

Before S.J. Vazifdar, C.J. & Anupinder Singh Grewal, J.

SKILL LOTTO SOLUTIONS PVT.LTD.— Petitioner

versus

STATE OF PUNJAB AND ORS.— Respondents

CWP No.21500 of 2016

May 30, 2017

Constitution of India, 1950 – Art. 226 and 227 – Punjab Tax on Lotteries Act, 2005 – Levy of tax rate – Demand of higher tax by the State – The Schedule 2005 was amended on 23rd December, 2015 where the tax per draw had been reduced to Rs.62,000 – On 5th November, 2016, the Schedule was again amended to increase the tax per draw to Rs.80,000/- – Held, there was nothing on record to indicate that the reduction in tax was contingent upon the increase in the number of daily draws - the State can lawfully collect tax only at the rate notified under the Act – The State had only tried to remedy the situation by increase in tax as there was a shortfall in the collection of tax – Tax cannot be imposed without legislation, therefore demand raised by the State is held without authority and the tax collected by them for the period over and above Rs.62,000 per draw would have to be refunded.

Held that, per contra, the learned counsel appearing for the State has contended that the tax had been reduced by the State Government on the representation and assurance of the petitioners that they would be willing to carry out 48 draws per day and on their inability to adhere to their commitment the respondents are seeking to collect tax to make up for the shortfall of the revenue in this regard.

(Para 3)

Further held that, there is nothing whatsoever in the amendment to the Schedule dated 23.12.2015 wherein the tax per draw had been reduced to Rs.62,000/- or any other notification to the effect that reduction in tax was contingent upon the increase in the number of daily draws.

(Para 12)

Further held that, perhaps noticing the shortfall in the collection of tax, the respondents have tried to remedy the situation by notifying the increase in tax per draw on 05.11.2016 while amending the Schedule to increase the tax per draw to Rs.80,000/-. Nonetheless, the

respondents could not have charged any amount over and above that notified in the Schedule to the Act of 2005. In the eventuality of the respondents suffering any loss or reduction in tax revenue on account of the reduction of tax per draw it was open to them to increase the tax or amend the Act to correlate the tax to the number of draws. However, the respondents have notified the increase in tax only on 05.11.2016.

(Para 13)

Further held that, it is trite that tax cannot be imposed without legislation. Article 265 of the Constitution of India states that no tax shall be levied or collected except by authority of law. The power to impose tax is a legislative function and any amount collected or sought to be collected as tax over and above that notified under the Act would be without legislative sanctity and patently illegal. Therefore, the demand raised by the respondents is without the authority of law and is liable to be set aside and the tax collected by the respondents for the period 23.01.2016 to 21.02.2016 over and above Rs.62,000/- per draw would have to be refunded.

(Para 14)

Ashish Chopra, Advocate
Ajiteshwar Singh, Advocate
for the petitioner in CWP No.21500 of 2016.

Piyush Kant Jain, Advocate
for the petitioners in CWP Nos.23315 and 23728 of 2016.

Sudeepti Sharma, Deputy Advocate General, Punjab
for the respondents.

ANUPINDER SINGH GREWAL, J.

(1) These three writ petitions are being decided by a common order as similar questions of law and facts arise therein. For the sake of convenience, the facts are being referred from Civil Writ Petition No.21500 of 2016. Reply has been filed in CWP No.23315 of 2016. Learned counsel for the respondents had adopted the same in the other two writ petitions.

(2) The petitioners have sought quashing of letters/demand notices dated 23.05.2016 (Annexure P-4), 30.05.2016 (Annexure P-5), 18.07.2016 (Annexure P-7), 14.09.2016 (Annexure P-11), 20.09.2016 (Annexure P-16), 10.10.2016 (Annexure P-17 & 17A) and 26.10.2016 (Annexure P-13A) raising a demand of Rs.1.12 crores, Rs.1.12 crores, Rs.37.35 lacs, Rs. 1.12 crores, Rs.66.51 lacs, Rs.12.45 lacs, Rs.12.45

lacs, Rs.2.84 lacs and Rs.9,61,000/- respectively for alleged default pertaining to shortfall in the draws of lottery/card games for the period of 23.01.2016 to 21.02.2016 and sought a further direction to respondents to comply with the provisions of the Punjab Tax on Lotteries Act, 2005 (hereinafter referred to as the '2005 Act') as amended vide Notification No.S.O.61/S.4/P.A.18/2005 dated 23.12.2015 amending the Schedule of tax levied on card games from Rs.80,000/- to Rs. 62,000/-. They have also sought refund of the amount of Rs.37,35,000/- along with interest allegedly illegally deducted on this account.

(3) Learned counsel appearing for the petitioners have contended that in terms of the Notification issued on 23.12.2015 whereby the Schedule of 2005 Act was amended to levy tax at the rate of Rs. 62,000/- per draw, the action of the respondents in demanding higher tax at the rate of Rs. 80,000/- per draw is arbitrary, illegal and without any authority under the law. Per contra, the learned counsel appearing for the State has contended that the tax had been reduced by the State Government on the representation and assurance of the petitioners that they would be willing to carry out 48 draws per day and on their inability to adhere to their commitment the respondents are seeking to collect tax to make up for the shortfall of the revenue in this regard.

(4) The petitioners are engaged in the business of, inter alia, conducting lotteries, interactive games on commission basis or otherwise as agents/distributors for operating various lotteries and to provide infrastructure solutions for gaming and related interactive services. They are stated to be operating and marketing the lotteries including the Punjab State New Year Lohri Bumper, 2016 and Punjab State Visakhi Bumper, 2016. The petitioners are stated to have deposited tax at the rate of Rs.80,000/- in the month of December, 2015 and by letter dated 24.12.2015 sought the adjustment of excess payment of Rs.80,000/- against payment of tax on lotteries for the month of January, 2016 in view of the notification dated 23.12.2015 reducing the tax to Rs.62,000/- per draw. The petitioners are stated to have calculated the tax on lotteries for the month of January, 2016 at Rs.1,86,00,000/- and after adjusting the aforementioned excess payment deposited an amount of Rs.1,69,80,000/- on 01.01.2016. However, the respondent No.2 by the letter/notice dated 23.05.2016 asked the petitioners to deposit an amount of Rs.1.12 crores and in case of failure of the petitioners to do so, the respondents would recover the same in

three monthly installments. The petitioners by the letter dated 28.06.2016 responded thereto and stated that they had given no assurance for conducting 48 draws. However, vide the impugned notice dated 18.07.2016, respondent has sought to collect total shortfall of Rs.1.12 crores in three installments. A division bench of this Court on 10.11.2016 had passed interim order that in case amount of tax as calculated in terms of the notification dated 23.12.2015 had been paid, the recovery of additional amount shall remain stayed.

(5) Therefore, the question which arises for adjudication in these petitions is whether the respondents were justified under the law in collecting tax at the rate of Rs. 80,000/- per card game for the period 23.01.2016 to 21.02.2016.

(6) The State of Punjab through Notification dated 17.11.2005 enacted the Punjab Tax on Lotteries Act, 2005 to provide for levy and collection of tax on draw of lotteries and for matters connected therewith or incidental thereto. Section 3 of the Act which states that tax could be levied and collected per draw, is reproduced hereunder:-

“3. (1) There shall be levied and collected a tax, per draw on the lotteries at the rates, as specified in the Schedule.

(2) The tax levied under sub-section (1), shall be paid by every promoter.”

The schedule notified on 17.11.2005 provides for tax for cardgames at the rate of Rs.80,000/- per draw. The schedule is set out hereunder:-

“PUNJAB GOVT.(EXTRA),NOVEMBER17, 2005 203

(KARTIKA 26, 1927 SAKA)

SCHEDULE

(See Sections 3 and 4)

Serial No.	Type of Lottery	Amount of Tax Per draw in (Rs.)
1	2	3
1	-	-
2	-	-
3	Card games*	80,000/-
4	-	-

5	-	-
6	-	-
7	-	-
8	-	-
9	-	-
10	-	-

- *Enhanced for Card Games form Rs.55,000/- to Rs.80,000/- w.e.f. 20.10.2014”

(7) However, the respondents by the Notification dated 23.12.2015 amended the Schedule and reduced the rate of tax on card games to Rs.62,000/-. The notification reads as under:-

“ PART III GOVERNMENT OF PUNJAB

DEPARTMENT OF FINANCE

(FINANCE EXPENDITURE-VI BRANCH)

NOTIFICATION

The 23rd December, 2015

No.S.O.61/S.4/P.A.18/2005.- In exercise of the powers conferred by section 4 of the Punjab Tax on Lotteries Act,2005 (Punjab Act No.18 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment with immediate effect, in the Schedule, appended to the said Act, namely:-

AMENDMENT

In the said Schedule, for the existing serial number 3 and the entries relating thereto, the following serial number and the entries relating thereto shall be substituted, namely:-

“3. Card Games Rs. 62,000”

(8) Thereafter, the respondents by the Notification dated 05.11.2016, once again amended the Schedule and increased the tax on card games to Rs.80,000/-. The notification is reproduced hereunder:-

“ PART III GOVERNMENT OF PUNJAB

DEPARTMENT OF FINANCE
(FINANCE EXPENDITURE-IV BRANCH)

NOTIFICATION

The 5th November, 2016

No.S.O.76/P.A.18/2005/S.4/2016.- In exercise of the powers conferred by section 4 of the Punjab Tax on Lotteries Act 2005, (Punjab Act No.18 of 2005), and all other powers enabling him in behalf, the Governor of Punjab is pleased to make the following amendment in the Schedule appended to the said Act, with immediate effect namely:-

AMENDMENT

In the said Schedule, for serial No.3 and entries relating thereto, the following serial number shall be substituted, namely:-

“3. Card Games Rs. 80,000”

(9) It is thus apparent that the rate of tax on card games per game was Rs.80,000/- per draw w.e.f. 17.11.2005 and it was reduced to Rs.62,000/- per draw w.e.f. 23.12.2015. This had continued till 05.11.2016 whereon it was again increased to Rs.80,000/- per draw. Thus the rate of tax for the period in dispute 23.01.2016 to 21.02.2016 was Rs.62,000/- per draw in terms of the notification issued by the State Government under the Act.

(10) We are not impressed by the argument of the respondents that it was on the assurance and commitment of the petitioners to conduct 48 draws per day that the rate of tax was reduced. It is true that the petitioners along with other operators had requested the Government of Punjab to reduce the tax on card games and assured to increase the number of draws. One such request by letter dated 01.12.2015 is appended with the reply as Annexure R-I. However this by itself cannot be the basis for recovering any amount towards tax on lotteries de hors notification to this effect. It is also stated by respondents that in the meeting of the Council of Ministers it was ordered to reduce the tax on experimental basis for one month and it was further decided that if there is loss then the rate of tax would be revised. There is no reference whatsoever to any assurance or commitment made by the petitioners which led to the reduction in tax on card games per draw.

(11) We do not find any material on record to indicate that the increase in tax was contingent upon the petitioners conducting more draws. Even assuming that the reduction in tax was on the assurance and commitment of the petitioners to conduct 48 draws per day, the respondents can lawfully collect tax only at the rate notified under the Act. Mere noting on the file or discussion in the Council of Ministers about the number of draws cannot have any bearing on the rate of tax as notified under the Act.

(12) There is nothing whatsoever in the amendment to the Schedule dated 23.12.2015 wherein the tax per draw had been reduced to Rs.62,000/- or any other notification to the effect that reduction in tax was contingent upon the increase in the number of daily draws.

(13) Perhaps noticing the shortfall in the collection of tax, the respondents have tried to remedy the situation by notifying the increase in tax per draw on 05.11.2016 while amending the Schedule to increase the tax per draw to Rs.80,000/-. Nonetheless, the respondents could not have charged any amount over and above that notified in the Schedule to the Act of 2005. In the eventuality of the respondents suffering any loss or reduction in tax revenue on account of the reduction of tax per draw it was open to them to increase the tax or amend the Act to correlate the tax to the number of draws. However, the respondents have notified the increase in tax only on 05.11.2016.

(14) It is trite that tax cannot be imposed without legislation. Article 265 of the Constitution of India states that no tax shall be levied or collected except by authority of law. The power to impose tax is a legislative function and any amount collected or sought to be collected as tax over and above that notified under the Act would be without legislative sanctity and patently illegal. Therefore, the demand raised by the respondents is without the authority of law and is liable to be set aside and the tax collected by the respondents for the period 23.01.2016 to 21.02.2016 over and above Rs.62,000/- per draw would have to be refunded.

(15) In the result, the petitions are allowed and the impugned orders seeking to collect tax above Rs.62,000/- per draw for the period 23.01.2016 to 21.02.2016 are set aside. Any such amount already collected would be refunded to the petitioners within a period of three months failing which the respondents shall be liable to pay interest thereon @ 9% per annum.