

"A IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1418 OF 2007

(Arising out of S.L.P.(C) No. 14129 of 2005)

ASHOKBHAI B. VYAS

...APPELLANT

VERSUS

COMMR. OF ENTERTAINMENT TAX AND ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NO. 1419 OF 2007

(ARISING OUT OF S.L.P.(C) NO. 19888 OF 2005

O R D E R

Leave granted.

This appeal is directed against the impugned order dated

21.4.2005 passed by the Division Bench of the Gujarat High Court

whereby the special civil applications filed by the appellant

against the order passed by the Commissioner (Entertainment

Tax) under the Gujarat Entertainment Tax, 1977 raising the

entertainment tax and the penalty thereon was dismissed.

Aggrieved against the said order, present appeal has been filed

by the appellant.

We have heard learned counsel for the parties.

The Division Bench of the High Court has dismissed the

Special Civil Application filed by the appellant relying on the

decision of this Court in State of West Bengal and others Vs.
Purvi Communication Pvt. Ltd. & Ors. 2005 (3) SCALE 274

equivalent to 2005 (3) SCC 711. It is urged by learned counsel
for the appellant that the learned Judges did not go into the
important question with regard to the service of notice on the
appellant- petitioner. It is also pointed out that the provisions of
Gujarat Entertainment Act, 1977 are not para materia with that of
the West Bengal Entertainment cum Amusement Tax Act, 1982.

Learned counsel for the respondent submitted that in fact the
learned counsel who appeared on behalf of appellant did not
dispute the ratio laid down in the aforesaid case. Therefore,
there was no occasion for the learned Judges to have examined
the validity of Gujarat Entertainment Tax Act, 1977 vis-a-vis the
West Bengal Entertainment cum Amusement Tax Act, 1982.

Learned counsel for the respondent submitted that the only
question which was argued before the Division Bench was that
the calculation of the tax was made on the basis of assumption
without carrying out the actual survey and this question was
answered by the Division Bench that this is a question of fact
which cannot be gone into and decided in its writ jurisdiction.

Learned counsel for the appellants strenuously urged
before us that the alleged notice was never served upon the
appellant and he pointed out at three stages from the pleadings

in which he has consistently taken a stand that the notice for the assessment was never served upon him and an ex-parte assessment order was made without any hearing. We asked the learned counsel for the respondent to show that any affidavit has been filed before the High Court or before any other court wherein any evidence has been produced to substantiate the fact that in fact the notice was served on the appellant. Learned counsel also tried to show us from the original record and to justify that the notice was sent to the appellant. It is not possible for us to examine the record in these proceedings. Therefore, we deem it just and proper to remand the matter back to the High Court to examine whether the notice was really served upon the appellant or not. If the notice has been served and despite that the appellant/writ petitioner did not appear before the concerned authority, then it is for the High Court to decide and pass an appropriate order in the facts and circumstances of the case. However, prima facie we are satisfied that the notice has not been served upon the appellant but the learned counsel for the respondent submitted with reference to the original record that the notice was served upon the appellants. This is a question of factual enquiry and can only be done by the High Court whether the notice was really served upon the appellant or not. If it is established that the notice was really served upon the appellant

then what will be the effect of ex-parte assessment order passed by the authority will be examined by the High Court.

Therefore, in the facts and circumstances of the case, we set-aside the impugned order passed by the Division Bench and remit the matter back to the High Court to examine this question of service of notice and other arguments which will be raised by the counsel for both the parties in accordance with law.

The appeal is allowed with no order as to costs.

CIVIL APPEAL NO. 1419 OF 2007
(ARISING OUT OF S.L.P.(C) NO. 19888 OF 2005)

In view of the decision in Civil Appeal No. 1418 of 2007, we set-aside the impugned order passed by the Division Bench and remit the matter back to the High Court to examine this question of service of notice and other arguments which will be raised by the counsel for both the parties in accordance with law.

The appeal is allowed with no order as to costs.

.....J.

[A.K.MATHUR]

.....J.

[TARUN CHATTERJEE]

NEW DELHI

MARCH 15, 2007

ITEM NO.7

COURT NO.9

SECTION III

[NMD Case]

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).14129/2005

(From the judgement and order dated 21/04/2005 in SCA No. 15894/2004
of The

HIGH COURT OF GUJARAT AT AHMEDABAD)

ASHOKBHAI B. VYAS

Petitioner(s)

VERSUS

COMMR. OF ENTERTAINMENT TAX AND ORS

Respondent(s)

(With prayer for interim relief)

(For final disposal)

WITH SLP(C) NO. 19888 of 2005

(With appln.(s) for permission to submit additional documents and urging a
dditional

grounds and exemption from filing O.T. and with prayer for interim relie
f and office

report)

(for final disposal)

Date: 15/03/2007 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Petitioner(s)

Mr. Amar Dave, Adv.

Mr. Mahesh Agrwala, Adv.

Mr. Gaurav Goel, Adv.

Mr. E.C. Agrawala, Adv.

Mr. Sameer Parekh, Adv.

Ms. Mary Mitzy, Adv.

Ms. Ranjeeta Rohthagi, Adv. for

M/S P.H. Parekh & Co.

For Respondent(s)

Mr. R.P. Bhatt, Sr. Adv.

Ms. Hemantika Wahi, Adv.

Ms. Pinky Behera, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

Appeals are allowed in terms of signed order.

(Pardeep Kumar)

Court Master

(Radha R. Bhatia)

Court Master

[SIGNED ORDER IS PLACED ON THE FILE]