IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1524 of 2018

WITH

CIVIL APPLICATION NO.329 of 2018
IN
WRIT PETITION NO.1524 OF 2018

Gold Adlabs Through its
Authorized Signatory .. Petitioner/Applicant
Versus
State of Maharashtra & ors .. Respondents

…

Mr.R.A. Dada, Sr. Counsel with Mr.Harish Pandya, Mr.Sairam Subramanian, Ms.Shobhana Narayan i/b Khaitan and Co. for the petitioner.

Mr.A.B.Vagyani with Mr.B.V.Samant, AGP for the State.

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

DATED : 12th FEBRUARY, 2018

P.C :-

1 This petition is directed against an order passed on 19th September 2017 by the State of Maharashtra – first respondent and the demand notices by which entertainment notice is demanded from the petitioner.

2 The petitioner is also a Multiplex Cinema House.

3 In Writ Petition No.13926 of 2017, identical issue and point was considered by this very Bench.

4 By the order dated 21st December 2017, the petition of that petitioner was allowed and with the directions to decide the matter by the Government again since the issue raised and controversy is identical as conceded by the learned AGP appearing for the State. 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.
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> 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.
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> 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/dity being not leviable or payable at all. In the former case, the enactment applied 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 national recovery and not actual one, which can be deducted 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 of 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 and final orders were not passed earlier. Mr.Vagyani, on taking instructions from the concerned official, stated that the Department of Revenue, Government of Maharashtra is ready and willing to re-hear 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 gentlemen, namely, Minister of Revenue, Relief & Rehabilitation and Public Works (Excluding Public

> Undertakings), for it seems from the impugned order that he as 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 regulate 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 tat 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.

5 In view of the disposal of the Writ Petition, Civil Application does not survive and stands disposed of.

(SMT.BHARATI H. DANGRE,J) **(S.C.DHARMADHIKARI)**