

THE HIGH COURT OF SINDH KARACHI

Suit No. 618 of 2012

[Abdullah Rafi versus Director Property & Entertainment Tax & others]

Plaintiff : Abdullah Rafi son of Muhammad Rafi [Late] through Mr. Zulfiqar Ali Langah, Advocate.

Defendants 1-2 : Director, Property & Entertainment Tax, Excise & Taxation Department & Deputy Director, Entertainment Wing through Mr. K.A. Vaswani, Assistant Advocate General Sindh alongwith Mr. Aftab Ahmed Sahto, AETO, Excise & Taxation Department, Sindh.

Defendants 3-4 : Nemo.

Date of hearing : 12-02-2021

Date of Decision : 12-02-2021

JUDGMENT

ADNAN IQBAL CHAUDHRY J. - By this suit, the Plaintiff challenged a demand of entertainment duty levied under the Sindh Entertainments Duty Act, 1958. The suit coming up for examination of parties and settlement of issues, it was heard for final judgment in view of Order XV Rule 3 CPC inasmuch as a decision was required on legal issues only.

2. The Plaintiff operates an amusement park consisting of mechanical rides and games. At the relevant time, the Plaintiff charged Rs. 5/- as entry ticket from the general public apart from separate tickets for each of the rides and games inside the park. On both such tickets, the Plaintiff paid entertainment duty to the Excise & Taxation Department, Government of Sindh. The Department contended that under the garb of 'utility charges' the Plaintiff was charging an additional Rs. 5/- from the public (total Rs. 10/-) without issuing the ticket prescribed for such additional charge under section 5 of the Sindh Entertainments Duty Act, and thus evading entertainment duty on the additional charge of Rs. 5/-. Therefore, the Department issued show-cause notice dated 25-11-2011 to the

Plaintiff under section 6 of the Sindh Entertainments Duty Act. In reply, the Plaintiff stated that the additional Rs. 5/- was not being charged as entry ticket, but as 'utility charges' for the provision and maintenance of facilities of toilets, hygiene spray, drinking water, maintenance of lawn, cleanliness etc.

3. The reply given by the Plaintiff to the above show-cause notice was not found satisfactory, and by order dated 14-12-2011 passed under section 6 of the Sindh Entertainments Duty Act, the Director, Property & Entertainment Tax directed the Plaintiff to pay duty of Rs.11,50,000/- evaded up to the middle of November 2011, and in future to pay entertainment duty on the additional Rs. 5/- being charged as utility charges.

4. Against the above demand/order dated 14-12-2011, the Plaintiff preferred a revision application under section 15 of the Sindh Entertainments Duty Act, 1958, which was dismissed by the Director General Excise & Taxation by order dated 22-05-2012. But in filing suit on 30-05-2012, the Plaintiff did not, and has still not challenged the dismissal of the revision, which order was brought on the record by the Department with its written statement as far back as 19-12-2012. An interim order suspending demand dated 14-12-2011 was passed in the suit on 30-05-2012 and therefore the Department did not raise any further demand of entertainment duty.

5. Heard the learned counsel and perused the record.

6. It is the case of the Plaintiff that out of every entry ticket of Rs. 5/-, it remits Rs. 4/- to the KMC for the lease of the park, and the remaining Rs. 1/- is deposited as entertainment duty; that sales of tickets of rides and games inside the park have since declined; therefore in order to meet expenses for maintenance of public facilities at the park, the Plaintiff charges an additional Rs. 5/- as 'utility charges' which does not constitute an 'admission to an entertainment' within the meaning of section 2(a) of the Sindh Entertainments Duty Act, 1958.

On the other hand, it is the case of the Department that the main source of the Plaintiff's revenue is from sale of separate tickets for mechanical rides and games inside the park, which are substantial to cover expenses for maintaining public facilities at the park; that since the Plaintiff charges the additional Rs. 5/- from all those entering the amusement park, such charge constitutes 'admission to an entertainment' within the meaning of section 2(a) of the Sindh Entertainments Duty Act. It was further submitted on behalf of the Department that the suit is not maintainable as the Plaintiff availed the remedy of revision provided by section 15 of the Sindh Entertainments Duty Act, which too was dismissed and was never challenged.

7. It is an undisputed fact that in addition to the entry ticket of Rs. 5/-, the Plaintiff charged a further Rs. 5/- as 'utility charges' from all those visiting the park. Since the Plaintiff pays entertainment duty on the entry ticket of Rs. 5/- and on the separate tickets of the rides and games, it is also not disputed that the Plaintiff provides an 'entertainment' within the meaning of section 2(d) of the Sindh Entertainments Duty Act, 1958. Therefore, apart from the issue whether the suit is maintainable, the only other issue between the parties is whether payment received by the Plaintiff from the public as 'utility charges' for maintenance of public facilities at the park attracts entertainment duty? I advert to the second issue first.

8. Entertainment duty is levied under section 3 of the Sindh Entertainments Duty Act, 1958 which reads as under:

“3. Duty on payments for admission to entertainments.—(1)
There shall be levied and paid to the Government on all payments for admission to any entertainment, a duty (hereinafter referred to as the 'entertainments duty') at the rate of fifty five per cent of such payment, excluding the amount of the duty:

Provided that where the proprietor of an entertainment admits any person to any place of entertainment without any payment or on payment of any amount less than the amount normally charged for admission thereto, the entertainments duty shall nevertheless be levied and paid on the amount which would have been normally charged for admission to that place.

Explanation I. - In case there be different classes in connection with an entertainment, the phrase 'place of entertainment' means the class to which person is admitted.

Explanation II. - The fact that any such person as is mentioned in the proviso to this subsection has been admitted to a class more advantageously placed for reviewing the entertainment than the class to which others making larger payments are admitted may be taken into account for determining whether the payment made is not that normally charged.

(2) Where the payment for admission to an entertainment is made by means of a lump sum paid as a subscription or contribution to any society or for a season ticket or for the right of admission to a series of entertainments or to any entertainment during a certain period of time or for any privilege, right, facility or thing combined with the right of admission to any entertainment or involving such right of admission without further payment or at a reduced charge the entertainments duty shall be paid on the amount of the lump sum, but where the Government is of the opinion that the payment of a lump sum or any payment for a ticket represents payments for other privileges, rights or purposes besides the admission to an entertainment, or covers admission to an entertainment during any period for which the duty has not been in operation, the duty shall be charged on such amount as appears to the Government to represent the right of admission to entertainments in respect of which the entertainments duty is payable."

9. While interpreting section 3 of the Sindh Entertainments Duty Act, 1958, it was observed by the Supreme Court in *Government of West Pakistan v. M/s. Jabees Ltd.* (PLD 1991 SC 870) that:

"5. It may be noticed that subsection (1) of section 3, is couched in very wide terms, as it provides that there shall be levied and paid to the Government on all payments for admission to any entertainment, a duty at the rate of fifty per cent of such payment excluding the amount of the duty. The words "all payments for admission to any entertainment" are of great significance as they cover all payments for admission to any entertainment. It may also be noticed that proviso to subsection (1) makes it clear that if the proprietor of an entertainment admits any person to any place of entertainment without any payment or on payment of an amount less than the amount normally charged for admission thereto, the entertainment duty shall be payable on the amount which would have been normally charged. It may also be observed that Explanations I and II further reinforce the above provision. Whereas, subsection (2) empowers the Government to determine the amount for the admission to an entertainment duty if the payment for admission to an entertainment is made by means of a lump sum paid as a subscription or contribution to any society or for a season ticket or for the right of admission to a series of entertainments or to any entertainment during a certain period of time or for any privilege, right, facility or thing combined with the right of admission to any entertainment or

involving such right of admission without further payment or at a reduced charge etc.

10. It is a well-settled principle of law that all charges upon the subject must be imposed by clear and unambiguous language and a subject is not to be taxed unless the language of the statute clearly imposes the obligation and language must not be stretched in order to tax a transaction, which, had the Legislature thought of it, would have been covered by the appropriate words. It is also a well settled principle of construction of a fiscal statute that one has to look merely at what is clearly said and there is no room for any intendment, there is no equity about a tax, there is no presumption as to a tax and nothing is to be read in and nothing is to be implied and one has to look fairly at the language used. But at the same time, this is also a well settled principle of law that if a person sought to be taxed comes within the letter of law, he must be taxed, however great the hardship may appear to the judicial mind."

10. The levy of duty under section 3 of the Sindh Entertainments Duty Act, 1958 is on "all payment for admission to any entertainment". The words "payment for admission" are defined in section 2(f) as follows:

"2(f). 'payment for admission' includes -

- (i) any payment made by a person who having been admitted to one part of a place of entertainment, is subsequently admitted to another part thereof for admission to which a payment involving duty or additional duty is required;
- (ii) any payment for seats or other accommodation in a place of entertainment;
- (iii) any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment;"

11. Thus, under sub-clause (iii) of section 2(f) of the Sindh Entertainments Duty Act, 1958, 'payment for admission' includes 'any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment', which may be in addition to the entry ticket. In view of such a broadly worded provision it cannot be argued by the Plaintiff that the additional Rs. 5/- charged as 'utility charges' does not constitute a 'payment for admission' when such amount is charged from all those visiting the park alike. The argument that 'utility charges' for public facilities within the amusement park are separate and not subjected to the

levy, is negated also by sub-section (2) of section 3 of the said Act in stipulating that where the payment for admission to an entertainment is made by means of a lump sum paid for any 'privilege, right, facility or thing combined with the right of admission', the entertainments duty shall be paid on the amount of the lump sum unless the Government opines otherwise.

12. Following the dictum of the *Jabees* case *supra*, sections 2(f) and 3 of the Sindh Entertainments Duty Act, 1958 are clear and leave no room for intendment. Consequently the second issue framed above is answered in the affirmative. In addition to entertainment duty on the entry ticket of Rs. 5/-, entertainment duty is also payable by the Plaintiff on the additional Rs. 5/- charged by it as utility charges. Having determined so, there will be no point in determining the issue whether the suit was not maintainable for failing to challenge the order passed in revision. The suit is dismissed.

JUDGE