differently
classified in the new Tariff Act.

(emphasis supplied)

25. Moreover, in the first order passed on 30.3.2013 the Commissioner (Excise) itself has admitted the petitioners No.1 & 2 to be the swami (owner) of the multiplex, therefore, considering the issue from all possible angles, this Court has no hesitation in concluding that the petitioners No.1 & 2 are the swami/owner of the cinema/multiplex and the contention of the learned counsel appearing for the State that the petitioners should get their ownership issue resolved by a civil Court is not sustainable.

(B) Owner's entitlement to avail benefit under the Rules, 1982, if exhibitor treated as tenant :

26. The Rules, 1982, as it stands now applies to all cinema theaters or multiplexes the construction of which was commenced on or after 1st July, 1991. The rider of not having any existing cinema theater or multiplex within radius of 10 Kms. was done away with vide amendment notified in the Chhattisgarh Gazette on 4.3.2010.
27. Rule 4 provides that such multiplex shall be eligible for incentive/ grant, the construction of which was commenced after 1st July, 1991, provided the owner of multiplexes have executed agreement for continuous exhibition for 13 years and not to sale

or donate the building of multiplex cinema and the land thereto during the said period of 13 years. The extent of incentive or grant has been provided in Rule 5 that newly constructed multiplexes shall be entitled to grant equal to the entertainment duty or any other tax for a period of 8 years from the date of exhibition. The explanation to Rule 5 clarifies that the word 'owner' (swami) would mean such person or group of persons or firm or society who have jointly funded to own the cinema house or multiplex. Thus, a conjoint reading of the rules including its title would mean that the rules have been framed for encouraging construction of cinema house or multiplex and the owner of the multiplex means the person(s) who has funded the construction of the same and further that the owner is eligible to claim benefit of the incentive/ grant under Rule 4. Rule 4 nowhere provide that if the multiplex owner leases out the premises or creates any other arrangement giving right of exhibition of films in the multiplex to any other agency, he would not be eligible for availing the benefit of incentive/grant.

28. There is yet another reason why the benefit of incentive/grant flowing from the rules is admissible only to the owner inasmuch as in the amendment to the Rules notified on 30.8.2003 Rule 8 (c) (iv) has been inserted imposing a condition that the owner could not sale or donate the building of multiplex cinema and the land

thereof for a period of 13 years during which the multiplex cinema should continuously operate. Thus, the condition can only operate against the owner of the multiplex who owns the mall/multiplex/land and not to the person who is an exhibitor either as a tenant or occupier under some agreement or arrangement with the owner of the multiplex.

29. The Rules, 1982 has been titled as 'Chhattisgarh Cinema Gharon Ke Nirman Ko Protsahan Yojna Ke Sahayata Anudan Niyam, 1982'. Although it does not appear to be an Act of legislature, however, it has statutory force. The Rules, 1982 not being an Act, there is no short title or long title, therefore, the title of the Rule can be treated as long title for the purpose of drawing aid for construction. Rules of interpretation with regard to taking assistance of the long title has been settled by the Supreme Court in plethora of cases.
30. In **Aswini Kumar Ghose and another v. Arabinda Bose and another**⁵, the Supreme Court held thus :

Turning now to the text of the Act, one cannot but be impressed at once with 'the wording of the full title of the Act. Although there are observations in earlier English cases that the title is not a part of the statute and is, therefore, to be excluded from consideration in construing the statute, it is now settled law that the title of a statute is an important part of the Act and may be referred to for the purpose of

5 AIR 1952 SC 369

ascertaining its general scope and of throwing light its construction, although it cannot override the clear meaning of the enactment.....

(emphasis supplied)

31. The Supreme Court in **Biswambhar Singh and others v. State of Orissa and another**⁶, observed that the long title of the Act can be read to indicate the object and purpose of the Act. The following has been held in para 17 :

17. The long title of the Act and the two preambles which have been quoted above clearly indicate that the object and purpose of the Act is to abolish all the rights, title and interest in land of intermediaries by whatever name known. This is a clear enunciation of the policy which is sought to be implemented by the operative provisions of the Act.....

32. The Supreme Court in **In re The Kerala Education Bill, 1957 (Special Ref. No.1 of 1958)**⁷, held thus :

19. Reference has already been made to the long title and the preamble of the Bill. That the policy and purpose of a given measure may be deduced from the long title and the preamble thereof has been recognised in many decisions of this Court and as and by way of ready reference we may mention our decision in *Bisambhar Singh v State of Orissa* ([1954] S.C.R. 842, 855) as an instance in point. The general policy of the Bill as laid down in its title and elaborated in the preamble is "to provide for the better organisation and development of educational institutions providing a varied and comprehensive educational service

6 AIR 1954 SC 139

7 AIR 1958 SC 956

throughout the State." Each and every one of the clauses in the Bill has to be interpreted and read in the light of this policy. When, therefore, any particular clause leaves any discretion to the Government to take any action it must be understood that such discretion is to be exercised for the purpose of advancing and in aid of implementing and not impeding this policy. It is, therefore, not correct to say that no policy or principle has at all been laid down by the Bill to guide the exercise of the discretion left to the Government by the clauses in this Bill. The matter does not, however, rest there. The general policy deducible from the long title and preamble of the Bill is further reinforced by more definite statements of policy in different clauses thereof. Thus the power vested in the Government under clause 3(2) can be exercised only "for the purpose of providing facilities for general education, special education and for the training of teachers". It is "for the purpose of providing such facilities" that the three several powers under heads (a), (b) and (c) of that sub-clause have been conferred on the Government. The clear implication of these provisions read in the light of the policy deducible from the long title and the preamble is that in the matter of granting permission or recognition the Government must be guided by the consideration whether the giving of such permission or recognition will enure for the better organisation and development of educational institutions in the State, whether it will facilitate the imparting of general or special education or the training of teachers and if it does then permission or recognition must be granted but it must be refused if it impedes that purpose.....

(emphasis supplied)

33. In **R v Secretary of State for Foreign and Commonwealth**

Affairs, ex parte Rees-Mogg⁸, the following has held :

In reaching this view we are fortified by consideration of long title. It reads :

'An Act to make provision consequential on the Treaty on European Union signed at Maastricht on 7th February, 1992'

The days are long since past when courts declined to regard the long title as an aid to construction.....

34. The Supreme Court in **Commissioner of Income Tax,**

Thiruvananthapuram v. Baby Marine Exports, Kollam⁹, held

thus :

31. In *Bajaj Tempo Ltd. v. CIT* this Court while interpreting Section 15-C of the Income Tax Act, 1922 observed that the section, read as a whole, was a provision, directed towards encouraging industrialisation by permitting an assessee setting up a new undertaking to claim benefit of not paying tax to certain extent on the capital employed. Similarly, Section 80-HHC has also been incorporated to give incentive to the earners of the foreign exchange. We must always keep the object of the Act in view while interpreting the section. The legislative intention must be the foundation of the court's interpretation.

(emphasis supplied)

⁸ [1994] 1 All ER 457

⁹ (2007) 4 SCC 555

35. In **Bajaj Tempo Ltd., Bombay v. Commissioner of Income Tax, Bombay City-III, Bombay**¹⁰, the Supreme Court held thus :

8. Sri Ramamurti, the learned counsel for the department, urged that even though from analogous provision in Section 80-J(4) (ii) in the Act of 1961 the restriction of transfer of new business to the building used previously for business has been omitted but that would not reflect favourably for assessee in 1960-61. Rather it would show that the legislature which is the best judge of need of people, manifests its intention from time to time through amendment, substitution and omission considering the social and economic conditions in view. Since during operation of 1921 (sic 1922) Act it intended that an undertaking established in building used earlier for business could not claim the benefit the Court should restrain its hands and may not interpret the provision by 1967 amendment in the 1961 Act, when the restriction was lifted from leased or rented building or 1976 or (sic) when the transfer of business to building used previously for business no more remained one of the conditions for disentitling the assessee from claiming benefit. Subsequently amendments in 1961 Act may or may not be taken as clarificatory but if a provision for checking abuse is found to have resulted in nullifying the very purpose of its enactment and legislature intervenes then it can be assumed that the legislature having been satisfied of failure of the purpose for which the provisions was inserted proceeded to cure the defect by suitably amending the provision or removing it. But for purposes of construing the proviso in Section 15-C it is not necessary to go that far as there can be no doubt that literal construction of clause (i) of sub-section (2)

¹⁰ (1992) 3 SCC 78

was amenable to denial of benefit to the assessee even in genuine cases. For instance an undertaking otherwise entitled to benefit would fall within mischief of the clause if it was established in a building which was used for business purposes at any time in the remote past. Or it might have been established in part of building, earlier used for business purposes due to paucity of accommodation. Denying benefit to such undertaking could not have been intended when the very purpose of Section 15-C was to encourage industrialisation. It was for this reason that various High Courts evolved the test of commercial expediency or substantial involvement valued in terms of money etc. to interpret this clause. Adopting literal construction in such cases would have resulted in defeating the very purpose of Section 15-C. Therefore it becomes necessary to resort to a construction which is reasonable and purposive to make the provision meaningful.

(emphasis supplied)

36. Similarly, in **Commissioner of Sales Tax v. Industrial Coal Enterprises**¹¹, the following has been held by the Supreme Court :

12. We find that the object of granting exemption from payment of sales tax has always been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industry in the State. If the test laid down in Bajaj Tempo Ltd. case is applied, there is no doubt whatever that the exemption granted to the respondent from 9-8-1985 when it fulfilled all the prescribed conditions will not cease to operate just

¹¹ (1999) 2 SCC 607

because the capital investment exceeded the limit of Rs 3 lakhs on account of the respondent becoming the owner of land and building to which the unit was shifted. If the construction sought to be placed by the appellant is accepted, the very purpose and object of the grant of exemption will be defeated.....

(emphasis supplied)

37. Thus, it is fairly settled that for construction of provisions of a statute, assistance of long title or title of the Act as well as the object, intent and purpose of the legislation has to be considered. Considering the object of the Rules, 1982, the 'owner of multiplex' is entitled to avail the benefit even if some other person has been permitted to occupy the premises either as 'occupier' or 'tenant' for exhibition of films.

(C) Rider of 10 Kms. on the date when the petitioners commenced exhibition in the multiplex :

38. In the first order dated 30.3.2013 the Commissioner (Excise), while rejecting the petitioners prayer for availing the benefit of incentive/grant, has not referred to the issue that since on the date of commencement of exhibition the rider of not having any cinema theater within radius of 10 Kms. was operative, the petitioners are not entitled to avail the benefit of the Rules. This ground of rejection was subsequently mentioned in the order impugned dated 30.4.2014.

39. The principle as to when the application of a particular provision has to be considered on the date of its disposal has been enunciated by the Supreme Court in **State of Tamil Nadu v. M/s Hind Stone and Others**¹². In the said case, when the applications for renewal of mining lease were pending the rules suffered an amendment. The Supreme Court concluded that the amended rules apply to all pending applications whether they have been preferred prior to amendment of rules or thereafter.

40. In **M/s Hind Stone** (supra) the Supreme Court held thus :

13. Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of GOMs No. 1312 (December 2, 1977) should be dealt with as if Rule 8-C had not come into force. It was also contended that even applications for grant of leases made long before the date of GOMs No. 1312 should be dealt with as if Rule 8-C had not come into force. The submission was that it was not open to the government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a

¹² (1981) 2 SCC 205

lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant or renewal of leases made long prior to the date of GOMs No. 1312 should be dealt with as if Rule 8-C did not exist.

(emphasis supplied)

41. The Supreme Court in **Kolhapur Canesugar Works Ltd. and Another v. Union of India and Others**¹³, considered the repeal of a statute or deletion of a provision and held thus :

37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section

¹³ (2000) 2 SCC 536

6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision.

40. From the contents of the provisions in the Rules it is clear that it did not contain any saving clause for continuance of the proceedings initiated under the Rule which was deleted/omitted. There is also no provision in Section 11-A or in any other section of the Act saving the proceedings initiated under the deleted/omitted provision. The consequential position that follows is that the proceedings lapsed after 6-8-1977 and any order passed in the proceedings thereafter is to be treated as non est. In case the notice was issued after Section 11-A was introduced in the Act, the proceedings will continue and will not be affected by this decision. All the cases are disposed of on the terms aforesaid. No costs.

(emphasis supplied)

42. In the rules with which this Court is presently concerned, Rule 3 relating to applicability provides that it shall apply to all cinema/multiplex cinema whose construction has started on or after 1.7.1991. If the rider of not having existing cinema within radius of 10 Kms. is still read with the rules by accepting the plea of the

respondents that it will only cease to apply after 4.3.2010, it would throw a very incongruous or contradictory situation inasmuch as a multiplex whose construction has been started after 1.7.1991 will not be eligible for exemption even after 10.3.2010 because on the date of commencement of exhibition of films the cinema theater was existing within radius of 10 kms. Even if it is taken that the amendment is prospective in its application, any multiplex whose construction was started after 1.7.1991 would be eligible for the benefit of incentive/grant after 4.3.2010 for whatever period the benefit would remain available under Rule 8 (c) as amended on 30.8.2003.

(D) Respondents plea of transfer of risk by the petitioner and charging of higher entry rates for admitting the persons :

43. In the impugned order dated 30.4.2014, apart from reiterating the earlier order dated 30.3.2013 that the petitioner is not an exhibitor, but he has inducted a tenant for exhibition of films, it is also mentioned in the impugned order that by doing so the petitioner has transferred the risk and has increased the ticket rates to gain profit, therefore, the petitioner is not entitled to the benefit of incentive/grant.
44. A reading of the Rules, 1982 would clearly discern that none of these pre-conditions are attached with a multiplex or with the

owner of the multiplex to become disentitled for availing the benefit.

45. It is the settled law that a taxing statute or notification relating to grant of exemption from tax or any other benefit of like nature is to be construed liberally so as to advance the object of the statute or the exemption.
46. In a recent judgment rendered in **State of Haryana and Others v. Bharti Teletech Limited**¹⁴, the Supreme Court, after referring to several of its earlier judgments, held thus in paras 21 to 25 :

21. The concept of exemption has been introduced for the development of industrial activity and it is granted for a certain purpose to a unit for certain types of goods. Exemption can be granted under the rules or under a notification with certain conditions and also ensure payment of taxes post the exemption period. The concept of exemption is required to be tested on a different anvil, for it grants freedom from liability. In the case at hand, as we understand, it is “unit” specific. The term “unit” has not been defined. The grant of exemption unitwise can be best understood by way of example. An entrepreneur can get an exemption of a unit and thereafter establish number of units and try to club together the production of all of them to get the benefit for all. It would be well-nigh unacceptable, for what is required is that each unit must meet the conditions to avail the benefit.

14 (2014) 3 SCC 556

22. We will be failing in our duty if we do not address a submission, albeit the last straw, of Mr. Jain that any provision relating to grant of exemption, be it under a rule or notification, should be considered liberally. In this regard, we may profitably refer to the decision in *Hansraj Gordhandas v. CCE and Customs* wherein it has been held as follows:-

“5...It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different...”

23. In *CST v. Industrial Coal Enterprises*, after referring to *CIT v. Straw Board Mfg. Co. Ltd* and *Bajaj Tempo Ltd. v. CIT*, the Court ruled that an exemption notification, as is well known, should be construed liberally once it is found that the entrepreneur fulfills all the eligibility criteria. In reading an exemption notification, no condition should be read into it when there is none. If an entrepreneur is entitled to the benefit thereof, the same should not be denied.

24. In this context, reference to *TN Electricity Board v. Status Spg. Mills Ltd.* would be fruitful. It has been held therein :-

“It may be true that the exemption notification should receive a strict construction as has been held by this Court in *Novopan India Ltd. v. CCE and Customs*, but it is also true that once it is found that the industry is entitled to the benefit of exemption notification, it would received a broad construction. See *TISCO Ltd. v. State of Jharkhand* and *AP Steel Re-Rolling Mill Ltd. v. State of Kerala*. A notification granting exemption can be withdrawn in public interest. What would be the public interest would, however, depend upon the facts of each case.”

25. From the aforesaid authorities, it is clear as crystal that a statutory rule or an exemption notification which confers benefit on the assessee on certain conditions should be liberally construed but the beneficiary should fall within the ambit of the rule or notification and further if there are conditions and violation thereof are provided, then the concept of liberal construction would not arise. Exemption being an exception has to be respected regard being had to its nature and purpose. There can be cases where liberal interpretation or understanding would be permissible, but in the present case, the rule position being clear, the same does not arise.

(emphasis supplied)

47. By now it is fairly settled that taxing statutes, including any exemption statute or notification has to be interpreted by looking squarely at the words of the statute which is expressed therein.

48. In **Commissioner of Sales-tax, U.P. v. Modi Sugar Mills Ltd.**¹⁵, the Supreme Court held thus in para 11 :

11..... The fact that he may have to pay tax from which persons choosing the alternative method of submitting of return may partially be exempted, because of an exemption granted in the course of the year, may not, in our judgment, be a ground for not giving full effect to the provisions of the Act as they stand. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency.

(emphasis supplied)

49. In an extremely recent judgment, applying the said principle of interpretation, the Supreme Court in **Shabina Abraham and Others v. Collector of Central Excise and Customs**¹⁶, held thus in paras 32 & 33 :

32. The impugned judgment in the present case has referred to Ellis C. Reid case but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short-levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be

¹⁵ AIR 1961 SC 1047

¹⁶ (2015) 10 SCC 770

able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the face of first principle when it comes to taxing statutes. It is therefore necessary to reiterate the law as it stands. In Partington v. Attorney General, Lord Cairns stated: (LR p. 122)

“... If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the State, seeking to recover the tax, cannot bring the citizen within the letter of the law, the citizen is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable, construction, certainly such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.”

33. In *Cape Brandy Syndicate v. IRC*, Rowlatt, J. laid down: (KB p. 71)

“... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”

(emphasis supplied)

50. The discussion made above, would make it clear like day that the Rules, 1982 were enacted for encouraging construction of new cinema theaters and multiplexes (*w.e.f.* 30.8.2003) of which the constructions have been commenced after 1.7.1991. Rules, 1982 confers benefit of grant/incentive in the shape of grant/subsidy of an amount equal to the entertainment tax or any other tax deposited by the owner for a period of 8 years from commencement of exhibition. Initially, there was a rider for limiting the applicability of the Rules to such cinema theaters or multiplexes who do not have an existing cinema within radius of 10 Kms., however, this requirement was done away with by an amendment vide gazette notification dated 4.3.2010. Similarly, the rider of keeping the ticket rates in between the maximum and minimum of existing cinema theaters was also deleted by a gazette notification dated 30.4.2010 to provide that this rider would not apply to multiplex cinema theaters.
51. Explanation to Rule 5 provides that the owner would mean any person, group of persons, firm or society who have funded to own the multiplex. Thus, applying the settled principles of interpretation in relation to a statute or notification granting tax benefit or exemption, the rule applies to owner of the multiplex and there is no rider that on transfer of risk or of charging higher

rate of entry ticket the multiplex owner would not be entitled to the benefit.

52. *Ex-consequenti*, the writ petition succeeds. The impugned order dated 30.4.2014 with which the order dated 30.3.2013 has merged, is quashed. Petitioners No.1 & 2, being the owner of the mall/multiplex, are entitled to avail the benefit conferred under the Rules, 1982 w.e.f. 4th March, 2010. No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri