

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO(S) 6892 OF 2018
[ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL)
NO.13253/2017]**

GYPSY PEGASUS LTD. . . . APPELLANT(S)

VERSUS

THE STATE OF GUJARAT & ORS. . . . RESPONDENT(S)

ORDER

1. Leave granted.

2. The appellant - Assessee is an Event Organizer who had arranged a live musical concert in the Sardar Patel Stadium, Navrangpura, Ahmedabad on 23rd December, 2016. Entertainment tax under Section 3 of the Gujarat Entertainments Tax Act, 1977 (for short "the Act") on the gate receipts of the musical program has been levied which was questioned by the appellant before the High Court. The High Court having answered the question in the negative i.e. against the appellant - Assessee the present appeal has been filed.

3. We have heard the learned counsels for the parties.

4. Section 3 of the Act is the charging Section. Section 3A of the Act which was brought in by an amendment in the year 1998 reads as follows:

“3A. Certain entertainments free from tax. Notwithstanding anything contained in section 3, there shall not be levied and paid the tax to be State Government on any payment for admission to entertainments specified in the Schedule III.”

5. Schedule III to the Act specifies the lists of entertainments that Section 3A of the Act takes out of the purview of the charging Section. The particular form of entertainment that we are concerned with is first item in Schedule III to the Act, namely, “All kinds of musical programmes including musical nights and opera”.

6. Section 29 of the Act provides for exemption from payment of entertainment tax by issuance of notification in the Official Gazette

and upon fulfillment of the conditions specified therein. One such condition for grant of exemption is that the entertainment must be provided for educational, medical, cultural, charitable, or such other purpose.

7. A perusal of the order of the High Court would go to show that the primary ground for rejection of the appellant's claim is that the musical concert organized by the appellant was not for the purposes of promotion of cultural activities and was for commercial purposes.

8. The claim of the appellant - Assessee has been sought to be resisted by Shri Pritesh Kapur, learned counsel appearing for the respondent - State by contending that a reading of the budget speech of the Hon'ble Finance Minister which had led to the amendment of the Act introducing Section 3A would go to show that the purport of Section 3A was to fast track the exemptions available under Section 29 of the Act. He has additionally submitted that a musical concert would not be a musical event as it is not a "musical work". In this regard, he has relied on the definition of the

term “musical work” contained in Section 2(p) of the Copyright Act, 1957. Attempts have also been made to persuade the Court that the common understanding of the word “music” would exclude a live musical concert.

9. The matter lies within a short compass. Section 3 of the Act is the charging section whereas Section 3A of the Act makes certain forms of entertainments non-taxable. If a form of entertainment is not taxable under Section 3A of the Act we do not see how the requirement of exemption and necessity to conform to the requirement of exemption can apply to a non-taxable form of entertainment.

10. We have read and considered the speech of the Hon’ble Finance Minister which had led to the amendment of the Act by incorporation of Section 3A and what we find therefrom is that all kinds of musical programmes, without any qualification, have been sought to be taken out of the purview of the charging section. If that is so, we can find no substance in the arguments advanced on behalf of the State; neither can we agree with the reasoning

of the High Court. The High Court could not have imposed the requirement of the entertainment to be for educational, cultural or charitable purpose when the form of entertainment in question is included in Schedule III to the Act. We, therefore, set aside the order of the High Court and allow this Appeal.

....., J.
(RANJAN GOGOI)

....., J.
(R. BANUMATHI)

....., J.
(NAVIN SINHA)

NEW DELHI
JULY 24, 2018

ITEM NO.23

COURT NO.2

SECTION III

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 (C) NO(S). 13253/2017
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 30-03-2017
IN SCA NO. 2444/2017 PASSED BY THE HIGH COURT OF GUJARAT AT
AHMEDABAD)

GYPSY PEGASUS LTD.

PETITIONER(S)

VERSUS

THE STATE OF GUJARAT & ORS.
(FOR FINAL DISPOSAL)

RESPONDENT(S)

Date : 24-07-2018 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s)

Mr. Harin P. Raval, Sr. Adv.
Mr. D.N. Ray, Adv.
Mr. Lokesh K. Choudhary, Adv.
Ms. Disha Ray, Adv.
Mr. Dillip Kumar Nayak, Adv.
Mr. Nipun Saxena, Adv.
Mr. Aditya Arora, Adv.
Mrs. Sumita Ray, AOR

For Respondent(s)

Mr. Pritesh Kapur, Adv.
Ms. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.
Ms. Vishakha, Adv.
Ms. Mamta Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

[VINOD LAKHINA]

[ASHA SONI]

AR-cum-PS

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]