ENTERTAINMENT TAX OFFICER, MADHAPUR CIRCLE, HYDERABAD

v.

M/S. HI TECH THEATRE, MADHAPUR, HYDERABAD

SEPTEMBER 24, 2007

[S.B. SINHA AND H.S. BEDI, JJ.]

Andhra Pradesh Entertainment Tax Act, 1939:

S.5—Tax payable by cinema owner dependant on gradation of municipality—Upgradation of municipality—Assessing officer ignorant of upgradation—Mistake thereby in computation of tax payable—Held: Mistake can be rectified—Question as to quantum of difference may be determined by appropriate authority after giving opportunity of hearing to assessee—However, assessee not liable to pay any penalty and interest on the said amount.

Respondent owner of a cinema theatre was liable to payment of entertainment tax. S. 5 of Andhra Pradesh Entertainment Tax Act, provided for computation of tax on the basis of an option to be exercised by the owner of the theatre subject to the conditions as may be prescribed therefor. The scheme for exercise of such an option is that; (i) a proprietor has to file an application in the prescribed form before the prescribed authority; (ii) the authority would pass an order upon giving an opportunity of hearing to the owner of the theatre for correct determination of the amount and the nature of security to be furnished by the proprietor for proper payment of tax and the time within which such security to be furnished; (iii) once such security is furnished the Entertainment Tax Officer is required to grant a permit in the prescribed form, namely, Form IV wherafter, the proprietor of the cinema theatre is to pay tax in the manner indicated therein.

The cinema theatre in question is situated within Serilingampally Municipality. In terms of Notification dated

A **18.5.2001, the Municipality was upgraded to Grade II from Grade III. The respondent filed application in terms of the scheme prior to 18.5.2001.**

Form IV was issued to the respondent on 25.5.2001.

B **During assessment of tax proceedings in terms of the option exercised by the respondent, the Entertainment Tax Officer was not aware of the factum of upgradation of the Municipality in terms of the said Notification dated 18.5.2001. The mistake was pointed out only by the Office of the Accountant General. A show cause notice** C **in terms of s. 5(6) of the Act was, therefore, issued on the respondent on or about 24.6.2005.**

The question for consideration before this Court is whether in terms of s. 5(6), an order of varying the quantum of tax could be D **passed only during the currency of period for which such tax is to be paid.**

Partly allowing the appeal, the Court

HELD: 1. In the fact situation attention of the assessing E **authority might not have been drawn to the Notification dated 18.5.2001 in terms whereof the Municipality was upgraded from Grade III to Grade II, a mistake was committed in the matter of computation of tax. If a genuine mistake has been committed not only by the assessing authority in the said matter and furthermore** F **as the respondent also did not bring the same to the notice of the said authority, interest of justice would be subserved if the said mistake be allowed to be rectified. [Para 10] [609-C-D]**

2. The question in regard to the quantum of difference may be determined by an appropriate authority after giving an opportunity G **of hearing to the respondent. The respondent shall neither be liable to pay any interest on the said amount nor shall not be exigible to any penalty. [Para 14] [611-E]**

Swamy Theatre, Sanatnagar **v.** *Deputy Commercial Tax Officer, Sanatnagar, Hyderabad,* **(1992) Vol. 15; A.P. Sales Tax Journal 63;**
H

Union of India and Ors. **v.** *Bikash Kuanar,* **(2006) 10 SCALE 86 and** *Shri Shekhar Ghosh* **v.** *Union of India and Anr.,* **(2006) 11 SCALE 363, referred to.** A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4491 of 2007. B

From the Judgment and final Order dated 6.1.2006 of the High Court of Judicature of Andhra Pradesh at Hyderabad in W.P. No. 20087 of 2005.

R. Sundervardhan, Manoj Saxena, Rahul Shukla and T.V. George for the Appellant. C

N. Annapoorani for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. Delay condoned. D

Leave granted.

(1) Interpretation of Sub-section(6) of Section (5) of the Andhra Pradesh Entertainments Tax Act, 1939 in the facts and circumstances as obtaining herein falls for our consideration in this appeal which arises out E of a judgment and order dated 6.1.2006 passed by a Division Bench of the Andhra Pradesh High Court in Writ Petition No. 20087 of 2005 allowing the writ petition filed by the respondent herein.

(2) The basic fact of the matter is not in dispute. F

(3) Respondent owns a cinema theatre. It is exigible to payment of entertainment tax. Section 4 of the Andhra Pradesh Entertainment Tax Act provides for the mode and manner for calculating the quantum of tax payable. Section (5) of the said Act, however, provides for computation of tax on the basis of an option to be exercised by the owner of the theatre G subject to the conditions as may be prescribed therefor. Indisputably, the State has made rules for calculation of the tax in lieu of such an option exercised by the owner of the cinema theatre. The scheme for exercise of such an option is that;(i) a proprietor shall file an application in the prescribed form before the prescribed authority;(ii) the authority would H

A pass an order upon giving an opportunity of hearing to the owner of the theatre for correct determination of the amount and the nature of security to be furnished by the proprietor for proper payment of tax and the time within which such security to be furnished;(iii) once such security is furnished the Entertainment Tax Officer is required to grant a permit in B the prescribed form, namely, Form IV wherafter, the proprietor of the cinema theatre is to pay tax in the manner indicated therein.

(4) Sub-Section (6) of Section (5), however, entitles the prescribed authority to vary the amount of tax payable if one or the other conditions contained therein is satisfied.

C

(5) In this case the respondent filed an application in the prescribed 'Form' exercising an option under Section 5 of the Act. The cinema theatre in question is situated within Serilingampally Municipality. It is now not in dispute that in terms of a Notification dated 18.5.2001 the Municipality D was upgraded to Grade II from Grade III.

(6) Form IV was issued to the respondent on 25.5.2001. Although, the correct date of the filing of the application is not available on records but the respondent must have filed the said application prior to 18.5.2001.

E (7) It is possible that during assessment of tax proceedings in terms of the option exercised by the respondent, the Entertainment Tax Officer was not aware of the factum of upgradation of the Municipality in terms of the said Notification dated 18.5.2001. The mistake was pointed out only by the Office of the Accountant General. A show cause notice in F terms of Sectin 5(6) of the Act was, therefore, issued on the respondent on or about 24.6.2005.

(8) The question which arose for consideration before the Appellant and, consequently, before the High Court was as to whether in terms of Sub-section (6) of Section (5) of the Act read with Sub-Rule 13 of Rule G 27, the words "during the period of option" referred to the power of the prescribed authority to vary the amount of tax payable or only the amount of tax payable.

(9) Respondent in support of its plea that an order of varying the H quantum of tax could be passed only during the currency of the period

for which such tax is to be paid submitted that the said words restrict the power of the assessing authority to vary the amount of tax payable which would mean that on the expiry of the said period, the power to vary the amount of tax also comes to an end. Such a construction appears to have found favour by the Andhra Pradesh High Court in *Swamy Theatre, Sanatnagar* v. *Deputy Commercial Tax Officer, Sanatnagar, Hyderabad,* (1992) Vol. 15 A.P. Sales Tax Journal 63).

(10) Having heard learned counsel for the parties, we are of the opinion that it is not necessary for us to go into the aforementioned question. In the fact situation obtaining herein, we are satisfied that attention of the assessing authority might not have been drawn to the Notification dated 18.5.2001 in terms whereof the Municipality was upgraded from Grade III to Grade II, a mistake was committed in the matter of computation of tax. If a genuine mistake has been committed not only by the assessing authority in the said matter and furthermore as the respondent also did not bring the same to the notice of the said authority, in our opinion, interest of justice would be subserved if the said mistake be allowed to be rectified.

(11) In *Union of India & Ors.* v. *Bikash Kuanar,* (2006) 10 SCALE 86 this Court held:

> " It is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation require compliance of the principles of natural justice. It is only in a case where the mistake is apparent on the face of the records, a rectification thereof is permissible without giving any hearing to the aggrieved party."

(12) In *Shri Shekhar Ghosh* v. *Union of India and Anr.,* (2006) 11 SCALE 363 , it was held:

> " It is not denied or disputed that even when a mistake is sought to be rectified, if by reason thereof, an employee has to suffer civil consequences ordinarily the principles of natural justice are required to be complied with..."

It was further held:

"If a mistake is to be rectified the same should be done as expeditiously as possible. (See: *Board of Secondary Education, Assam* v. *Mohd. Sarjumma*, [2003] 12 SCC 408)

We are not oblivious that in *Ram Chandra Tripathi* v. *U.P. Public Services Tribunal IV and Ors.*, [1994] 5 SCC 180, an order passed by way of a mistake was permitted to be corrected as the same was done in violation of the order of injunction. In such a situation only, this Court held that an opportunity of being heard for correcting such mistake would not arise because there would not have been any occasion to take one view or the other in the matter on the basis of representation to be made by the affected employee.

It is also not a case where a mistake was apparent on the face of the records and, thus, compliance of the principles of natural justice would not have been made any difference as was in the case of *Smt.Ratna Sen nee Roy* v. *The State of West Bengal and Ors.*, (1995) 1 Cal. LT 462.

Requirements to comply with the principles of natural justice would, therefore, vary from case to case. if upon giving an opportunity of hearing to an affected employee, it is possible to arrive at a different finding, the principles of natural justice must be complied with. We may notice that recently in *Union of India and Ors.* v. *Bikash Kuanar,* (2006) 10 SCALE 86, a Division Bench of this Court opined:

" ....It is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation require compliance of the principles of natural justice. It is only in a case where the mistake is apparent on the face of the records, a rectification thereof is permissible without giving any hearing to the aggrieved party."

(13) We may, however, notice that whereas according to the respondent the difference in the quantum of tax was as under:

(1) From 18-5-2001 to 25-5-2001 -Rs.16,724/-. A

(2) From 26-5-2001 to 14-6-2001 is Rs.27,624/-

(GCC increased due to enhancement of rates of admission)

3) From 15-6-2001 to 31-3-2001 is Rs.16,724/-(GCC restored to Rs.16,724/-because the licensing authority refused B to grant permission for enhancement);

according to the appellant the said difference would be:

1. GCC Rs.18,562.00 18-5-2001 to 25-5-2001 E.Tax Rs.89,840.00 C
2. GCC Rs.27,624.00 26.5.2001 to 14.6.2001 E.Tax Rs.1,33,700.00
3. GCC Rs.18,562.00 15.6.2001 to 2.9.2001 E.Tax Rs.89,840.00 D
4. GCC Rs.19,549.00 3.9.2001 to 31.3.2002 E.Tax Rs.94,617.00

(14) We are, therefore, of the opinion that the question in regard to the quantum of difference may be determined by an appropriate authority E after giving an opportunity of hearing to the respondent. We, however, make it clear that the respondent shall neither be liable to pay any interest on the said amount nor shall not be exigible to any penalty . We also make it clear that computation of the difference in the amount of tax shall be confined only to the matter of upgradation of Municipality and no other. F

(15) The appeal is allowed to the aforementioned extent. No costs.

D.G. Appeal partly allowed.