

SUPREME COURT OF INDIA

Indusind Media & Commun. Ltd. & Anr.

Vs.

Mamlatdar & Ors.

C.A.No.7026-7029 of 2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

17.08.2011

JUDGMENT

Anil R.Dave,J.,

SLP.(Civil)No.17158-17161 of 2010

1. Leave granted.

2. Being aggrieved by the Judgement and Order dated 13.5.2010, delivered in SCA Nos.

13586-13589/2009 by the High Court of Gujarat at Ahmedabad, these appeals have been filed by the appellants-assessees.

3. The facts in a nutshell are that the appellants are engaged in transmitting signals from their `Head Ends' located at Ahmedabad to various cable operators, who in turn receive the same and transmit by way of cables to their subscribers. According to the appellants, they are not liable to pay Entertainment Tax under the provisions of the Gujarat Entertainment Tax Act, 1977 (hereinafter referred to as `the Act'). According to the appellants, they are transmitting signals to cable operators and the cable operators thereafter transmit signals to actual subscribers who are entertained. In the circumstances, according to the appellants, they are neither `Proprietors' nor providing any entertainment to anyone and, therefore, they are not liable to pay any tax under the Act.

4. On the other hand, the case of the respondent authorities is that the appellants did not get themselves registered under the Act on the pretext that they are not providing entertainment. According to the respondent authorities, the appellants are `Proprietors' as per the provisions of the Act and, therefore, they are liable to pay Entertainment Tax.

5. According to the appellants, some officers of the respondents visited the office premises of the appellants and switched off all the equipments and removed the connectors. Under such circumstances, due to threats and coercion, according to the appellants, they were

constrained to deposit a cheque for Rs. 5,00,000. A further amount of Rs. 6,88,000 was also paid by the appellants as demanded by the respondents under protest, pending outcome of the legal proceedings. Thereafter, the

appellants applied for registration as required under the Act without prejudice to their rights.

6. Ultimately the Mamlatdar i.e. the Prescribed Officer appointed under the Act, passed an Order dated 18th October, 1999, whereby the appellants were made liable to pay Rs.6,88,840/- by way of an Entertainment Tax and Rs.3,62,431/- as interest on the aforesaid amount, which had not been paid within the prescribed period and a fine of Rs.5,000/- was also imposed by virtue of the said order. The validity of the said order was challenged by the appellants but ultimately, the Commissioner of Entertainments Tax had confirmed the aforesaid order passed by the Mamlatdar. Being aggrieved by the aforesaid order passed by the Mamlatdar which had been confirmed by the Commissioner of Entertainments Tax, the appellants had filed Special Civil Application Nos.13586-13589 of 2009 in the High Court of Gujarat. The said applications have been rejected and, therefore, the appellants have approached this Court for challenging the validity of the same.

7. The contentions raised on behalf of the appellants before this Court were to the effect that the appellants were not 'Proprietors' and they were not providing entertainment and, therefore, no tax was to be paid by them. As no tax was to be paid, the question of paying penalty and interest on late payment of tax would also not arise. The same submission was made before the High Court, which had not been accepted.

8. The learned counsel for the respondent authorities had justified the order passed by the High Court confirming the order dated 18th October, 1999, passed by the Mamlatdar.

9. On hearing the learned counsel and looking to the facts of the case, in our opinion, the High Court was justified in confirming the order passed by the Mamlatdar dated 18th October, 1999.

10. Two issues arise for our consideration in the present appeals viz.:

i. Whether the appellants, who are Multi System Operators, are liable to pay Entertainment Tax, and ii. Whether the facts and circumstances of the case warrant imposition of penalty on the appellants. The first issue is no longer res integra as this Court, in the case of State of West Bengal V. Purvi Communications (P) Ltd.¹, has held that even Multi-System Operators (MSO) would be liable to pay Entertainment Tax. It is not in dispute that the appellants are Multi-System Operators, who transmit the signals to the cable operators and in turn, the cable operators transmit signals to the subscribers. In such a way, as the appellants are connected to an organisation of the entertainment, they would be 'Proprietors' as per the provisions of the Act. Hence, this issue does not need any further consideration. With regard to the second issue, it was contended by the appellants that penalty under Section 9(3) of the Act can be imposed only if there is any wilful misstatement or suppression of facts. In the instant case, the appellants were under a genuine belief that they would not fall under

the definition of 'Proprietor' under the Act and hence, imposition of penalty is unfair. It was further argued on behalf of the appellants that the impugned order imposing the penalty is violative of the principles of natural justice as no notice was issued under Section 9 of the Act and also no opportunity of being heard was afforded to the appellants.

11. We do not find any substance in the submission made on behalf of the appellants that imposition of penalty is in violation of the principles of natural justice. We find from the orders passed by the authorities that the appellants had given incorrect information with regard to total number of connections given by them. The requisite information was not provided by the appellants in spite of issuance of notices and requests made to the appellants. In fact, notice had been issued before imposition of penalty to the appellants as it can be seen from the orders passed by the authorities but in spite of grant of sufficient opportunities, the appellants did not give correct information and made an effort to evade payment of Entertainment Tax by making wilful mis-statements and suppression of fact. In the circumstances, it cannot be said that the imposition of penalty is in violation of the principles of natural justice.

12. For the aforesaid reasons and for the reasons recorded by the High Court in the impugned order, we do not find any substance in these appeals and, therefore, the appeals are dismissed with no order as to costs.

¹(2005) 3 SCC 0711