

A THE STATE OF MAHARASHTRA & ORS.

v.

PAN INDIA PARYATAN LIMITED & ANR.

(Civil Appeal Nos. 6438-6439 of 2009)

B FEBRUARY 18, 2020

[DEEPAK GUPTA AND HEMANT GUPTA, JJ.]

Bombay Entertainments Duty Act, 1923: ss. 3(1)(b), 3(2), 3(5)(a) and (b) – Duty on payments for admission to entertainment – Levy of entertainment duty for entry in amusement park – Respondent was running an amusement park and was required to pay entertainment duty – Respondent sought confirmation that entertainment tax to be levied @ 3.75% of the value of a consolidated ticket, however, demand of entertainment duty @7.5% and not @3.75% from the respondent – Respondent paid in protest – Writ petition challenging the provisions of the Act and seeking refund of the duty paid – High Court held that entertainment duty to be levied for the amusement park is 50% of 15% i.e. 7.5% u/s. 3(2), thus, in terms of s. 3(5)(a) and (b), the entertainment duty is 50% of 7.5% i.e. 3.75% – On appeal, held: In respect of the first three years from the date of commencement of the amusement park, no entertainment duty is payable – However, in respect of the subsequent two years, the rate of duty leviable is u/s.3(1)(b) or, as the case may be, u/s. 3(2) – All amusement parks for all entertainment are not entitled to concessional duty in terms of s. 3(2) of the Act, thus, respondents cannot claim benefit u/s.3(2) – Amusement parks would be entitled to only one benefit either u/s. 3(2) or u/s. 3(5)(a) – Since s.3(2) is not applicable to all amusement parks for all other activities, therefore, the entertainment duty in terms of s.3(5)(a) alone would be leviable – Order of the High Court that in terms of s. 3(5)(a), the entertainment duty is 50% of the duty payable u/s. 3(2) cannot be accepted and is set aside.

G **Allowing the appeals, the Court**

HELD: 1.1 Sub-clause (ii) of Section 3(5)(a) of the Bombay Entertainments Duty Act, 1923 contemplates that duty @50% under clause (b) of sub-section (1) or, as the case may be, sub-

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section (2) of Section 3 would be payable. In respect of the first part of sub-clause (ii) of Section 3(5)(a) of the Act, the entertainment duty is 50% of 15% leviable under Section 3(1)(b) of the Act. It is sub-section 3(2) of the Act which is required to be interpreted. The said provision is in respect of charging of duty at 50% of the duty fixed in Section 3(1)(b) of the Act to the specific category of visitors to the amusement parks such as payment in “lump sum 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 “any entertainment during a certain period of time”. The writ petitioners do not fall in any of the four categories. Category (a) is subscription or contribution in lump sum to any society. The writ petitioners would not fall in such category as the payment is not to any society. It is not the case of writ petitioners that they have issued a season’s ticket to the visitors. Category (d), that entry would be on charging 50% of the duty fixed for any entertainment during a certain period of time, depends upon the decision of the State Government and/or Municipal Corporation to grant that relaxation to enable the writ petitioners or such other amusement park owners to charge duty at a lesser rate. [Para 12-15][660-B-H]

1.2 The amusement park is defined under Section 2(a-1) of the Act to mean a place wherein various types of amusements including games or rides or both are provided fairly, on a permanent basis, on payment for admission. The payment for admission is defined under Section 2(b) of the Act as the payment made by a person having admitted to one part of a place of entertainment and subsequently admitted to another part. Section 2(d) of the Act deals with admission to an entertainment which includes admission to any place in which the entertainment is held. It cannot be said that when a lumpsum amount is paid as a right of admission for all rides and games, then it becomes admission to series of entertainment. The writ petitioners issue one ticket including one or more rides or games situated in one compound. It is not the case of the writ petitioners that for every ride or game, it is charging separately. The admission to entertainment in terms of Section 2(d) of the Act includes all rides and games which are provided by the service provider. The series

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A of entertainment as contemplated by Section 3(2) of the Act does
not mean that on a single day ticket for one entry, it can be treated
to be a series of entertainments. The series of entertainments
can be where the facility for a game or ride is provided on multiple
days and a combined ticket is issued for events for each day. It
will only then be said to be series of entertainment. [Para 16,
B 17][661-B-E]

1.3 Once an admission ticket is granted, it is not in terms
of Section 3(2) of the Act but only in terms of Section 3(1)(b) of
the Act. Section 3(2) of the Act has no applicability for a visitor to
an amusement park who does not fall in any of the four categories
C mentioned in Section 3(2) of the Act. Since, the activities
undertaken by the writ petitioners are not falling part of Section
3(2) of the Act, therefore, they are not entitled to rebate of 50%
provided to specified category of persons in Section 3(2) of the
Act. [Para 18][661-F-G]

D 1.4 Section 3(5)(a) of the Act has an overriding effect over
Section 3(1)(b) and Section 3(2) of the Act. In respect of the first
three years from the date of commencement of the amusement
park, there is no issue as no entertainment duty is payable. But,
in respect of the subsequent two years, the rate of duty leviable
E is under clause (b) of sub-section (1) or, as the case may be, under
sub-section (2) of Section 3. Section 3(1)(b) of the Act is applicable
to all amusement parks whereas Section 3(2) of the Act has a
limited applicability only in respect of the specified categories
therein. All amusement parks for all entertainment are not entitled
to concessional duty in terms of Section 3(2) of the Act. Therefore,
F the writ petitioners cannot claim benefit under Section 3(2) of
the Act. The argument is preposterous as the writ petitioners
are firstly claiming the benefit under Section 3(2) of the Act and
then under Section 3(5)(a) of the Act. The amusement parks would
be entitled to only one benefit either under Section 3(2) or under
G Section 3(5)(a) of the Act. Since Section 3(2) is not applicable to
all amusement parks for all other activities, therefore, the
entertainment duty in terms of Section 3(5)(a) of the Act alone
would be leviable. The duty under Section 3(2) of the Act would
be leviable only in respect of specified categories mentioned
therein. [Para 19][661-H; 662-A-C]

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1.5 The judgment of the High Court that in terms of Section 3(5)(a) of the Act, the entertainment duty is 50% of the duty payable under Section 3(2) of the Act cannot be accepted and is set aside. [Para 20][662-D]

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6438-6439 of 2009.

B

From the Judgment and Order dated 19.12.2006 of the High Court of Judicature at Bombay in Writ Petition No. 111 of 1996 with Writ Petition No. 2009 of 1998.

Sachin Patil, Rahul Chitnis, Aaditya A. Pande, Geo Joseph, Nishant Ramakantrao Katneshwarkar, Advs. for the Appellants.

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Tejveer Bhatia, Sudeep Chatterji, Ms. Surbhi Singh, Gaurav Sharma, Abhinav Mukerji, Advs. for the Respondents.

The Judgment of the Court was delivered by

HEMANT GUPTA, J.

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1. The challenge in the present appeals is to an order passed by the Division Bench of the High Court of Judicature at Bombay on 19th December, 2006 whereby Sections 3(1)(b), 3(2) and sub-sections 5(a) and (b) of the Bombay Entertainments Duty Act, 1923¹ were interpreted to hold that the rate of tax payable by the respondents² would be as follows:

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“i. For the first three years from date of commencement of park the Petitioners are not required to pay any duty,

ii. Duty for the 4th and 5th year, from the date of commencement, duty payable is at the rate of 3.75%, applying concessional provision.

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iii. Duty payable during 6th year from the date of commencement of park and there onwards, is at rate of 7.5%.”

2. The writ petitioners own and run an amusement park within limits of Greater Bombay which was opened to the public for admission on 25th December, 1989. They charged a lumpsum amount for admission and entertainment to the amusement park. In terms of the Act, the writ petitioners were required to pay entertainment duty.

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¹ for short, ‘Act’

² for short, ‘writ petitioners’

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A 3. In the writ petition before the High Court, the assertion of the writ petitioners was that on 4th October, 1994, it sought confirmation that entertainment tax to be levied would be 3.75% of the value of a consolidated ticket. Such stand was accepted by appellant No. 2-The Collector, Bombay Suburban District. Later, vide communication dated 7th January, 1995, the writ petitioners were informed that they would be required to pay duty @7.5% and not @3.75%. The writ petitioners challenged such demand by way of writ petition. The said writ petition was withdrawn with liberty to file a fresh petition.

B 4. The State sought to recover the entertainment duty @7.5% in respect of entry to the amusement park for the period from 16th September, 1994 to 24th December, 1994 and @15% from 25th December, 1994. The writ petitioners paid the duty under protest. In a writ petition challenging the provisions of the Act, the writ petitioners sought refund of the duty paid.

C 5. The High Court found that the following questions arose for consideration:

- D “i. Rate of entertainment duty payable by the Petitioners for a period from 16th September, 1994 to 24th December, 1994.
- E ii. Rate of duty payable for the period commencing 25th December, 1994.
- iii. Whether action of Respondents in seeking to recover duty payable during 25th December, 1989 to 23rd August, 1990 already adjusted against refund payable to Petitioners, is justified and valid in law. This question is raised by Writ Petition No. 2009 of 1998.”

F 6. Before we consider the respective arguments of the learned counsel for the parties, the statutory provisions of the Act need to be referred:

G “2 (a-1). “amusement park” means a place wherein various types of amusements including games or rides or both but excluding exhibition by cinematograph and video exhibition are provided fairly on permanent basis, on payment for admission;

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H 2 (b) “payment for admission” in relation to the levy of entertainments duty, includes-

(i) any payment made by a person who, having been admitted to one part of a place of entertainment, is subsequently admitted to another part thereof for admission to which a payment involving duty or more duty is required,

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(d) “admission to an entertainment”, includes admission to any place in which the entertainment is held or any place where from the entertainment is provided by means of cable connection from any type of antenna with a cable network attached to it or cable television for Direct-to-Home (DTH) Broadcasting service;

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(f) “entertainment duty”, or “duty” in respect of any entertainment means the entertainment duty levied under section 3;

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3. Duty on payments for admission to entertainment. –

(1) There shall be levied and paid to the State Government on all payments for admission to any entertainment [except in the case of video games, exhibition by means of any type of antenna or cable television, or exhibition by means of Direct-to-Home (DTH) Broadcasting service, bowling alley, Go-carting, dance bar, discotheque, amusement park, water sports activity, pool game] a duty (hereinafter referred to as “entertainments duty”) at the following rates, namely:-

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(a) xx xx xx

(b) In the case of every entertainment, [other than exhibition by cinematograph including video exhibition [video games and exhibition by means of any type of antenna or cable television]

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Provided that, in the case of the cabaret entertainment, fifty per cent of the total payment charged by the proprietor per person per show, whether with or without eatables or beverages and whether regular tickets are issued or not, for admission to such entertainment, shall be deemed to be the payment for admission and duty shall be levied thereon accordingly under this clause:

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Provided further that, the entertainment duty in respect of an amusement park shall be 15 per cent of the payment made

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A *for admission to the amusement park, including payment made for admission for games and rides, whether charges separately or not”*

3(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 or at a reduced charge, the entertainment duty shall be levied and paid on 50 per cent; of such lump sum at the rates specified in clause (b) of sub-section (1).*

3(5)(a) *Notwithstanding anything contained in sub-section (2) or in any other provisions of this Act but subject to the provisions of clause (b), on and with effect from the 25th December, 1989, there shall be levied, and paid by the proprietor to the State Government, the entertainments duty in respect of an amusement park in the following manner, namely:-*

E (i) for the first three years from the date of commencement of the amusement park, no duty;

(ii) *for the subsequent two years, at the rate of fifty per cent of the rate of duty leviable under clause (b) of sub-section (1) or, as the case may be, sub-section (2) of section 3;*

F (iii) from the sixth years, full amount of entertainments duty leviable at the rate of specified in clause (b) of sub-section (1) or, as the case may be, sub-section (2) of section 3.

Explanation.- For the purpose of this sub-section,-

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G *(emphasis supplied)*

H 7. The High Court held that entertainment duty to be levied for the amusement park is 50% of 15% i.e. 7.5% under Section 3(2) of the Act, therefore, in terms of Section 3(5)(a) and (b) of the Act, the entertainment duty is 50% of 7.5% i.e. 3.75%. The High Court held that

such interpretation is on the basis of a cumulative reading of the provisions of the Act. A

8. The argument of the learned counsel for the appellants is that Section 3(5)(a) of the Act starts with a non-obstante clause contemplating levy of an entertainment duty in respect of the amusement park, in the manner mentioned therein. Section 3(1) of the Act contemplates levy of entertainment duty in respect of amusement park to be 15% of the payment made for admission to the same. In terms of the non-obstante clause with which Section 3(5)(a) begins, the levy of duty shall be in terms of that sub-section. There is no difficulty in respect of sub-clause (i) of Section 3(5)(a) of the Act, which is to the effect that no duty shall be payable. Sub-clause (ii) of Section 3(5)(a) of the Act contemplates that for the subsequent two years, duty @50% would be leviable under clause (b) of sub-section (1) or, as the case may be, sub-section (2) of section 3 of the Act. B C

9. The learned counsel for the writ petitioners argued that upon a collective reading of the definition of “amusement park” (which means a place where various types of entertainment are provided on a permanent basis on payment for admission) and Section 3(2) which provides that upon payment of admission to entertainment by means of a lump sum amount for the right to admission to a series of entertainments, the entertainment duty would be charged @ 50% of the rates mentioned in Section 3(1)(b). Thus, in the case where the amusement park charges a lump sum amount as a right to admission for all the rides and games available in the said amusement park, then, Section 3(2) will be applicable and the entertainment duty payable by the amusement park would be half of what is provided in Section 3(1)(b) being 15% i.e. 7.5%. D E

10. It is also argued that the proviso to Section 3(1)(b) ends with the phrase “including payments made for admissions for games and rides, whether charged separately or not”. Thus, 15% entertainment tax was payable by the amusement park where it charged an amount for mere admission and the charges for the games and rides being separate. However, where the amusement park charges a lump sum amount which includes the charges for games and rides, the entertainment tax payable would be 7.5 % in terms of Section 3(2). F G

11. It is argued that Section 3(5)(a) of the Act further gives a tax holiday on the duty payable under Section 3(1)(a) or Section 3(2) of the H

- A Act, therefore, for the fourth and fifth year of the operation of the amusement park, the duty would be 3.75%.

12. We do not find any merit in the argument raised by learned counsel for the writ petitioners. In respect of first three years falling in Section 3(5)(a) of the Act, there is no dispute, as no duty is payable.

- B The controversy revolves around the levy of entertainment duty for the fourth and fifth year and subsequently from the sixth year onwards. Sub-clause (ii) of Section 3(5)(a) contemplates that duty @50% under clause (b) of sub-section (1) or, as the case may be, sub-section (2) of Section 3 would be payable. In respect of the first part of sub-clause (ii) of Section 3(5)(a) of the Act, there can possibly be no dispute as the entertainment duty is 50% of 15% leviable under Section 3(1)(b) of the Act.

- D 13. It is sub-section 3(2) of the Act which is required to be interpreted. The said provision is in respect of charging of duty at 50% of the duty fixed in Section 3(1)(b) of the Act to the specific category of visitors to the amusement parks such as payment in:-

- E a) “lump sum as a subscription or contribution to any society”, or
b) “for a season ticket” or
c) “for the right of admission to a series of entertainments” or
d) “any entertainment during a certain period of time”

- F 14. We find that the writ petitioners do not fall in any of the four categories as mentioned above. Category (a) is subscription or contribution in lump sum to any society. The expression Society is not defined in the Act. Therefore, Society would mean a Society registered under the Societies Registration Act, 1860 or other similar statutes. The writ petitioners would not fall in such category as the payment is not to any society. It is not the case of writ petitioners that they have issued a season’s ticket to the visitors. A Season ticket would mean a regular visitor visiting the amusement park regularly at a specific time.

- G 15. Category (d), that entry would be on charging 50% of the duty fixed for any entertainment during a certain period of time, depends upon the decision of the State Government and/or Municipal Corporation to grant that relaxation to enable the writ petitioners or such other amusement park owners to charge duty at a lesser rate.

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16. The prime argument turns around in respect of category (c) as delineated above i.e. for admission to a series of entertainment. The argument of the learned counsel for the writ petitioners is that when a ticket is issued by them, it is a ticket for admission to series of entertainment. We do not find any merit in the said argument. The amusement park is defined under Section 2(a-1) of the Act to mean a place wherein various types of amusements including games or rides or both are provided fairly, on a permanent basis, on payment for admission. The payment for admission is defined under Section 2(b) of the Act as the payment made by a person having admitted to one part of a place of entertainment and subsequently admitted to another part. Section 2(d) of the Act deals with admission to an entertainment which includes admission to any place in which the entertainment is held.

17. The argument that when a lumpsum amount is paid as a right of admission for all rides and games, then it becomes admission to series of entertainment, is not tenable. The writ petitioners issue one ticket including one or more rides or games situated in one compound. It is not the case of the writ petitioners that for every ride or game, it is charging separately. The admission to entertainment in terms of Section 2(d) of the Act includes all rides and games which are provided by the service provider. The series of entertainment as contemplated by Section 3(2) of the Act does not mean that on a single day ticket for one entry, it can be treated to be a series of entertainments. The series of entertainments can be where the facility for a game or ride is provided on multiple days and a combined ticket is issued for events for each day. It will only then be said to be series of entertainment.

18. Once an admission ticket is granted, it is not in terms of Section 3(2) of the Act but only in terms of Section 3(1)(b) of the Act. Section 3(2) of the Act has no applicability for a visitor to an amusement park who does not fall in any of the four categories mentioned in Section 3(2) of the Act. Since, the activities undertaken by the writ petitioners are not failing part of Section 3(2) of the Act, therefore, they are not entitled to rebate of 50% provided to specified category of persons in Section 3(2) of the Act.

19. Section 3(5)(a) of the Act has an overriding effect over Section 3(1)(b) and Section 3(2) of the Act. In respect of the first three years from the date of commencement of the amusement park, there is no issue as no entertainment duty is payable. But, in respect of the subsequent

- A two years, the rate of duty leviable is under clause (b) of sub-section (1) or, as the case may be, under sub-section (2) of Section 3. Section 3(1)(b) of the Act is applicable to all amusement parks whereas Section 3(2) of the Act has a limited applicability only in respect of the specified categories therein. All amusement parks for all entertainment are not entitled to concessional duty in terms of Section 3(2) of the Act. Therefore, the writ petitioners cannot claim benefit under Section 3(2) of the Act. The argument is preposterous as the writ petitioners are firstly claiming the benefit under Section 3(2) of the Act and then under Section 3(5)(a) of the Act. The amusement parks would be entitled to only one benefit either under Section 3(2) or under Section 3(5)(a) of the Act. Since
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- C Section 3(2) is not applicable to all amusement parks for all other activities, therefore, the entertainment duty in terms of Section 3(5)(a) of the Act alone would be leviable. The duty under Section 3(2) of the Act would be leviable only in respect of specified categories mentioned therein.
- D 20. Thus, we are unable to agree with the judgment of the High Court that in terms of Section 3(5)(a) of the Act, the entertainment duty is 50% of the duty payable under Section 3(2) of the Act. Consequently, the order passed by the High Court is set aside. The appeals are allowed.