

THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NOS.1008 AND 2331 OF 2019

COMMON ORDER
(Per Sri Justice Sanjay Kumar)

M/s. PVR Limited, Hyderabad, the petitioner in these cases, assails the assessment orders passed against it by the Entertainment Tax Officer, Somajiguda Circle, Hyderabad, the third respondent in both cases, under the provisions of the Telangana Entertainment Tax Act, 1939 (*for brevity*, 'the Act of 1939') and the Rules framed thereunder. W.P.No.1008 of 2019 was filed by it against the assessment order dated 16.03.2016 along with the reiteration thereof, *vide* order dated 20.03.2017, and the notice dated 08.01.2019, while W.P.No.2331 of 2019 pertains to the assessment order dated 20.03.2017 and the reiteration thereof, *vide* notice dated 08.01.2019.

2. The case of the petitioner company is as follows: It is in the business of maintaining and running cinema theatres for exhibition of movies. It is a registered dealer under the Act of 1939 and an assessee on the rolls of the third respondent. While so, the erstwhile Government of Andhra Pradesh notified G.O.Ms.No.604, Revenue (CT.IV) Department, dated 22.04.2008, granting exemption from entertainment tax leviable under Sections 4(1) and 4(1A) of the Act of 1939 in relation to feature films/low budget films produced in the then State of Andhra Pradesh. According to the petitioner company, as and when such movies were exhibited in its theatres, it availed the benefit of G.O.Ms.No.604 dated 22.04.2008. While so, the third respondent issued show-cause notice dated 15.12.2015 calling upon it to explain as to how it had claimed exemption under the aforesaid G.O. when it did not comply with the conditions mentioned therein during the tax periods 2011-12 to 2014-15. According to the third respondent, the

petitioner company was liable to pay Rs.99,46,735/- in this regard. The petitioner company sought four weeks time on 21.12.2015 so as to obtain documents and submit detailed objections to the show-cause notice. Thereafter, it submitted its reply on 11.01.2016, furnishing year-wise details in respect of the differential amount of Rs.86,30,675/- out of the demanded sum of Rs.99,46,735/-. It also attached the relevant A.P. State Film Development Corporation Tax Certificates in support of this differential tax amount of Rs.86,30,675/-. It sought four weeks more time to arrange for and submit tax certificates in relation to the balance tax differential amount of Rs.13,16,059/-. However, the third respondent issued an assessment order on 16.03.2016 stating that the petitioner company was not entitled to claim exemption under G.O.Ms.No.604 dated 22.04.2008 as it had not furnished details of the low budget films screened by it in its theatres in writing in advance, as required under the said G.O. The petitioner company was called upon to pay the sum of Rs.23,81,928/- towards the evaded entertainment tax amount for the years 2012-13 to 2014-15. Thereafter, the third respondent issued reminder notice dated 30.08.2016 calling upon the petitioner company to file its objections to the show-cause notice dated 15.12.2015, failing which the demand therein would be confirmed. The petitioner company submitted representation dated 01.09.2016 informing the third respondent that it had already submitted tax certificates for the differential tax amount of Rs.86,30,675/- under its letter dated 11.01.2016 and that representations had been made by it to the Commissioner of Commercial Taxes on 31.01.2016 and 04.07.2016 to make necessary corrections in the guidelines stipulated under G.O.Ms.No.604 dated 22.04.2008. The third respondent however passed assessment order dated 20.03.2017 for the tax periods 2012-13 to 2014-15 citing reasons similar to

those mentioned in the assessment order dated 16.03.2016 and called upon the petitioner company to pay Rs.75,64,807/- as tax arrears. Nearly two years later, notice dated 08.01.2019 was issued to the petitioner company requiring it to pay Rs.99,46,735/- as per the orders dated 16.03.2016 and 20.03.2017. According to the petitioner company, it had substantially complied with the requirements stipulated in G.O.Ms.No.604 dated 22.04.2008. It pointed out that it was not possible for it to submit certificates from the Andhra Pradesh Film, Television and Theatres Development Corporation (APFTTDC) in advance, as the APFTTDC issued such certificates only after the release of the movie. The petitioner company therefore assailed the action of the third respondent in passing the assessment orders solely on the ground that such certificates were not furnished in advance. According to the petitioner company, the authorities had at all times taken note of the fact that certificates would be issued by APFTTDC only after release of the movies and permitted submission of such certificates not in advance but after the release. According to it, a hyper-technical approach was being adopted by the third respondent and that too, only in its case as it had alone been singled out for denial of exemption though the same was extended and granted to all other similarly situated assesseees.

3. The third respondent filed a counter stating as follows: The petitioner company responded to the show-cause notice dated 15.12.2015 issued for the tax periods 2011-12 to 2014-15, by filing copies of the certificates in relation to the sum of Rs.86,30,675/- on 11.01.2016 but such certificates were not produced in advance, as required. As the assessment for the year 2011-12 was getting time barred, the assessment order dated 16.03.2016 was passed quantifying the differential tax amount payable by the petitioner company at Rs.23,81,928/-. This order was passed by disallowing the

exemption claimed by the petitioner company as it had failed to comply with the condition of producing the certificates in advance. Assessment for the tax periods 2012-13 to 2014-15 was effected under the order dated 20.03.2017 raising a demand for Rs.75,64,807/-. The third respondent pointed out that the assessment orders in question were passed on 16.03.2016 and 20.03.2017 but the petitioner company chose to keep quiet till January, 2019 when it filed the present writ petitions. The writ petitions were therefore hit by delay and laches, as the petitioner company did not offer any explanation for its lassitude. The third respondent further pointed out that remedy of appeal was available to the petitioner company under Section 9(B) of the Act of 1939, but the petitioner company did not choose to avail the same within time. The third respondent asserted that once the assessee failed to comply with the conditions prescribed in the exemption G.O., it would not be entitled to qualify for or claim benefit thereunder. On these grounds, the third respondent sought dismissal of the writ petitions.

4. Heard Mr.S.Niranjan Reddy, learned senior counsel appearing for Ms.Rubaina S.Kahtoon, learned counsel for the petitioner company, and Mr.Jukanti Anil Kumar, learned Special Standing Counsel for Commercial Taxes, State of Telangana, for the respondents.

5. At the outset, it would be appropriate to examine G.O.Ms.No.604 dated 22.04.2008, the fulcrum of this controversy. Thereunder, the erstwhile Government of Andhra Pradesh, in exercise of power conferred under Section 19-A of the Act of 1939, exempted payment of entertainment tax leviable under Sections 4(1) and 4(1A) of the said Act subject to certain conditions. These conditions read as under:

- ‘(1) The burden of proof shall be on the proprietor claiming exemption of entertainment tax that the theatre screened the

feature films/low budget films produced in the State of Andhra Pradesh;

- (2) The proprietor shall submit a certified copy of the affidavit of the producer of the feature films or low budget film along with a certified copy of the certificate obtained from the Andhra Pradesh State Film Development Corporation to the effect that feature films/low budget film was produced, in the State of Andhra Pradesh;

Note:-Low Budget feature film means any film produced with not exceeding 35 prints.

- (3) The proprietor shall intimate the concerned Entertainment Tax Officer in advance in writing the particulars of screening the feature films/low budget films produced in Andhra Pradesh in the Application form appended to this notification;
- (4) In case the number of prints is increased beyond 35 prints, the said exemption available as per the amount for Low Budget films will not be available from the date of increase in the number of prints; and
- (5) Any misuse of this exemption will result in the cancellation of license under the Andhra Pradesh Cinema (Regulation) Act, 1955.'

In terms of Clause (3) set out *supra*, the proprietor of the theatre was required to intimate to the concerned Entertainment Tax Officer, in advance and in writing, the particulars of the feature films/low budget films produced in Andhra Pradesh screened in the said theatre in the application form appended to the notification. The said application form specifically required certified copies of the affidavit of the producer and the certificates of the Andhra Pradesh Film Development Corporation. Therefore, as per this G.O., the theatre proprietor not only had to intimate to the concerned Entertainment Tax Officer, in advance and in writing, the particulars of the feature film/low budget film produced in Andhra Pradesh which was being screened but also furnish a certified copy of the certificate of the Film Development Corporation.

6. Mr.S.Niranjan Reddy, learned senior counsel, would assert that the condition that the certificate from the Film Development Corporation should

be produced in advance was incapable of compliance as such certificate would only be issued by the said Corporation only after release of the movie. He would point out that even as per Clause (2), set out *supra*, a low budget film was a film which is produced with less than 35 prints and argue that the Film Development Corporation could only issue certification as to whether a particular feature film qualified as a low budget film after its release, by counting the number of prints that had been produced and released. He would contend that when the exemption G.O. prescribed a condition which was incapable of being performed, it was not open to the third respondent to insist upon strict compliance. The learned senior counsel would assert that necessary certificates were produced before the third respondent after release of the movies in question. He would point out that it was not the case of the third respondent that despite such certificates being produced, the petitioner company was still due and liable to pay any differential tax amount. He would contend that the assessment orders, which only proceeded on the ground that certificates from the Film Development Corporation were not produced in advance, cannot be sustained.

7. Learned senior counsel relied upon the judgment of the Constitution Bench in COMMISSIONER OF CENTRAL EXCISE, NEW DELHI V/ s. HARI CHAND SHRI GOPAL¹. Therein, the Supreme Court was considering whether the doctrine of substantial compliance could be applied to exemption notifications also. Observing that mandatory requirements must be obeyed or fulfilled exactly, the Supreme Court noted that a condition may be given liberal meaning if the same was directory in nature. It was observed that the doctrine of substantial compliance was a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does

¹ (2011) 1 SCC 236

all that can reasonably be expected of it, but failed or faulted in some minor or inconsequential aspects which could not be described as the 'essence' or the 'substance' of the requirement. Noting that a fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefit of an exemption clause, the Supreme Court observed that substantial compliance would be insisted upon with the enactment, where mandatory and directory requirements are lumped together. In such a case, *per* the Supreme Court, if mandatory requirements are complied with, it would be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance with directory requirements. The Supreme Court held that the doctrine of substantial compliance sought to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

8. This principle was applied by a Division Bench of the High Court for the States of Telangana and Andhra Pradesh in *PRINCIPAL COMMISSIONER OF SERVICE TAX, CUSTOMS, CENTRAL EXCISE & SERVICE TAX V/ s. R.R. GLOBAL ENTERPRISES (P.) LTD.*²

9. At this stage, we may note that though the third respondent raised the issue of delay on the part of the petitioner company in filing these writ petitions, the said aspect was not pressed into service during the course of arguments. In any event, technicalities would not be binding constraints upon exercise of the extraordinary jurisdiction vesting in this Court under Article 226 of the Constitution. All the more so, when the orders under

² (2016) 58 GST 13 (A.P.)

challenge are patently illegal. Therefore, though there is delay on the part of the petitioner company in laying a challenge to the assessment orders in question, that by itself would be insufficient to non-suit the petitioner company, when the orders impugned in these writ petitions smack of arbitrariness and clearly demonstrate lack of application of mind.

10. Mr.Jukanti Anil Kumar, learned Special Standing Counsel, does not dispute the fact that the petitioner company could not have produced the certificates from the Film Development Corporation in advance, as required by the application form appended to G.O.Ms.No.604 dated 22.04.2008.

11. Logically, the Film Development Corporation would not be in a position to issue such a certificate without knowing the number of prints of the movie that had been released. As already noted *supra*, a low budget feature film was one where the number of prints was less than 35. This fact could only be ascertained after release of the movie and not prior thereto. In effect, the condition was practically impossible to perform.

12. Significantly, the petitioner company asserted that it was alone being singled out for this discriminatory treatment and other similarly situated theatres were allowed to furnish the certificates from the Film Development Corporation later and not in advance. This assertion by the petitioner company was not rebutted by the third respondent in her counter-affidavit. No explanation is forthcoming even now as to why the petitioner company alone is being picked upon for violation of the condition of furnishing the certificates in advance. The third respondent also does not dispute that the certificates were produced by the petitioner company after release of the movies and there is no shortcoming or lacuna in this regard. If that is so, mere failure on the part of the petitioner company to produce such certificates in advance, which it could not have done in any event, is not a

ground to deny it the benefit of G.O.Ms.No.604 dated 22.04.2008. The assessment orders, which proceeded only on the premise that such benefit could not be extended to the petitioner company owing to belated production of the certificates, therefore cannot be countenanced.

13. The writ petitions are accordingly allowed setting aside the impugned assessment orders dated 16.03.2016 and 20.03.2017 and all consequential proceedings and notices issued by the third respondent. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

P.KESHAVA RAO, J

6th September, 2019

Sv

