J.K. Kapur And Ors. vs State Of Gujarat And Ors. on 24 January, 1974

Equivalent citations: AIR1974SC1996, (1974)4SCC92, 1974(6)UJ171(SC), AIR 1974 SUPREME COURT 1996, 1974 4 SCC 92, 1974 TAX. L. R. 2441, 1974 U J (SC) 171, 1974 SCC (TAX) 221, (1974) 1 S C W R 320

Bench: R.S. Sarkaria, V.R. Krishna Iyer

JUDGMENT

Iyer, J.

1. These two civil appeals may be disposed of together. Both the appellants who were running cinema theatres in the State of Gujarat, have hitched their litigation wagon to the Liberty Talkies star. In Liberty Talkies v. The State of Gujarat this Court laid down certain principles which according to the appellants govern their cases, although the State has refuted this contention.

2. Very briefly, the appellant in Civil Appeal No. 1779 of 1969 was carrying on the business of showing cinemas in the name and style of Sadhna Talkies. He paid entertainment tax as required under the Bombay Entertainments Duty Act, 1923 (for short, the Act). From 1959 to 1962 such duty was paid and requisite returns made, but by notice dated 24-1-1969, the officers of the State demanded payment of Rs. 10,140/- as being the shortfall in the duty paid as against the duty due. This difference arises on account of the interpretation put by the State, now upheld by this Court in the Liberty Talkies case, that the duty is payable on the gross collection, that is, the price of the ticket plus the tax and not on the net collection, that is, the price of the ticket simplicitor. It cannot be disputed that the State's construction of the statutory liability under Section 3, is sound since the Liberty Talkies has declared the law in the same strain. The narrow question that falls for decision now is as to whether it is open to the State to demand by notice in 1969 (1963 ?) the difference in duty payable for the period 1959-62. This is possible only if there is a power of re-assessment or reopening of assessment vested by the statute in the State.

3. In Civil appeal No. 1780 of 1969, the problem is similar. There, the appellants were running the Chitra Cinema and were paying entertainment tax between 1-4-1957 and 30-4-1962. Returns were made in due course, but by letter dated 16-5-1962, the appellants were told that the entertainment tax paid by them for the period referred to was short by Rs. 35,679/58, this difference having arisen on account of the alternative interpretation put by the State. The liability to pay is based on the new demand which is sought to be sustained by the State on the score that a power to revise, reopen or re-assess is available to it under the Act.

4. The contention of the State has been stated thus:

> The State Government is empowered to review the assessment made earlier by the authorities and raise a demand for the correct amount towards entertainment tax.
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> The fact, as such, are not very much in controversy. The appellants stated in one of the writ petitions thus :
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> The Bombay Entertainment Duty Act, 1923 (Act 1 of 1923), hereinafter referred to as the Act, was applied to Godhra and the entertainment duty on admission to the cinema was leviable under the Act from 1st April 1957. The Mamlatdar of Godhra Taluka was the authority concerned for the collection of the said duty. The rate which was imposed so far as the town of Godhra was concerned was 20 per cent on admission to an entertainment. These duties were to be paid in any of the methods prescribed under Section 4 of the Act.
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> For the purpose of checking the enforcement of the tax at every show special clerk was appointed in the Collector Office and one Inspector was also appointed for the said purpose. Over and above, the petitioners were required to send reports of the collections every day in which the tax collection was required to be shown and thereafter a weekly report mentioning the collections and the entertainment duty was sent. It was also incumbent upon the petitioners to send monthly reports, three-monthly-reports, six-monthly reports and yearly reports of the total collections and entertainment tax collections to the authorities. The said reports contained the rates of the tickets in various classes and the entertainment duties collected and paid to the Government.
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> Both, the petitioners and the authorities of the respondents, interpreted the Act to the effect that the taxes were payable on the rate of admission excluding the tax and not on the gross amount of admission and as a matter of fact, the tax has been collected from 1st April, 1957 to 30th April, 1962 accordingly; and the respondents, having checked the reports have accepted the said tax as legally payable.
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> A similar averment has been made in the other writ petition also.

5. The scheme of the Act appears to be that every proprietor who admits to entertainment persons on payment for admission is liable under Section 3 to pay entertainment duty in the manner set out therein. The method of levy is enacted in Section 4. Although Section 4B, brought in by way of amendment in 1967, provides for the manner of assessment, there was no formal procedure for such assessment during the period with which we are concerned. Rule 11(4) and Rule 13 throw light on the assessment process as it were. Being a preConstitution statute, the Act itself does not elaborately articulate the stages of creation of liability, the procedure for quantification and the method of collection, although there is sufficient provision to comply with Article 265 of the Constitution.

6. this Court held in the Liberty Talkies case-construing the provisions of the same Act-that the Act contains no provision for reopening assessments already made. The Court further held that when persuant to return by the proprietor, payments were made and accepted under Section 4(2)(b), the tax must be deemed to be assessed and paid and the State cannot thereafter reopen the concluded assessment and seek to levy tax or duty which has escaped. We have, therefore, to decide whether in this case, the assessment has been made and the present demand is to reopen the assessment already made.

7. Counsel for the State contends that the provision applicable to the present case is Section 4(1) and not Section 4(2)(b), as fell for decision in Liberty Talkies. May be technically, the provisions are perhaps different Even so, it is indisputable that there is no provision in the Act for reopening closed assessments and our enquiry must be focussed on the fact of assessment being concluded or not. Whether it comes under Section 4(1) or Section 4(2) is immaterial for this purpose. Under Section 4(1) stamps have to be affixed to the tickets. Returns have to be made periodically which will indicate to the authority concerned the total number of persons admitted to the entertainment, the value of the stamp used, etc. On the basis of this return and on such enquiry the authorities deem fit to make, by way of inspection at the time of the show or otherwise, they either accept the payment already made by way of use of stamps or they make fresh demands. In the present case it has been pointed out already by us that officers concerned had the returns before them of the tax collections and of the persons who had been admitted to the shows but on account of a wrong impression about the meaning of the statute the respondents kept quiet. Long later, demands were made when they awakened to the new interpretation which happens to be the correct interpretation. To accept the payments made by use of stamps from April 1957 to April 1962 after the returns were sent to the relevant authorities, is in bur view sufficient to imply assessment and payment.

8. The procedure for checking on the correctness of the returns submitted by the cinema proprietors is indicated indirectly in the writ petition filed before the High Court. There is a special cell for inspection & verification. The cinema owners are required to send returns of collections daily weekly, monthly, tri-monthly, half-yearly & yearly. These returns are obviously intended to post the officers of the government with the relevant facts including duty paid and duty due. In this light it is reasonable to hold that before we can deem a return-cum payment to amount to an assessment, a reasonable time should have elapsed after the authorities concerned have the facts before them. In the circumstances set out in para 4 of the writ petition itself, it is reasonable to hold that one year from the date of the show will be reasonable time for inferring that the State Government has accepted the assessment after the return and payment have been made.

9. Viewed in this light, it follows that in the demand made in civil appeal 1779 of 1969, there has been a long delay. The notice by the Mamlatdar is of 1969, while the payments had all been made as early as 1962. Therefore, an assessment must be deemed to have been made and payment accepted, the present notice of 1969 (1963 ?) being only an attempt to reopen the assessment. This cannot be allowed and so civil appeal 1779 of 1969 has to be allowed to the limited extent that the demand for Rs. 10,140/- is not valid and cannot be allowed. If the amount has already been recovered, it has to be refunded. In regard to civil appeal 1780 of 1969 the earliest notice demanding payment of Rs. 35,679/58 was made on 16-5-1962. We are inclined to the view that from 1-4-61 to 30-4 62 must in

any case be treated as pending assessment. The notice making demand for payment would, therefore, be valid to the extent it relates to the one year period we have indicated. So far as prior periods before 1-4-61 are concerned, the demand amounts to a reopening of assessment already made and cannot be allowed. To this limited extent, therefore, the demand made by the State is permitted, but if any sum has been recovered relating to the period prior to 1-4-61, it should be refunded.

10. The Act is an old one, perhaps obsolescent. Clearer Provisions have to be made to make it viable if the tax due to the State is not to be lost. It is only proper that a legislative renovation process is undertaken by the State to make the statute knave-proof and foolproof and to ensure that the State is enabled to recover what is due to it, even if it be on account of discovery of mistakes made in the original assessment. With these observation and to the limited extent above indicated, we allow the appeals but in the circumstances without costs.