

M/s. Liberty Talkies and Others

Vs

State of Gujarat and Another

Civil Appeal Nos. 416-426 of 1967

(J.C. Shah, K.S. Hegde, A.N. Grover JJ)

19.01.1971

JUDGMENT

SHAH, C. J. -

1. Under the Bombay Entertainments Duty Act 1 of 1923 entertainment duty is chargeable on the total collections from the visitors to a theatre. On March 18, 1960, Collector, Junagadh issued instructions to his subordinate officers directing them to levy entertainment duty at the prescribed rate only on the net price receivable by the proprietor of the theatre and not on the total amount including entertainment duty collected from the visitors. Entertainment duty so computed was paid till January 1962 by the appellants who own a theatre at Junagadh.

2. On January 11, 1962 the Government of Gujarat issued a memorandum that "the duty (entertainment duty) is a percentage of the payment for admission, i.e, the amount which a person pays for being admitted to witness the entertainment, inclusive of the various items mentioned in clause (b) of Section 2 of the Bombay Entertainments Duty Act, 1923. The amount which a person pays includes both sums - (i) what the Manager has to pay by way of duty; and (ii) what the Manager can retain as 'Net receipts' and hence the duty has to be charged on the total amount payable by the person buying the ticket, including any sum charged separately by way of duty." Pursuant to that notification entertainment duty was levied on the gross sum levied and paid by the visitors for admission to the theatre.

3. By a petition moved in the High Court of Gujarat the appellants challenged the validity of the memorandum, dated January 11, 1962 and the notice of demand issued pursuant thereto and urged that the primary liability for payment of entertainment duty is by the Act imposed upon the visitor to the theatre, and that the proprietor of the theatre is merely an agent of the Government for collecting the duty; and that the proprietor has under the Act to pay the duty which he collects from the visitors; and that he cannot be required to pay an amount which he does not collect from the visitors. The High Court rejected the petition and against the order of the High Court this appeal has been preferred.

4. The Act and the rules framed thereunder prescribe the method of collection of entertainment duty. On each ticket issued to a person entitling him to enter the theatre for entertainment a revenue stamp of a specified face value is affixed. The total amount that the visitor pays consists of two items, the net charge which the proprietor makes for the ticket and the value of the stamp. Under the memorandum issued on March 13, 1960, the aggregate of the duty received by the appellants was paid over to the Government and the net value of the tickets remained with the proprietor, under the memorandum issued on January 11, 1962, the duty payable to the Government was calculated at the

appropriate rate applicable to the aggregate of the net value of the ticket and the duty paid by the visitor. In consequence of the notification the proprietor could collect from the visitor the amount shown as entertainment duty on one ticket but he was obliged to pay duty equal to the amount computed on the total amount paid by the visitor at the appropriate rate. The difference between the entertainment duty computed on the total value of the ticket and value of the stamp affixed on the ticket was therefore borne by the proprietor.

5. The relevant provisions which have a bearing on the question are these : Section 3 of the Act is the charging section. Insofar as it is relevant it provides :

"(1) There shall be levied and paid to the State Government on all payments for admission to any entertainment a duty hereinafter referred to as 'entertainment duty' at the following rate -

#(a) X X X X(b) In any other area -I. X X X XII. In any other case -(i) out of the first 100 naye paise ... 30 per cent. of payment for admission of such payment.(ii) out of the next 100 naye paise ... 45 per cent. of payment for admission of such payment.(iii) out of the balance of the total ... 60 per cent. payment for admission of such payment.(1-A) X X X X ##

(2) Where the payment for admission to an entertainment is made by means of a lump sum paid as a subscription or contribution to any society, or for a season ticket or for the right of admission to a series of entertainments or to any entertainment during a certain period of time, or for any privilege, right, facility or thing combined with the right of admission to any entertainment or involving such right of admission without further payment at a reduced charge, the entertainment duty shall be paid on the amount of the lump sum."

Section 3-A provides for payment of duty on complimentary tickets. By that section entertainment duty at the appropriate rates prescribed under Section 3 is payable as if full payment had been made for admission to the entertainment according to the class of seat or accommodation which the holder of such ticket shall be deemed to have been admitted for payment for the purpose of the Act. Section 4 provides for the method of levy of duty. It provides, insofar as it is relevant :

"(1) Save as otherwise provided by this Act, no person other than a person who has to perform some duty in connection with an entertainment of a duty imposed upon him by any law, shall be admitted to any entertainment, except with a ticket stamped with an impressed, embossed, engraved or adhesive stamp (not before used) issued by the State Government for the purposes of revenue denoting that the proper entertainment duty has been paid.

(2) The State Government may, on the application of any entertainment in respect of which the entertainment duty is payable under Section 3, allow the proprietor on such conditions as the State Government may prescribe to pay the amount of the duty due -

(a) by a consolidated payment of a percentage to be fixed by the (State Government) of the gross sum received by the proprietor on account of payments for admission to the entertainment and on account of the duty;

(b) in accordance with returns of the payments for admission to the entertainment and on account of the duty;

(c) in accordance with the results recorded by any mechanical contrivance which automatically registers the number of persons admitted.

#(3) X X X.###

Section 6 provides for exemptions from payment of entertainment duty in certain specific classes of cases. Section 7 authorises the State Government to make rules for securing the payment of the entertainment duty and generally for carrying into effect the provisions of the Act. The expression "entertainment" is defined in Section 2(a) as including any exhibition, performance amusement, game or sport to which persons are admitted for payment. A cinematograph show is "entertainment" within the meaning of the Act. Section 2(b) defines "payment for admission" as including :

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(ii) any payment for seats or other accommodation in a place of entertainment;

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(iv) any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment;".

Section 2(c) defines "proprietor" in relation to any entertainment as including any person responsible for, or for the time being in charge of, the management thereof.

6. By Section 3 the duty is levied at the rates prescribed on payment for admission and the method of levy is prescribed by Section 4(2). The proprietor is enjoined by Section 4(1) not to admit any person to an entertainment without a ticket. The proprietor pays the entertainment duty determined in the matter provided by clauses (a), (b) and (c), sub-clause (2) of Section 4. He is permitted by the Act to collect entertainment duty on the net amount receivable by him, but he does not on that account become an agent for the Government. The charge is by Section 3 on payments received by the proprietor for admitting visitors to entertainment. Even where a ticket is not issued for an individual show but payment is received "by means of a lump sum" as subscription or contribution to any society, or by season ticket or for the right of admission to a series of entertainments or during a certain period of time, or for any privilege, right, facility, thing combined with the right of admission to any entertainment without further payment or at a reduced charge, the entertainment duty is payable on the lump sum; see Section 3(2). Where a complimentary ticket is issued the duty is payable by the proprietor at the appropriate rate prescribed under the Act as if full payment had been made for admission to the entertainment. These provisions leave no room for doubt that liability for payment of the duty is imposed upon the proprietor and not upon the visitors to theatre. Under Section 4(1) on the ticket for admission to any entertainment, an impressed, embossed, engraved or adhesive stamp (not before used) issued by the State Government of the value specified in Section 3 must be affixed. The price which the visitor pays for a ticket for admission to an entertainment is the value of the stamp affixed and the net value of the ticket. But the statutory liability to pay the entertainment duty is imposed upon the proprietor and not to the visitor. The proprietor true passes it is on a part of the duty payable by him to the visitor, but even in respect of that amount he does not act as an agent of the Government.

7. The rules framed under the Bombay Entertainments Duty Act, 1923 do not also suggest a contrary scheme. Rule 7, insofar as it is relevant, provides :

"Except as provided in Rules 15 and 23, every dutiable ticket, not being a complimentary ticket, issued on payment for admission to entertainment shall be in three parts. One part shall remain on the ticket book and the remaining two parts shall be detached therefrom and issued to the purchaser. Every dutiable ticket shall have each part clearly marked with the price of admission, and with the date and show for which it is available and also with the book number and the serial numbers..... and shall also have securely affixed to it a stamp of the value of the duty payable out of the said price of admission.

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A similar provision is made in respect of "plural tickets" where a number of persons are to be admitted on a single ticket. The use of the expression "affixed to it a stamp of the value of the duty payable out of the said price of admission" does not support the view that the amount of entertainment duty represented by the ticket alone is payable by the proprietor. It only means that the proprietor shall specify on the ticket the amount chargeable by him to the visitor and the duty in respect of which the stamp has been affixed. Rule 7 cannot operate to modify the charging Section 3, nor Section 4 relating to the method of levy. Rules 15 and 23 which are referred to in rule 7 also do not support the submission made by counsel for the appellant. Rule 15 deals with unstamped tickets and Rule 23 deals with the form of exemption granted by the District Magistrate or the Commissioner of Police. Rule 16 imposes a duty upon every proprietor either making a consolidated payment under clause (a) of sub-section (2) of Section 4 or making payment in accordance with return of the payments for admission under clause (b) of sub-section (2) of Section 4, within ten days of the date of entertainment and to submit to the prescribed officer a return in form "B" showing the number of tickets (not being complimentary tickets) issued at each rate, the serial number of tickets issued, the gross amount received by sale of tickets and the amount of duty payable to the State Government. Under Section 4(2)(a) the consolidated payment is a percentage of the gross sum (not charge and the entertainment duty) received by the proprietor on account of payments for admission to the entertainment. That duty is charged under Section 4(2)(b) in accordance with the returns relating to the payments for admission to the entertainment, under Rule 16 the duty is again chargeable on the gross amount received by the proprietor. The definition of the expression "payment for admission" in Section 2(b) of the Act, is an inclusive definition; it includes by clause (iv) payment for any purchase whatsoever "connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment". In our judgment entertainment duty is payment which the proprietor is required to make as a condition for enabling visitors to attend or continue to attend the entertainment. Without such a payment the visitor cannot be admitted to the entertainment under Section 4(1) of the Act. That being so the expression "payment for admission" includes entertainment duty.

8. We agree with the High Court that the appellant was liable to pay duty computed in the manner provided by Section 3(1) (b)(ii) on the total amount received by the proprietor. But the method of levy of entertainment duty from the proprietors involves some hardship. It is implicit in the Act that the proprietor is entitled to pass on the liability "for payment of entertainment duty" to the visitors. But the visitor only pays the amount represented by the stamp affixed on the ticket. A proprietor paying entertainment duty on the total amount received by him from the visitor will never be able to collect the full entertainment duty from the visitor. A part of the duty payable by him will have to

come out of the amount received by him as net charge for the ticket. But we are dealing with a taxing statute and questions of hardship cannot justify us in departing from the provisions of Sections 3 and 4 of the Act. The Legislature must be deemed to have contemplated that only a part of the entertainment duty levied by the Government may be collected in the manner provided from the visitors to the theatre and the balance shall be paid by the proprietors. It may be observed that between March 18, 1960 and January 11, 1962 the appellant collected and paid the duty which was actually received from the visitors to the theatre by stamps affixed on the tickets issued to them according to the notification issued by the Collector. It was thereafter when a fresh memorandum, dated January 11, 1962 was issued requiring the proprietors of the theatres to pay tax on the aggregate amount of the net value of the ticket and the entertainment duty that the proprietor was called upon to pay the difference. Till January 11, 1962 the proprietor acted pursuant to the memorandum, dated March 18, 1960 issued by the Collector and collected the duty and paid it over. The Government of Gujarat later advised that the method of collection notified by the Collector was not the correct method. But the Act contains no provision for reopening assessments already made. When pursuant to return by the proprietor, payments were made and accepted under Section 4(2)(b), the tax may be deemed to be assessed and paid, and the State cannot thereafter reopen the concluded assessments and seek to levy tax or duty which has escaped.

9. The appeals fail except as to the amount claimed to be due for the period between March 18, 1960 and January 11, 1962. There will be no order as to costs.

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