

CASE NO.:
Appeal (civil) 5161 of 2007

PETITIONER:
M/s Jaswant Talkies

RESPONDENT:
Commercial Taxes Officer, Bhilwara

DATE OF JUDGMENT: 12/11/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5161 OF 2007
(Arising out of SLP (C) No. 7053 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a learned Single Judge of the Rajasthan High Court at Jodhpur, allowing the revision filed by the respondent. The said revision petition was filed under Section 86 of the Rajasthan Sales Tax Act, 1994 (in short the 'Act').
3. Factual position which is almost undisputed is as follows:

The appellant is an exhibitor of cinematograph films. On 3.2.1996 cinema hall of the appellant was inspected by the Commercial Tax Inspectors. At that time a movie "Alladdin" was being shown in the morning show. At the time of inspection, 878 viewers were found watching the movie without tickets. It was found that the daily collection register maintained by the appellant was not properly maintained. The inspectors put their signatures after drawing a line in the register so that no entry can be made thereafter. Alleging that the appellant admitted 878 viewers without tickets, a show cause notice was issued under Section 10 of the Rajasthan Entertainment and Advertisement Tax Act, 1957 (in short the 'Entertainment Act') prima facie being of the view that offence under Sections 6(1) and 6(2) of the Entertainment Act has been committed. The appellant submitted its reply and stated that girl students of a school had gone to watch the movie which was meant for children and in any event there was no scope for imposition of penalty of Rs.500/- in respect of each viewer. The Commercial Tax Officer, Bhilwara was of the view that penalty at the rate of Rs.500/- per viewer was to be imposed and in addition penalty of Rs.500/- under Section 10(3)(b) was also to be imposed. The officer was of the view that mere fact that children of Mahila Aashram were being shown the picture and the tickets were to be handed over to the school authorities after counting the number of children was not relevant.

The inspection was done at 10.00 a.m. when the school children had just entered the hall and, therefore, even before

the show started the inspection was done. The order of assessment was challenged before the Commissioner (Appeals). The said authority found that all the tickets were with the Manager of the Cinema, but since each viewer did not possess a ticket there was contravention. Therefore, penalty under Section 10(3)(a) of the Entertainment Act was upheld while setting aside the penalty imposed under Section 10(3)(b)(iii).

The appellant preferred an appeal against the said order before the Rajasthan Taxation Board, Ajmer (in short the 'Taxation Board'). Before the Taxation Board, it was contended that the total cost of the tickets was Rs.3006/- and penalty of Rs.4,39,000/- at the rate of Rs.500/- per viewer was unconscionable. The Taxation Board found that the penalty that was imposed was not imposable at the rate of Rs.500/- per viewer and the maximum penalty imposable was Rs.500/-.

Revenue filed a revision petition as noted above and by the impugned order penalty imposed by the Assessing Officer was restored.

4. In support of the appeal, learned counsel for the appellant submitted that the High Court has relied on a decision of its own Court in Maharana Talkies, Bhilwara v. State of Rajasthan and Ors. (2004 (1) STT 237 (Raj.HC)) ignoring the view expressed in State of Rajasthan and Ors. V. RTT and Ors. (2003 WLC (Raj.)) which held that no penalty can be levied per person. The High Court also, it is pointed out, held in that case that the subsequent amendment was not clarificatory.

5. Learned counsel for the State on the other hand supported the order.

6. The legislative history of the statutory provision needs to be noted.

Section 10 of the Rajasthan Entertainment and Advertisement Act, 1957 existing pre-1982

10. Offence and penalties. - (1)

Notwithstanding anything contained in any law for the time being in force, a ticket for admission to an entertainment shall not be resold for profit by the holder thereof.

(2) Whoever re-sells any ticket for admission in contravention to the provisions of sub-section (1) shall, on conviction before a Magistrate, be liable to pay fine which may extend to two hundred rupees.

(3)(a) The proprietor of any entertainment or any person employed by him in any place of entertainment, who admits any person to any place of entertainment in contravention of the provisions of sub-section (1) or sub-section (2) of Section 6, or

(b) The proprietor of an entertainment who \026

(i) fails to pay the tax due from him under this Act within the prescribed time, or

(ii) fraudulently evades the payment of tax due from him under this Act,

(iii) contravenes any of the provisions of this Act or the rules framed thereunder for which no other penalty has been provided under this Act.

shall be liable to pay by way of penalty, in addition to the amount of tax payable by him a sum not exceeding Rs.500/-.

Section 10 of the Rajasthan Entertainment and Advertisement Act, 1957 from 1982

10. Offence and penalties. - (1)

Notwithstanding anything contained in any law for the time being in force, a ticket for admission to an entertainment shall not be resold for profit by the holder thereof.

(2) Whoever re-sells any ticket for admission in contravention to the provisions of sub-section (1) shall, on conviction before a Magistrate, be liable to pay fine which may extend to two hundred rupees.

(3)(a) The proprietor of an entertainment or any person employed by him in any place of entertainment, who admits any person to any place of entertainment in contravention of the provisions of sub-section (1) or sub-section (2) of Section 6, or

(b) The proprietor of an entertainment who

(i) fails to pay the tax due from him under this Act within the prescribed time, or

(ii) fraudulently evades the payment of tax due from him under this Act, or

(iii) contravenes any of the provisions of this Act or the rules framed thereunder for which no other penalty has been provided under this Act.

shall be liable to pay by way of penalty

(i) in respect of cases referred to in clause (a) and sub-clauses (i) and (iii) of clause (b) in addition to the amount of tax payable by him, a sum not exceeding Rs.500/- and

(ii) in respect of cases referred to in sub-clause (ii) of clause (b) in addition to the amount of tax payable by him a sum not exceeding rupees five hundred or double the amount of tax evaded whichever is higher.

(4) The prescribed authority not below the rank of an Assistant Commercial Taxes Officer may, after affording a reasonable opportunity of being heard to the person affected, impose the penalty mentioned in sub-section (3).

(5) The person affected may, within one month of the communication of the order directing payment of any sum by way of penalty under sub-section (3) appeal to the prescribed authority.

Amended Section 10 of the Rajasthan Entertainment and

Advertisement Act, 1957 with effect from 31.7.1998

10. Offence and penalties (1) Notwithstanding anything contained in any law for the time being in force a ticket for admission to an entertainment shall not be resold for profit by the holder thereof.

(2) Whoever re-sells any ticket for admission in contravention to the provisions of sub-section (1) shall, on conviction before a Magistrate, be liable to pay fine which may extend to two hundred rupees.

(3)(a) The proprietor of an entertainment or any person employed by him in any place of entertainment, who admits any person to any place of entertainment in contravention of the provisions of sub-section (1) or subsection (2) of Section 6, or

(b) the proprietor of an entertainment who

(i) fails to pay the tax due from him under this Act within the prescribed time, or

(ii) fraudulently evades the payment of tax due from him under this Act, or

(iii) contravenes any of the provisions of this Act or the rules framed thereunder for which no other penalty has been provided under this Act shall be liable to pay by way of penalty-

(i) in respect of cases referred to in clause (a) and sub-clause (1) of clause (b)

regarding entertainment tax, in addition to the amount of tax payable by him, a sum not exceeding Rs.100/- per person;

(ii) in respect of cases referred to in sub-clause (1) of clause (b) regarding

advertisement tax and in respect of cases referred to in sub-clause (iii) of clause (b)

in addition to the amount of tax payable by him, a sum not exceeding Rs.500; and

(iii) in respect of cases referred to in sub-clause (ii) of clause (b) in addition to the amount of tax payable by him a sum not exceeding Rupees five hundred or double the amount of tax evaded whichever is higher.

(4) The prescribed authority not below the rank of an Assistant Commercial Taxes Officer may, after affording a reasonable opportunity of being heard to the person affected, impose the penalty mentioned in sub-section (3).

7. It is to be noted that Section 10 of the Entertainment Act has been amended w.e.f. 31st July, 1998. The amended provision permits imposition of penalty per person. Section 10(3)(b) contemplates two types of penalties. The first relates to cases covered by clause (a) and sub-clauses (i) and (ii) of Clause (b). The second relates to sub-clause (ii) of Clause (b) of Sub-Section 3 of Section 10. The case at hand relates to clause (a) of sub-section (3) of Section 10. If the position was clear as contended by learned counsel for the State that the penalty is to be at the rate of Rs.500/- per person, there was no reason for the amendment which specifically provided for imposition of penalty per person.

8. The Statement of Objects and Reasons for the amendment also throw considerable light on this position. The same reads as follows:

B. Amendment in the Rajasthan Entertainment and Advertisements Tax Act, 1957
Certain amendments in the Rajasthan Entertainment and Advertisements Tax Act, 1957 have been considered necessary and were under consideration for quite some time past. Owing to repeal of the Rajasthan Sales Tax Act, 1954 and coming into force of new Act of 1994, definition of the term 'Sales Tax Act', and due to proposed induction of certain new provisions in the 'Act of 1957', definitions of the terms 'appellate authority', 'Tax Board' and 'Tribunal' are proposed to be inserted vide clause 9 of the Bill.

To provide for limitation for assessments, new section 5BB, to ensure effective recovery of the out-standing entertainment tax by providing special mode of recovery, substitution of section 9, to enable payment of outstanding dues in installments, new section 5BB, to enable the Commissioner to reduce or waive interest and penalty under the Act in case of genuine hardship, new section 9C are proposed to be inserted, substituted or inserted, as the case may be, vide clauses 12, 13 or 14 of the Bill respectively.

Moreover to make the penalty provision more practicable, section 10 (3) (b) is proposed to be substituted vide clause 15 of the Bill. Besides above, to provide for statutory remedy of first appeal, new section 13-A, to provide for appeal against order of appellate authority, new section 13-B, to provide for revision to tribunal, new section 13-C provide for powers of revision to Commissioner in case of an order passed by the prescribed authority being erroneous or prejudicial to the interest of State revenue, new section 13D, and to provide for rectification of mistakes apparent from the record, new section 13-E; are proposed to be inserted vide clause 19 of the Bill.

Some of the consequential or minor amendments are also proposed in various sections of the Act of 1957 vide clauses 10, 11, 17, 20 and 21 of the Bill.

Extract of the Rajasthan Finance Bill, 1998 Relevant portion:

15. Amendment of Section 10, Rajasthan Act No. 24 of 1956:

In section 10 of the principal Act, -

(a) for existing clause (b) of sub-section (3), the following clause shall be substituted, namely:

"(b) the proprietor of any entertainment who -

(i) fails to pay the tax due from him under this Act within the prescribed time, or
(ii) fraudulently evades the payment of tax due from him under this Act, or
(iii) contravenes any of the provisions of this Act or the rules framed thereunder, for which no other penalty has been provided under this Act, shall be liable to pay by way of penalty:

(i) in respect of cases referred to in clause (a) and sub-clause (i) of clause (b)

regarding entertainment tax, in addition to the amount of tax payable by him, a sum not exceeding Rs.100/- per person.

(ii) in respect of cases referred to in sub - clause (i) of clause (b) regarding advertisement tax and in respect of cases referred to in sub-clause (iii) of clause (b), in addition to the amount of tax payable by him, a sum not exceeding Rs.500; and
(iii) in respect of cases referred to in sub clause (ii) of clause (b) in addition to the amount of tax payable by him a sum not exceeding Rupees five hundred or double the amount of tax evaded whichever is higher."

(b) sub-section (5) shall be deleted.

9. It is also irrational that as against a tax liability of Rs.3006/-, penalty of Rs.4,39,000/- was to be imposed. Though in all cases quantum would not be a relevant factor, but on analyzing the scheme of the Statute it is clear that the stress is on the contravention. The contravention essentially is of admitting persons without valid ticket and at the relevant point of time, had no nexus with the number of persons. To make the provision stringent the shift has been made to per person. But the amendment has no retrospective effect and as noted above is not clarificatory.

10. As noted above, the amendment does not appear to be clarificatory in nature as contended by learned counsel for the respondent-State. The view of the High Court therefore is not correct. The conclusion of the Taxation Board was the correct view.

11. The appeal deserves to be allowed which we direct. There shall be no order as to costs.