Chief Justice's Court
Serial No.3040/E-File

HIGH COURT OF JUDICATURE AT ALLAHABAD
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WRIT TAX No.194 of 2022

Pronounced on : January 18, 2023

Rajendra Pratap Singh .....Petitioner

Through : Mr. Shambhu Chopra, Senior Advocate with Ms. Mahima Jaiswal, Advocate

v.

State of U.P. and others .....Respondents

Through : Mr. Nimai Dass, Additional Chief Standing Counsel with Mr. Apurva Hajela, Standing Counsel for the respondents

CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE J.J. MUNIR, JUDGE

ORDER

1. The present writ petition has been filed praying for quashing of an order dated July 13, 2021 passed by the Joint Secretary, State Tax Department, U.P., Annexure-1 to the writ petition, vide which the claim of the petitioner for providing subsidiary grant after he had set up a cinema hall in rural area was rejected. Further challenge has been made to recovery notice dated August 24, 2021 issued by Assistant Commissioner, Trade Tax, Chandauli, Anneuxre-27 to the writ petition. Further, a direction has been sought to respondent No.1 to provide subsidiary grant to the petitioner with reference to the period mentioned in the scheme dated July 21, 1986.

2. Mr. Shambhu Chopra, learned Senior Advocate appearing for the petitioner submitted that the Government had come out with a scheme dated July 21, 1986 (hereinafter referred to as the "Scheme") pertaining to setting up of new permanent cinema halls. Under the Scheme, such cinema halls, for first year, were to be paid subsidiary grant equal to 100%

of the amount of entertainment tax payable with regard to the movie exhibited. Thereafter, for second and third year they were to be paid equal to 74% and 50% of the entertainment tax, respectively. The idea was to promote setting up of more means of entertainment in the rural areas, for which the Scheme was meant. One of the clause of the Scheme provided that benefit will be available to any entrepreneur, who applies for licence to run a cinema hall between January 1, 1984 to March 31, 1990. In the case in hand, the petitioner had applied for licence on February 26, 1990. Mr. Chopra submitted that the case of the petitioner having been recommended by the different authorities keeping in view the fact that the Scheme was an exercise of the State for grant of certain benefits, liberal construction was required but still despite his repeated attempts the benefit was not granted to him. The petitioner had set up the cinema hall relying upon the Scheme.

3. Mr. Chopra, learned Senior Advocate further contended that licence was granted to the petitioner under the Uttar Pradesh Cinematograph Rules, 1951 (hereinafter referred to as the "Rules") for running the cinema hall from February 21, 1991 and any delay in the process was in the hands of the respondents, which was beyond the control of the petitioner. He further submitted that before passing the impugned order, no opportunity of hearing was afforded to the petitioner despite earlier order passed by this Court, as a result of which he was unable to present his case before the authority concerned for proper consideration.

4. The contention has also been raised that the Scheme does not provide anywhere that construction of the cinema hall has to be completed upto March 31, 1990, as it only provided filing of an application for grant of licence to run the cinema hall, which the petitioner had filed. The licence was granted to him on February 21, 1991, which clearly establishes that the petitioner had fulfilled all the conditions laid down for the purpose. The issue sought to be raised in the present petition is to the decision making process adopted by the State, which should have been fair. Any decision taken after following due process has to be examined thereafter on merit. He further referred to certain examples where, according to the petitioner,

benefits of the Scheme have been granted to the entrepreneurs, who had set up the cinema hall in similar circumstances.

5. On the other hand, stand taken by the learned counsel for the respondents is that due opportunity was granted to the petitioner to respond to the notice issued. The reply filed by the petitioner was duly considered. The Scheme clearly provides that application for grant of licence should have been filed between January 1, 1984 to March 31, 1990. In terms of the provisions of the Rules, such an application can be filed only after fulfilment of certain conditions. In the case in hand, the building of cinema hall was still under construction when the petitioner applied for the licence, as evident from the facts mentioned in the impugned order. At the time of inspection, number of discrepancies were found and the certificates/documents required to be annexed by the petitioner with the application were lacking. Merely because the petitioner has been granted licence to run the cinema hall on February 21, 1991, will not mean that he would be entitled to get the benefits under the Scheme, as he does not fulfil the conditions laid down therein. Any such scheme has to be interpreted strictly. It is not a case where there was any delay on the part of the respondents, rather the petitioner just with a view to avail benefits under the Scheme, had filed application for grant of licence under the Rules to run the cinema hall even before construction thereof. It was so found in the inspection made by the respondents.

6. With reference to the argument regarding discriminatory treatment to the petitioner, he submitted that the aforesaid argument is not available to the petitioner for the reason that he cannot raise a plea of negative discrimination in Court.

7. Heard learned counsel for the parties and perused the record.

8. The issue arises with reference to a communication of the Government dated July 21, 1986 referred to as the Scheme. It was circulated by the Government to encourage setting up of new permanent cinema halls in the rural areas, which has reference to an scheme earlier issued by the

Government on September 17, 1983. As certain difficulties were noticed in implementation thereof, fresh Scheme was issued. It providied for subsidiary grant equal to 100% of the amount of entertainment tax payable with regard to the movie exhibited. Thereafter, for second and third year they were to be paid equal to 74% and 50% of the entertainment tax, respectively. The condition was also laid down that aforesaid grant shall be paid to new permanent cinema halls constructed under the Scheme. The Scheme also provided that application for grant of licence under the Rules to run the cinema hall has to be made between January 1, 1984 to March 31, 1990. Certain other conditions were also laid down in the Scheme, which are not required to be referred to in detail for the reason that legal issue required to be considered in the present petition does not hinge on that. It is not a case where there is any procedural error, rather it is a case where very eligibility of the petitioner to receive benefits under the Scheme is the core question.

9. As per Clause 4 of the Scheme to avail of the benefits therein, an application for grant of licence under the Rules has to be filed between January 1, 1984 to March 31, 1990. It is admitted case that such an application was filed on February 26, 1990. However, in terms of Rule 4 of the Rules, an application for grant of licence to run a cinema hall is required to be accompanied with certain documents, which are as follows:

> "(a) The order or approval of plan under Rule 3(1);
>
> (b) Plan of the building and premises containing the specification enumerated in sub-rule (2) of Rule 3;
>
> (c) Plan of seating arrangements for each class, separately;
>
> (d) Certificate from the Electrical Inspector to Government that the electrical installations conform to the required standards and the existing rules;
>
> (e) Certificate from the Medical Officer of Health having jurisdiction that the arrangements for sanitation conform to the requirements of the existing rules; and

(f) Certificate from the Regional Fire Officer having jurisdiction that the arrangements for fire-fighting appliances provided and the precautions taken against fire conform to the requirements of the existing rules."

10. As the final cut off date in the Scheme for being eligible to avail of the benefits was March 31, 1990, as is evident from the impugned communication, an inspection was carried out by the Assistant Entertainment Commissioner, Varanasi on April 1, 1990 and following discrepancies were found:

"(i) The construction work of walls and rooms of the cinema building has been completed.

(ii) Inside the auditorium 3/4 part of work has been completed and the rest is in progress. 7 angles (कैंचा) for roof have been installed and tin shades for 4 rows of roof have been installed and these are yet to be installed for the two.

(iii) The stage has been completed, but the screen has not been installed nor has the projector been installed in cabin nor has the work of foundation been found in progress. No seat has been laid in any room of balcony and ground floor in auditorium. Six doors have been installed but the flaps are to be fixed. The work of flooring of hall is in progress. The work of dumping soil in auditorium and veranda has been completed, plastering is to be done.

(iv) There is no electric fan and fire-fighting equipment in the auditorium, it was said to be kept in a room.

(v) Plastering work outside the hall is underway. Levelling work of outer open space remains incomplete. Boundary is not constructed."

11. In the inspection report, it has also been mentioned by the Inspecting Officer that at the time of the inspection, the film exhibition was not in a condition to be started. Thereafter on January 9, 1991, the spot inspection of the cinema hall was again conducted by the Assistant Entertainment Tax Commissioner wherein the following shortcomings/defects were found:

> "a. The ventilation flow exhausters have not been installed to let out the smoke emitted from the machines in the projection room. The same be installed.
>
> b. There is no door fixed in the female toilet and urinals built near the balcony. The same be fixed.
>
> c. The way leading to the rewinding room passes through the projection room though as per rules, it should be out of the projection room."

12. The aforesaid reports of inspection clearly establish the fact that the date on which the petitioner filed the application for grant of licence or on the last date as provided under the Scheme, even the basic infrastructure was not complete and the petitioner did not have requisite permission on the basis of which licence to run cinema hall could be issued.

13. Merely because the petitioner had moved an application for grant of licence within the period specified under the Scheme will not entitle him to avail of the benefits under the Scheme when the pre-requisites for grant of licence have not been fulfilled.

14. The argument that grant of licence to the petitioner on February 21, 1991 under the Rules clearly establishes that the petitioner is entitled to the benefits under the Scheme is totally misconceived. Two issues are sought to be mixed up. Grant of licence is merely to run the cinema hall. It does not ipso facto entitle the petitioner to avail of benefits as are provided for under the Scheme, as for availing of the benefits under the Scheme, the conditions laid down therein are also to be fulfilled.

15. As far as the other argument of the learned counsel for the petitioner are concerned, they are also only to be noticed and rejected. All the issues sought to be raised by the petitioner even before this Court, have been duly dealt with in the impugned order. We have afforded opportunity of hearing to the petitioner to make out his case. We do not wish to relegate the petitioner as earlier also he had filed a writ petition. Merely because his case was recommended on wrong presumption of various clauses in the Scheme, will not entitle the petitioner to claim benefits to which he is not entitled, as not fulfilling the conditions laid down therein.

16. As far as liberal construction of Scheme being beneficial is concerned, the argument deserves to be rejected, as all the conditions laid down in the Scheme have to be strictly fulfilled to avail of the benefits therein.

17. The question as to the interpretation tools to be applied while interpreting a tax exemption provision/notification, when there is an ambiguity as regards its applicability or entitlement of the assessee, was referred to be considered by a Constitution Bench of Hon'ble the Supreme Court in **Commissioner of Customs (Import), Mumbai v. M/s Dilip Kumar and Company and others (2018)9 SCC 1**. Paras 1 and 2 of the aforesaid judgment throw light on the issues examined by the Constitution Bench of Hon'ble the Supreme Court. These read as under:

> "1. This Constitution Bench is set up to examine the correctness of the ratio in Sun Export Corporation. v. Collector of Customs (1997) 6 SCC 564 (hereinafter referred to as 'Sun Export case', for brevity), namely, the question is — What is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?
>
> 2. In Sun Export case (supra), a three-Judge Bench ruled that an ambiguity in a tax exemption provision or notification

must be interpreted so as to favour the assessee claiming the benefit of such exemption. Such a rule was doubted when this appeal was placed before a Bench of two Judges. The matter then went before a three Judge Bench consisting one of us (Ranjan Gogoi, J.). The three-Judge Bench having noticed the unsatisfactory state of law as it stands today, opined that the dicta in Sun Export case (supra), requires reconsideration and that is how the matter has been placed before this Constitution Bench."

18. It was further observed in the aforesaid judgment that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of the consequences thereof. Paras 21, 22 and 23 thereof are extracted below:

"21. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature.

22. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

23. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain

> language results in absurdity, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation."

19. In para 29 of the aforesaid judgment it was opined that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive interpretation cannot be applied nor any resort is made to look to other supporting material, especially in taxation statutes. It is well-settled that in a taxation statute, there is no room for any intendment. Regard has to be given to the clear meaning of the words and the matter has to be governed wholly by the language used therein. Equity has no place. Para 29 thereof is extracted below:

> "29. We are not suggesting that literal rule dehors the strict interpretation nor one should ignore to ascertain the interplay between "strict interpretation" and "literal interpretation". We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor

drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute."

20. The discussion in Para 55 in the judgment regarding the stages at which rule of strict interpretation is to be applied and in case of ambiguity the beneficiary thereof, are quite relevant for consideration of the point in issue in the present writ petition. It was opined that at the stage of taxing a subject, in case of ambiguity the benefit goes to the subject whereas in case of ambiguity in exemption provision the benefit goes to the revenue. Para 55 is extracted below:

"55. There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualising different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the Revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him,

that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the Revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view." (emphasis supplied)

21. After elaborate discussions on all the issues, the reference to the Constitution Bench was answering in the following terms:

"66. To sum up, we answer the reference holding as under:

66.1. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

66.3. The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands over-ruled."

22. It has been authoritatively held in the aforesaid judgment of Hon'ble the Supreme Court that exemption notifications are to be interpreted strictly and the burden to prove that an assessee falls within the four corners

of exemption notification lies on him. If the facts of the case in hand are examined in that light, the petitioner has not been able to prove that he is eligible to avail the benefits as provided for under the Scheme, as he had not fulfilled the conditions laid down therein.

23. For the reasons mentioned above, we do not find any merit in the present writ petition. The same is, accordingly, dismissed.

(J.J. Munir, J.) (Rajesh Bindal, C.J.)

Allahabad
18.01.2023
Rakesh

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes