

A ENTERTAINMENT TAX OFFICER, HYDERABAD

v.

M/S. GEETA ENTERPRISES

(Civil Appeal No. 4798 of 2008 etc.)

AUGUST 4, 2008

B [A.K. MATHUR AND AFTAB ALAM, JJ.]

C *Andhra Pradesh Entertainments Tax Act, 1939 – s. 5 (6)*  
– *Entertainment tax– Cinema Theatres opted to pay the tax u/*  
D *s 5 – Variation of tax in view of upgradation of the local area*  
*where they were situated – Demand raised for differential*  
*amount after expiry of period of option – Validity of – Held:*  
*The demands were not invalid only because they were raised*  
*after expiry of the period of option – The authority can vary the*  
*tax at any time if there is change in the circumstances calling*  
*for the variation during the period of option – Andhra Pradesh*  
*Entertainments Tax Rules, 1939 – r. 27 (13).*

E Respondents-Cinema theatres had opted to pay the  
entertainment tax on slab basis u/s 5 of Andhra Pradesh  
Entertainments Tax Act, 1939. During the period of option,  
the local area where they were situated was upgraded. In  
view of the upgradation, tax amount also varied. Pre-  
F scribed authority raised demand for the differential tax  
amount. Respondents challenged the demand contend-  
ing that the demand was bad as it was raised after the  
period of option was over. High Court allowed the writ  
petitions and held that power to vary the tax must be re-  
stricted to the period of option. Hence the present appeals.

G Allowing the appeals, the Court

HELD: 1.1 The impugned demands did not suffer  
from any invalidity simply because those were raised af-  
ter the period of option was over. [Para 12] [872 D-E]

H 1.2 According to the High Court any revision of rates

under Section 5(6) of Andhra Pradesh Entertainments Tax Act, 1939 would be valid only in case any of the four eventualities as stipulated in sub-section (6) of Section 5 took place during the period of permission granted under section 5(1) and the prescribed authority passed the order varying the fixed amount of tax also within that period. The meaning put by the High Court on section 5(6) gives rise to some problem when one comes to Rule 27 (13) of Andhra Pradesh Entertainments Tax Rules, 1939. Rule 27 (13) is quite unambiguous and it only uses the expression "at any time" and not "during the period of option permitted under this section". [Paras 9 and 10] [871 A-B, 871 B-C]

1.3 The meaning put by the High Court on Section 5(6) of the Act is not acceptable. The expression "during the period of option permitted under this section at any time" does not refer to the power of the prescribed authority at all but it refers to the happening of the events enumerated in the sub section that would form the basis to vary the fixed amount of tax. Alternatively, the long expression "during the period of option permitted under this section at any time" may be divided into two parts; the first part, "during the period of option permitted under this section" referring to any of the four events taking place and the second part "at any time" referring to the prescribed authority". Thus read, the meaning of Section 5(6) becomes plain and clear and rule 27(13) gets back its normal meaning, there being no need to give it any forced restricted meaning. [Para 11] [871 F G H 872 B-C]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4798 of 2008

From the final Judgment and Order dated 11.8.2005 of the High Court of Judicature of Andhra Pradesh at Hyderabad in W.P. No. 17325 of 2004 & 12643 of 2005

WITH

A C.A. Nos. 4799 & 4800 of 2008

June Chaudhary and Anoop G. Choudhary, Manoj Saxena, Rajneesh Kumar Singh, Rahul Shukla and T.V. George for the Appellant.

B V. Bhaskar Reddy, S. Udaya Kumar Sagar, Bina Madhavan, Venayagam (for M/s. Lawyer's Knit & Co.), V. Sridhar Reddy and V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

C **AFTAB ALAM, J.** 1. Heard counsel for the parties.

2. Leave granted.

D 3. All the three appeals arise from same or similar sets of facts and involve a common question of law. Hence, all the three appeals were taken up together and are being disposed of by this judgment. The dispute relates to demands raised by the prescribed authority in terms of Section 5(6) of the Andhra Pradesh Entertainments Tax Act, 1939 as the provision was in existence at the material time (Section 5 now stands deleted by Act 32 of 2005 with effect from 4.6.2005). The Prescribed Authority raised the impugned demands in view of the fact that the local authorities within which the respondents' cinema theatres were situate were upgraded during the period the three respondents had the permission to pay their taxes following the slab system as provided under section 5 of the Act. The demands were, of course, raised long after the period for which permission was granted was over. The controversy in regard to the legal validity of the demands turns on an interpretation of the expression "during the period of option permitted under this Section at any time" occurring in sub-section (6) of Section 5 and the expression "at any time" used in sub-rule (13) of Rule 27 of the Andhra Pradesh Entertainment Tax Rules, 1939. The Andhra Pradesh High Court has interpreted the aforesaid expressions in a certain way and if that interpretation is correct the conclusion arrived at by the High Court that the demands were invalid and unenforceable is perfectly unexceptionable.

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But the question is whether the High Court's interpretation of those expressions is correct and sound. A

4. Here, we may advert to the basic facts which are very brief and undisputed. All the three respondents are engaged in the business of exhibiting films having taken out requisite licenses under the Andhra Pradesh Cinematographic Act and the Andhra Pradesh Entertainments Tax Act, 1939. The cinema theatres of M/s. Geeta Enterprises and M/s. Sreedevi 70 MM (respondents in SLP(C) No.9512/06 and SLP(C) No.11420/06 respectively) are situate in Chandan Nagar, Serilingampally. For financial years 2001-02 and 2002-03 both the respondents paid entertainment tax on slab basis in terms of Section 5 of the Act (as it was in existence at that time) by making applications in Form III and obtaining their respective permits in Form IV. Serilingampally, where the two theaters are situate, used to be a Grade III Municipality but by a Government Notification issued on 19.5.2001 it was upgraded as a selection grade municipality with effect from 18.5.2000, that is to say, during the period the two respondents were granted permission to pay their taxes on the basis of the slab system. Here, it may be noted that in terms of the table that was part of Section 5, cinema theatres situate in a selection grade municipality attracted a higher rate of tax than the one situate in a grade III municipality. Notwithstanding the upgradation of the local authority within which the two cinema theatres were situate the appellants went on making weekly payments of the tax amounts as shown in their respective permits, at the rate relating to a grade III municipality. The Prescribed Authority issued notices dated 31.8.2004 to the two appellants raising demands of the differential tax amounting to Rs.10,19,875/- in case of M/s. Geeta Enterprises and Rs.11,85,863/- in case of M/s. Sreedevi 70 MM for the period of 18.5.2001 to 31.3.2002. The prescribed authority issued another notice dated 1.6.2005 making a demand of Rs.3,91,377/- against M/s. Geeta Enterprises for the period 4.4.2002 to 27.6.2002; against M/s. Sreedevi 70 MM a similar demand of Rs.95,820/- was made on the basis of a re-

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A vised Form IV for the year 2002-2003 vide order dated  
30.5.2005. M/s. Kumari Talkies, the respondent in SLP (C)  
No.21778/2006 was given a similar demand for the differential  
amount of tax by the prescribed authority on the ground that  
during the period of option the population of Kaikalur Gram  
B Panchayat, in Krishna district, where the respondent's cinema  
theatre was situate had increased and had gone over 15,000.

5. All the three respondents challenged the demands raised  
against them by the prescribed authority before the Andhra  
Pradesh High Court. The High Court allowed the writ petitions  
C filed by the three respondents and quashed the impugned de-  
mands relying upon its earlier decision dated 25.6.1992 in *M/*  
*s. Swami Theatre, Sanathnagar vs. Deputy Commercial Tax*  
*Officer, Santhnagar*. W. P. Nos.8432/88 and 14970/89.

D 6. Here, it will be useful to take a look at the relevant statu-  
tory provisions before going to the High Court decision in the  
case of *Swamy Theatre* (supra). Section 5 of the Act gave the  
option to the theatre's proprietor to pay entertainment tax on  
slab basis. The provision allowed for payment of a fixed weekly  
amount as tax, determined on the basis of such factors as the  
E status of the local authority within which the cinema theatre was  
situated and the facility of air-conditioning or air cooling, if any,  
provided in the theatre etc. Sub-section (6) of the section em-  
powered the prescribed authority to vary the fixed amount of tax  
on the happening on any of the four events enumerated in the  
F sub-section. Section 5(6), when it was on the statute book, was  
as follows:

G “(6). It shall be lawful for the prescribed authority to vary  
the amount of tax payable by the proprietor under sub-  
section (1) *during the period of option permitted under*  
*this section at any time –*

- (a) where the amount of tax payable under sub-section  
(1) has been modified by law; or
- H (b) if there is an increase in the gross collection capacity

per show in respect of the place of entertainment by virtue of an upward revision of the rate of payment for admission therein or of the seating capacity or accommodation thereof; or

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(c) *where the local area in respect of which permission is granted is upgraded; or*

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(d) if it is found for any reason that the amount of tax has been fixed lower than the correct amount.”

(emphasis added)

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7. The other relevant provision in this regard was Rule 27 of the A. P. Entertainments Tax Rules that dealt with the details concerning payment of entertainment tax on slab basis. Sub-rule (13) of Rule 27 provided as follows:

“(13). The Entertainments Tax Officer may revise the amount of tax payable by the proprietor under sub-section (1) of Section 5 of the Act *at any time* if there is an increase in the gross collection capacity per show in respect of the place of entertainment by virtue of upward revision of the rate or the rates of payment for admission therein or of the seating capacity or accommodation thereof or where the local area, in respect of which permission is granted is upgraded or if it is found for any reason that the amount of tax has been fixed lower than the correct amount.”

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(emphasis added)

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8. In view of the provisions in the Act and the Rules it was contended on behalf of the respondents that the prescribed authority undoubtedly had the power to vary the amount of tax fixed under section 5 but the power could only be exercised during the period for which the permission was allowed. It was pointed out that in the three cases the impugned demands were raised, admittedly, long after the period for which the permission was allowed was over. The impugned demands were, therefore, bad, invalid and unenforceable. The High Court, relying

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A upon an earlier decision in *Swamy Theatre* upheld the respondents' contentions, set aside the impugned demands and allowed the writ petitions filed by the respondents.

B 9. In the case of *Swamy Theatre*, a Division Bench of the A.P.High Court earlier held that the expression "during the period of option permitted under this section at any time" imposed a limitation on the exercise of the power by the prescribed authority to vary the amount of tax fixed under section 5(1) of the Act. The Division Bench held as follows:

C "A reading of sub-section (6) of Section 5, which confers  
D power on the prescribed authority to vary the amount of  
E tax, in our opinion, clearly shows that the power to vary  
must be restricted to the period of option. The period  
during which the power to vary the amount of tax is the  
"period of option". The language employed is specific and  
admits of no ambiguity. The jurisdiction facts conferring  
power to vary the amount of tax as laid down in sub-section  
(6) are: (1) Increase in the gross collection capacity per  
show because of upward revision of the rate of payment  
for admission; (2) Increase in the seating capacity or  
accommodation; (3) Up gradation of the local area where  
the theatre is situate; and (4) If a lower rate of tax was  
fixed due to any other reason. If the above said jurisdiction  
facts are present, the opening words of section 6, namely,  
"it shall be lawful for the prescribed authority to vary the  
amount of tax payable by the proprietor under sub-section  
(1) during the period of option permitted under this section  
at any time" come into operation. The words "at any time"  
signify the limitation of time aspect confining the same to  
the period of option. In other words, the period of option  
qualifies the time factor inferable from the words "at any  
time"."

H Thus, according to the High Court, the expression "during the period of option permitted under this section at any time" referred to the power of the prescribed authority to vary the

amount of tax fixed under section 5(1). Hence, any revision of rates under section 5(6) would be valid only in case any of the four eventualities as stipulated in sub-section (6) of Section 5 took place during the period of permission granted under section 5(1) and the prescribed authority passed the order varying the fixed amount of tax also within that period.

10. The meaning put by the High Court on section 5(6) gave rise to some problem when one came to rule 27 (13). As noted above rule 27 (13) is quite unambiguous and it only uses the expression "at any time" and not "during the period of option permitted under this section". The High Court tried to overcome the problem by reading the rule subject to its interpretation of section 5(6). The High Court observed:

"The question is: Whether the words "at any time" occurring in sub-rule (13) confer power on the authority to revise the tax without regard to the period of limitation? Our answer is in the negative. *When once the section specifically curtails the power of the authority to vary the tax only during the period of option*, it cannot be accepted that a rule can confer on the authority the power to vary the tax without regard to the period of option. The words "at any time" occurring in sub-rule (13) of Rule 27 must, therefore, be interpreted as limiting the power to vary the tax "during the period of option". The words "during the period of option" occurring in sub-section (6) must be read into sub-rule (13). Otherwise, it will be ultra vires the section."

11. We are unable to agree to the meaning put by the High Court on Section 5(6) of the Act. In our view, the expression "during the period of option permitted under this section at any time" does not refer to the power of the prescribed authority at all but it refers to the happening of the events enumerated in the sub section that would form the basis to vary the fixed amount of tax. To make our meaning clear we may read sub-section (6), insofar as relevant for the present, in the following way: "Where, at any time during the period of option permitted under

- A this section, the local area in respect of which permission is granted is upgraded, it shall be lawful for the prescribed authority to vary the amount of tax payable by the proprietor under sub-section". Alternatively, the long expression "during the period of option permitted under this section at any time" may be
- B divided into two parts; the first part, "during the period of option permitted under this section" referring to any of the four events taking place and the second part "at any time" referring to the prescribed authority". Thus read the meaning of Section 5(6) becomes plain and clear and rule 27(13) gets back its normal
- C meaning, there being no need to give it any forced restricted meaning.

12. In view of the discussions made above, we find and hold that the decision of the A.P. High Court in the case of *Swamy Theatre* did not lay down the correct law. The orders passed by
- D the High Court in the writ petitions filed by the three respondents relying upon the decision in *Swamy Theatre* are accordingly set aside and it is held that the impugned demands did not suffer from any invalidity simply because those were raised after the period of option was over. All the writ petitions filed by
- E the respondents in the High Court stand dismissed. In the result, the appeals are allowed.

13. It may, however, be made clear that this judgment finds and holds that the impugned demands did not suffer from invalidity because those were raised after the period of option was
- F over. In case the respondents have any other grievances against the impugned demands it will be open to them to seek their remedies, if any is available, under the provisions of the Act.

K.K.T.

Appeals allowed.