K. Viswanathan Vs. the State of Madras Represented by Commissioner of Commercial Taxes Board of Revenue, Madras

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Court : Chennai

Decided On : Mar-03-1961

Reported in : AIR1961Mad525

Judge : Ramachandra Iyer and ;Kunhamed Kutti, JJ.

Acts : Madras Entertainments Tax Act, 1939 - Sections 4(1) and 7

Appeal No. : Appeal No. 206 of 1958

Appellant : K. Viswanathan

Respondent : The State of Madras Represented by Commissioner of Commercial Taxes Board of Revenue, Madras

Advocate for Def. : Govt. Pleader and ;G. Ramanujam, Adv.

Advocate for Pet/Ap. : T.R. Srinivasa Iyengar, Adv.

Disposition : Appeal dismissed

Judgement :

Ramachandra Iyer, J.

1. This appeal arises from the decree of the Second Assistant City Civil Judge, Madras, in O. S. No. 1722 of 1956 dismissing the suit instituted by the appellant for recovery of a sum of Rs. 17,252-7-0, under the following circumstances.

2. The appellant is the Proprietor of a picture house in Madras known as 'Chitra Talkies'. Under the provisions of the Madras Entertainments Tax Act the appellant paid certain sums by way of entertainment tax in respect of the five annas ticket sold by him between the period 15th August 1949 to 18th October 1953. The amount paid was at the rate of one anna per five annas ticket. The appellant later on discovered as a result of a communication received from the Assistant Commercial Tax Officer that the tax due on a ticket of the gross value of five annas was only nine pies, and not one anna, and alleging that he had paid a sum of Rs. 17,252-7-0 by way of excess tax under a mistake of law, filed the suit for recovery of that sum from the Government

2a. The suit was contested substantially on three grounds, (1) that the payment made to the Government was not the money of the appellant hut what was collected by the appellant on its behalf, (2) that the appellant would not be entitled to obtain a refund of payment made voluntarily, though under a mistake of law, (3) that the claim was barred by limitation under Section 18 of the Madras Entertainments Tax Act. The learned City Civil Judge upheld the objections of the Government under all the three heads and dismissed the suit. Hence this appeal.

3. It is unnecessary to consider the correctness or otherwise of the view taken by the Assistant City Civil Judge on the question whether a party would be entitled to relief in respect of a payment under a mistake of law, or whether the suit claim was barred by the provisions of Section 18 of the Madras Entertainments Tax Act as we are of opinion that his conclusion on the first point is correct.

4. The Madras Entertainments Tax Act was enacted to impose tax on amusements and other entertainments in the State of Madras. The relevant portions of the Act as it stood at the time when the payment of entertainment tax was made by the appellant to the Government are as follows:

5. Section 4(1) states:

'On such payment for admission to any entertainment, there shall be levied and paid to the State Government (except as otherwise expressly provided in this Act), a tax (hereinafter referred to as the entertainments tax) calculated at the following rates .... Provided that in the case of cinematograph exhibitions, the tax shall he calculated at the rates specified above on each payment of admission, after excluding from such payment the amount of the tax' (the rest of the section is omitted as unnecessary).

Section 7(1) states:

'The entertainments tax shall be levied in respect of each person admitted on payment, and shall be calculated and paid on the number of admissions.'

Sub-clause (2) states:

'The entertainments tax shall be due and be recoverable from the proprietor.'

It will be seen that under the provisions extracted above the management of a cinema for example is made the collecting agent for the tax. The amount so collected is a tax On the individual attending the entertainment. It being a tax will be due to the Government and not to the proprietor of the cinema. There is however no evidence in this case to show whether the appellant collected the tax by adding the sum of one anna to a four anna ticket, or by collecting five annas in lump sum from the picture goes undertaking to pay whatever tax that may be duo thereon to the Government from out of the collections. Ex. B. 1 is a typical statement of the tickets sold. That gives only particulars of the number of tickets sold, total amount collected and tax due thereon at one anna per ticket. It does not show that one anna was collected from each member of the audience on the representation that it was for entertainment tax. But the learned trial Judge has observed in his judgment thus:

'Further it will be seen that the collections of tax at the rate of one anna per ticket of 5 annas was made by holding out that it was payable to the Government. The seal or stamp on the ticket bears that the tax payable is one anna.'

The correctness of this statement has not been challenged in the grounds of this appeal. It would follow that although no five annas ticket during the relevant period has been produced in this case, the admitted case of both the parties was that those tickets contained an impression on it, that the entertainment tax payable thereon was one anna.

Thus there was a representation to the individuals who attended the cinema that out of five annascollected for each ticket one anna was collected as land for the entertainments tax.

It was this amount that was paid by theappellant to the respondent. The amount socollected from the persons who attended the cinemawas for paying it over as entertainments tax to theGovernment. If that amount was in excess of whatwas legally due, namely, three pies on each ticket,the excess would belong to the individual who hadpaid the money and not to the appellant, whomerely collected the money on behalf of the State.

6. The management of a cinema is made by the statute an agent as it were for the collection of the entertainment tax; once the collection was made and the amount paid to the Government, the agency would cease. The agent himself would have no interest in the amount collected and paid over to the Government.

7. Learned counsel for the appellant contended that in the circumstances of the case it should be held that the sum of five annas collected in respect of each ticket was a consolidated sum; as the management did not allocate what was due to them, and what was due to the Government as and for the entertainments tax, the entire sum would belong to the management subject to the duty of the management to pay the proper amount of tax to the Government; if under these circumstances, an excess was paid as tax it must be out of the monies belonging to the management, who would therefore be entitled to recover the same on proving that there was a mistake of law in making the payment. We cannot however agree that what was collected in the instant case was a consolidated sum. While charging an individual picture goes five annas for a particular seat the management in the instant ease intended to charge only four annas for itself and one anna for the entertainments tax.. While it may be accepted that what the

appellant paid was in excess of what was due, the excess payment was not of the appellant's money but represented the excess collected from the various persons who attended the cinema shows during the relevant period by purchasing five annas tickets. The question whether a person entrusted by a statute with the duty of collecting a tax as a part of his business can be said to receive it as his business income, arose under the Madras General Sales-tax Act in Velayudhan v. Agricultural Income-tax and Sales-tax Officer, Perumbavoor, 1953 4 S.T.C. 338 (AIR 1953 Trav-Co 618). Subramania Iyer J. while considering the question whether a tax realised by a dealer from his customer could be included in the dealer's turnover thereby subjecting it to further tax observed,

'The sales-tax collected by the petitioner is immune from the levy of any sales-tax as the collection was made by him for and on behalf of the State and his obligation was to make it over to the State on whose behalf he made the collection." This view was affirmed in Agricultural Income-tax and Rural Sales-tax Officer Perumbavoor v. Velayudhan, (1954) 5 S. T. C. 285. In K. M. Kunju v. State of Travaucore Cochin, 1954 5 S. T. C. 462 : AIR 1956 Trav Co 111 , it was held that any amount collected by a registered dealer from his customers by way of tax due to the Government regardless of the fact whether the tax so collected was actually due on the sales or not was a collection which had to be handed over to the State. In Dy. Commr. of Commercial Taxes Coimbatore Division-v. Krishnaswanii Mudaliar, : AIR1954 Mad856 , a Bench of this court holding that there could be no levy of sales-tax on sales-tax collected by a dealer observed that, 'The dealer did nothing to the goods sold in order to enable him to earn the tax that is levied upon the sale. It is an obligation imposed by the State upon transactions of sales which liability is to be borne by the purchaser and the amount is to be collected by the seller not because he is entitled to it in his capacity as seller, but because an obligation has been enjoined upon him to make the collection under the statute.'

We have already referred to the relevant provisions in the Madras Entertainments Tax Act which shows that what is collected by the person providing the entertainment is a tax for being paid over to the Government. The circumstance that such tax is collected along with the admission fee for the particular entertainment cannot alter the nature of what is collected on behalf of the

Government or of the obligation on the part of the person so collecting to transfer the entirety of the amount so collected from the public.

The amount thus collected not being the income of the person providing the entertainment would not form his property so that he can in case there is any payment by mistake recover it back. What was paid to the Government was what was collected on its behalf; if there was an excess collection made, the person aggrieved is the person who paid. The appellant could have no cause of action in respect of such excess collection which was made and paid over to the Government.

8. Agreeing with the lower court, we are of opinion that the excess amount of tax paid to the Government by the appellant was not his property so as to entitle him to recover such excess payment from the Government. The appeal fails and is dismissed with costs.