

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.240 OF 2018

E-Square Leisure Pvt. Ltd. Petitioner
Vs.
The State of Maharashtra & Others Respondents

Mr. Jas Sanghavi i/by PDS Legal for the Petitioner.
Mr. B.V. Samant, AGP, for the Respondents.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : JANUARY 15, 2018

P.C:

1. On 21-12-2017, while deciding Civil Writ Petition No.13926 of 2017 in the presence of both sides, we had passed a detailed order.

2. The matter pertains to the Maharashtra Entertainments Duty Act, 1923 and the demand raised thereunder.

3. It is not disputed that the argument in Civil Writ

Petition No.13926 of 2017 is identical to the one canvassed before us. That petition also was filed by an exempted unit, namely, a Multiplex Cinema Theatre. The present petition is also filed by the proprietor/owner of a Multiplex Cinema. They say that in pursuance of a scheme evolved by the State Government, such Multiplex Cinemas enjoy a tax holiday. Meaning thereby, though the Act was applicable, they were exempt from paying taxes or duties thereunder. Therefore, no demand could be raised for the period until the exemption or tax holiday was in force. This was the issue considered by us and on 21-12-2017, while upholding the stand of the petitioner, we had passed the following order and directions:-

"1. This Petition under Article 226 of the Constitution of India challenges the order passed on 19th September, 2017 and a Demand Notice dated 8th December, 2017.

2. Mr. Dada, learned Senior Counsel appearing on behalf of the petitioners, on the earlier occasion and even today, submitted that the petitioners had been exempted from payment of entertainment duty under the Maharashtra Entertainments Duty Act, 1923.

3. The argument is that there was some exemption known as tax holiday/exemption from tax for the initial period. The initial period commences from 2002-2003 till 2006-2007. The impugned order proceeds on the footing

that the petitioners have collected the entertainment duty but have not remitted the same to the Government treasury. That is why the demand was justified. Mr. Dada would submit that there is a distinction but an important one in law, namely, tax holiday or exemption from payment of tax and tax/duty being not leviable or payable at all. In the former case, the enactment applies and the duty is leviable but the parties like the petitioners are exempt from payment thereof for a specified period. Through such mechanism, according to him, there is a notional recovery and not actual one, which can be deduced from the record. The records have been maintained only for the purpose of computation and calculation, but there is no actual collection. The customers or the viewers-public have not been called upon to pay the duty amount. All that they have to do is pay the price for ticket to the entertainment.

4. Mr. Dada would submit that this vital distinction has completely missed the attention of the concerned appellate authority before whom a statutory appeal was filed challenging the order of assessment and the demand.

5. Our attention is invited to the specific averments in that behalf in the Petition.

6. On the last occasion and today, we perused the appellate order with the assistant of both, Mr. Dada, learned Senior Counsel and Mr. More, learned AGP. We find from the record that the register which is maintained by the petitioners/original appellants styled as "DCR Register" is relied upon to hold that there is recovery of entertainment tax from the audience. However, the position is quite otherwise. The petitioners had pointed out that notional calculations have been made of the entertainment duty liability, but there is no actual imposition, much less recovery of the amount from the viewer of the cinema/cine goers. In the sense, that is not separately computed and recovered from the viewer in the price of the ticket. The records, therefore, could not have been relied upon to confirm the demand.

7. We had invited the attention of Mr. More to the fact that there was a specific contention raised in the memo of Appeal and even in the oral arguments. In the order under challenge, the appellate authority in para 4 (sub- paras 4.1 to 4.12) notes the contentions of the petitioners-appellants. Though Mr. More would justify the conclusions which are in paras 5.1 to 5.3, what we find is, there is absolutely no discussion, much less independent application of mind to the contentions and arguments raised before the appellate authority. There is no reference made to the above distinction in law, nor to the argument that the judgment of the Hon'ble Supreme Court on the point of unjust enrichment would be inapplicable on facts.

8. We therefore, indicated to Mr. More that we are inclined to quash and set aside the order dated 19th September, 2017, which even otherwise was not communicated to the petitioners in time. They became aware of such an order only when they were served with a notice of demand and seeking to recover the amount under the said notice as arrears of land revenue. Hence, the impugned orders are set aside.

9. To enable Mr. More to take instructions, the matter was posted today and final orders were not passed earlier. Mr. More, on taking instructions from the concerned official, stated that the Department of Revenue, Government of Maharashtra is ready and willing to rehear the Appeal preferred by the petitioners and it is for this Court to determine whether it can be heard by the same gentleman or a Secretary in the Department.

10. We had indicated that we are not inclined to sent the matter back to the same gentleman, namely, Minister of Revenue, Relief & Rehabilitation and Public Works (Excluding Public Undertakings), for it seems from the impugned order that he has clearly indicated his mind to confirm the demand. We want an independent and impartial adjudication. The approach should be unbiased

as well. In the circumstances, while we quash and set aside the impugned order and the notice of demand, we relegate the matter, as an Appellate Authority to the Principal Secretary in the Department of Revenue and Forest, Government of Maharashtra. He shall decide the subject Appeal of the petitioners. We clarify that we have not accepted either stand of the petitioners or that of the Government. All contentions on merits of the Appeal are kept open. Let the respondents give sufficient advance notice to the petitioners and when we say sufficient, at least 10 days advance notice of the date of hearing. The Writ Petition is disposed of with the above directions. There shall be no order as to costs."

Since this matter is identical to the above said civil writ petition, we follow the same course. This writ petition also is disposed of in terms of similar orders and directions. There will be no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)