

Assistant Commercial Tax Officer-Cum-Entertainment Tax Officer,

Vs

Narasimhaiah and Others

Civil Appeals Nos. 1780-86 of 1986

(K. Ramaswamy, D. P. Wadhwa JJ)

02.04.1997

ORDER

1. These appeals by special leave arise from the common judgment of the Division Bench of the Karnataka High Court, made on 13-9-1985 in Writ Appeals Nos. 1640-46 of 1985.

2. The admitted position is that the Legislature of Karnataka introduced Section 6-B in the Karnataka Entertainments Tax Act, 1958 by Amendment Act, 1966 (Karnataka Act 14 of 1966) with effect from 16-5-1966 which reads as under :

"6-B. Payment for admission, etc., escaping assessment. - (1) Where, for any reason,
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(i) any complimentary ticket or any payment for admission to any entertainment has escaped assessment to tax under Section 3 or Section 3-A; or

(ii) any cinematograph show has escaped assessment to tax under Section 4 or 4-A;
or

(iii) such ticket, payment or show has been assessed at a rate lower than the rate at which it is assessable under Section 3 or Section 3-A or Section 4 or Section 4-A.

the authority prescribed under sub-section (1) of Section 6-A may, subject to the provisions of sub-section (2) and at any time within such period as may be prescribed, assess or reassess, to the best of its judgment, the tax due on such ticket, payment or show under Section 3 or Section 3-A or Section 4 or Section 4-A as the case may be, after service of notice on the proprietor and after making such enquiry, as it may consider necessary."

3. Reassessment of escaped turnover was sought to be made by operation of Notification No. FD. 194 CEX-76 dated 30-11-1976 amending and framing Rule 29-F of the Rules made under the Act prescribing the period of limitation of five years. It reads as under :

"29-F. The time within which the power under Section 6-B is exercisable shall be five years from the close of the period to which the assessment in question relates."

4. The respondents contend that the appellants have no power to reopen the assessment and reassess the escaped turnover beyond 30-11-1976. The said contention found favour with the learned Single Judge, which was affirmed by the Division Bench dismissing the appeal summarily. Thus, these

appeals by special leave.

5. A reading of Section 6-B of the Act clearly indicates that where for any reasons, any complimentary ticket or any payment for admission to any entertainment has escaped assessment to tax under Section 3 or Section 3-A, or any cinematograph show has escaped assessment to tax under Section 4 or Section 4-A, or such ticket, payment or show has been assessed at a rate lower than the rate at which it is assessable under Section 3 or Section 3-A or Section 4 or Section 4-A, as the case may be, the authority has been given power under sub-section (1) of Section 6-A, subject to the provisions of subsection (2) of Section 6-A, to reassess to the best of its judgment, the rate due on such ticket, payment or show under Section 3 or Section 3-A or Section 4 or Section 4-A, as the case may be. But it should be done only after service of notice on the proprietor and after making such enquiry as it may consider necessary. Since limitation for the period during which the escaped turnover can be reassessed, had not been earlier prescribed, Rule 29F was made and had come into effect from 30-11-1976. As seen under Rule 29-F, the time within which the power under Section 6-B is exercisable has been prescribed, "shall be five years from the close of the period to which the assessment in question relates". In other words, it relates backward to five years from the date the Rule came into force from 30-11-1976. If the interpretation given by the High Court is given effect to, the amended Rule 29-F would come into effect five years after the date the Amendment came into force, namely, 30-11-1976, five years forward. That would not be the intendment of the Rule. As a consequence, the High Court is clearly in error in holding that reassessment of the escaped turnover preceding five years from 30-11-1976 is not correct.

6. The appeals are, therefore, allowed. The authorities are empowered to reassess the escaped turnover for the period, five years preceding 30-11-1976 as relating to the assessment in question. No costs.