IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF FEBRUARY, 2025

R

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

STRP NO.19 OF 2024

C/W

STRP NOS. 37/2023, 10/2024, 15/2023, 31/2019

IN STRP NO.19/2024:

BETWEEN:

M/S ATRIA CONVERGENCE TECHNOLOGIES LTD.,
IIIRD FLOOR, GOLDEN HEIGHTS, NO. 1/2,
59TH C CROSS, 4TH M BLOCK, RAJAJINAGAR,
BENGALURU-560 010.

(A PRIVATE LIMITED COMPANY REGISTERED
UNDER THE COMPANIES ACT, 2013 AND
REPRESENTED BY MR. VATS SAWHNEY,
VICE-PRESIDENT-FINANCE CONTROLLER)

...PETITIONER

(BY SRI.Y C SHIVAKUMAR., ADVOCATE)

AND:

1. DEPUTY COMMISSIONER OF COMMERCIAL TAX
   (AUDIT)- 2.2, DVO-2, BENGALURU.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES,
   (APPEALS)-2,
   BMTC, SHANTHINAGAR,
   BENGALURU -560 027.

…RESPONDENTS

(BY SRI.ADITYA VIKRAM BHAT., AGA)

THIS STRP IS FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AGAINST THE JUDGMENT DATED 06.05.2024 PASSED IN STA.NO.78/2019 ON THE FILE OF KARNATAKA APPELLATE TRIBUNAL AT BANGALORE, DISMISSING THE APPEAL AND FILED AGAINST THE ORDER DATED 31.01.2019 BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS)-2, SHANTHINAGAR BENGALURU, DISMISSING THE APPEAL AND CONFIRMING THE REASSESSMENT ORDER DATED 05.04.2018 PASSED BY DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)2.2 , DVO-2, BENGALURU FOR THE TAX PERIODS OF THE YEAR 2012-13.

IN STRP NO.37/2023:

BETWEEN:

TATA PLAY LIMITED.,
(FORMERLY KNOWN AS TATA SKY LTD)
KIRLOSKAR BUSINESS PARK,
C BLOCK, 6TH & 7TH FLOOR,
BEHIND COLUMBIA ASIA HOSPITAL,
BELLARY ROAD, BANGALORE 560 024.
TIN 29310477227
REP BY ITS AUTHORIZED SIGNATORY
MR. MANJUNATH J S
AGED ABOUT 40 YEARS.

…PETITIONER

(BY SRI. T SURYANARAYANA., SENIOR COUNSEL A/W
MS. ISHI PRAKASH., ADVOCATE FOR
SRI. MANU P KULKARNI., ADVOCATE)

AND:

1. ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES (AUDIT)- 5.8,
DVO -5, KORAMANGALA,
BANGALORE 560 047.

2. ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES (AUDIT) 5.6,
DVO - 5, KORAMANGALA,
BANGALORE 560 047.

3. JOINT COMMISSIONER OF
COMMERCIAL TAXES (APPEALS) 5,
TTMC B BLOCK, BMTC BUILDING,
BENGALURU 560 047.

…RESPONDENTS

(BY SRI. ADITYA VIKRAM BHAT., AGA)

THIS STRP FILED UNDER SECTION 65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AGAINST THE JUDGMENT DATED 31.07.2023 PASSED IN STA No.56 TO 59/2020 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, DISMISSING THE APPEALS AND CONFIRMING THE ORDER DATED 23.12.2019 PASSED IN , VAT A.P No.12 TO 15/2018-19, (A.Y.2011-12 TO 2014-15) ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-5), BANGALORE, DISMISSING THE APPEALS AND UPHOLDING THE ORDER DATED 16.03.2018 PASSED BY THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-5.8,DVO-5, BANGALORE, FOR THE TAX PERIOD OF APRIL 2011 TO MARCH 2012.

IN STRP NO.10/2024:

BETWEEN:

M/S KAIZEN DIGITAL CABLE SERIVES (P) LTD
NO. 169/10, GURUKRUPA,
12TH CROSS, MAHALAKSHMI LAYOUT,
BANGALORE-560 086.
(A PRIVATE LIMITED COMPANY REGISTERED
UNDER THE COMPANIES ACT 2013 AND
REPRESENTED BY SRI SHASHIKANTH, DIRECTOR)

…PETITIONER

(BY SRI.Y C SHIVAKUMAR., ADVOCATE)

AND:

1. THE JOINT COMMISSIONER OF COMMERCIAL TAXES
(APPEALS)-6, 2ND FLOOR, TTMC BUILDING,
SHANTINAGAR, BENGALURU-560 027.

2. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES
(AUDIT)-6.4, DIVISIONAL VAT OFFICE-6,
3RD FLOOR, KIADB BUILDING, 14TH CROSS,
PEENYA 2ND STAGE,BANGALORE-560 058.

…RESPONDENTS

(BY SRI.ADITYA VIKRAM BHAT., AGA)

THIS STRP FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AGAINST THE JUDGMENT DATED 8.05.2024, PASSED IN STA.NO. 111/2019, ON THE FILE OF KARNATAKA APPELLATE TRIBUNAL AT BANGALORE, DISMISSING THE APPEAL AND FILED AGAINST THE ORDER DATED 14.01.2019 PASSED IN VAT.AP. 27/2016-17, ON THE FILE OF JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS) 6, DISMISSING THE APPEAL AND FILED AGAINST THE ENDORSEMENT ORDER DATED 23.07.2014 ON THE FILE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-6.4, VAT DVO-6, BANGALORE FOR THE TAX PERIOD FROM APRIL - 2011 TO MARCH -2012.

IN STRP NO.15/2023:

BETWEEN:

DEN NETWORKS LIMITED.,
1017/38, DR RAJKUMAR ROAD,
4TH BLOCK, RAJAJINAGAR,
BENGALURU 560 010,
REPRESENTED BY ITS SENIOR OFFICER AND
AUTHORIZED REPRESENTATIVE
MR. BAIJU PHILIP
OLD ADDRESS:
PLOT NO 25 (OLD NO 1030)
2ND FLOOR, DR RAJKUMAR ROAD,
4TH BLOCK, RAJAJINAGAR,
BENGALURU 560 010.

…PETITIONER

(BY SRI.T SURYA NARAYANA., SENIOR COUNSEL A/W
MS. MAHIMA GOUD., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   REPRESENTED HEREIN BY ITS,
   PRINCIPAL SECRETARY FINANCE DEPARTMENT
   VIDHANA SOUDHA, BENGALURU 560 001.

2. THE DEPUTY COMMISSIONER
   OF COMMERCIAL TAXES(AUDIT) 3.5,
   DVO- 03, SHANTHINAGAR, BENGALURU 560 027.

3. COMMERCIAL TAX OFFICER(AUDIT)3.3
   DVO- 03, SHANTHINAGAR,BENGALURU 560 027.

…RESPONDENTS

(BY SRI.ADITYA VIKRAM BHAT., AGA)

THIS STRP FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT,2003 AGAINST THE JUDGMENT DATED 08.02.2023 PASSED IN STA NO.288/2019, 289/2019, 295/2019, 296/2019 AND 302/2019 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, DISMISSING THE APPEALS AND CONFIRMING THE ORDER DATED 24.09.2019 PASSED IN VAT AP.03/2018-19, VAT AP.04/2018-19, VAT AP.128/2018-19, VAT AP.82/2018-19 AND VAT AP.129/2018-19 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS 3) BANGALORE, DISMISSING THE APPEALS AND FILED AGAINST THE ORDER DATED 28.02.2018, 28.02.2018, 05.02.2019, 07.06.2018 AND 04.02.2019 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)- 3.5, BENGALURU FILED UNDER SECTION 39(1) OF THE KARNATAKA VALUE ADDED TAX ACT 2003, FOR THE TAX PERIODS OF 2011-12, 2012-13, 2013-14, 2014-15 AND 2015 - 16 RESPECTIVELY.

IN STRP NO.31/2019:

BETWEEN:

M/S DEN NETWORKS LTD.,
NO.7, 3RD FLOOR, 17TH CROSS,
BSK, 2ND STAGE, BANGALORE-560 070.

…PETITIONER

(BY SRI.SIDDHARTH BAVLE., ADVOCATE FOR
SRI.RAVI RAGHAVAN., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
   (THROUGH ITS PRINCIPAL SECRETARY,
   FINANCE DEPARTMENT, VIDHANA SOUDHA,
   BANGALORE-560 001.

2. THE COMMISSIONER OF COMMERCIAL TAXES
   VANIJYA THERIGE KARYALAYA,
   GANDHINAGAR, BANGALORE-560 009.

3. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES
   (AUDIT-3.5), VAT-3, BMTC BUILDING,
   SHANTHINAGARA,
   BANGALORE-560 027.

…RESPONDENTS

(BY SRI. ADITYA VIKRAM BHAT., AGA)

THIS STRP IS FILED UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX ACT, 2003 AGAINST THE ORDER DATED 24.07.2018 PASSED IN STA NO.2/2016 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, DISMISSING THE APPEAL UPHOLDING THE ORDER DATED 29.10.2015 PASSED IN VAT.AP.NO.135 TO 146/2015-16 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS)-3 BENGALURU AND THE RE-ASSESSMENT ORDER DATED 25.03.2015 ON THE FILE OF THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, (AUDIT), 3-5, DVO-03, BENGALURU FOR THE TAX PERIODS OF APRIL 2008 TO MARCH 2009.

THESE STRPs HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, **KRISHNA S. DIXIT.J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE G BASAVARAJA

CAV ORDER

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

All these Petitions by the Assessees call in question orders made by the Karnataka Appellate Tribunal at Bengaluru whereby their Appeals filed under Section 62(6) of the Karnataka Value Added Tax Act, 2003 have been negatived essentially holding that the Assessees have transferred to the subscribers the right to use Set Top Boxes for consideration and therefore, the same amounts to sale within the definition of Section 2(29)(d) of the Act and as a consequence, levy of sales tax is unassailable.

II. Since common questions of law & facts are involved, there is consensus at the Bar to hear & dispose off these cases by a common order and therefore, they are taken up accordingly. Learned Sr. Advocate Mr. T.Suryanarayana and other advocates appearing for the Assessees succinctly submit as under:

(1) After the 46th Amendment, Article 366(29A) has been introduced to the Constitution of India providing for tax on the sale or purchase of goods in an inclusive way; clause (d) of this Article enables the State to levy tax even

on the transfer of the right to use any goods for any purpose for consideration; Section 2(29)(d) of 2003 Act which enacts definition of sale has to be construed co-terminus with Article 366(29A)(d).

(2) To constitute sale within the inclusive definition under Section 2(29)(d) of the Act, there should be a clear-cut case of transfer of the right to use the goods to the customer; such transfer should be for consideration.

(3) A Set Top Box is only an information appliance device that contains TV – tuner input and displays output connects to a Television set; it turns the source of signal into content in a form that can be displayed on the television screen or other display devices; it is incapable of being made use of by the subscriber. Therefore, by no stretch of imagination, STB can be goods.

(4) Assuming that STB is goods, there is absolutely no material to assume that it is transferred to the subscriber since ownership continues with the Assessees nor there is transfer of right to use STB in favour of the subscribers. The subject orders of assessment as affirmed by the Tribunal vide impugned orders run counter to a catena of decisions of Apex Court and High Courts, which have been wrongly construed by the Tribunal.

(5) The subscription charges paid by the subscribers to the Assessee is not a consideration for the alleged transfer of right to use STB. At the most, it is only an activation charge. The condition in the contract that the STB has to be returned to the Assessee supports this view, which aspect has been wrongly construed by the authorities and sustained by the Tribunal.

(6) The Tribunal grossly erred in placing wrong construction on the provisions of Sections 173 & 174 of Karnataka Goods and Services Tax Act, 2017 and also the Notification dated 15.03.2021 bearing No.FD 04 CSL 2021

issued under Section 74(2) that too with retrospective effect, when such power is not delegated.

III. Learned AGA Mr. Aditya Vikram Bhat appearing on behalf of the Revenue vehemently resisted the Petitions making submission in justification of the impugned orders and the reasons on which they have been constructed. What he contended is concised as under:

(1) The scope of Revision Petition under Section 65(1) of 2003 Act is limited and a question of law is a *sine qua non* for the invocation of revisional jurisdiction; whether there is a sale, is a mixed question of law & fact, if not a pure question of fact; none of the questions raised in these Petitions or argued by the Assessees is a question of law.

(2) The definition of sale enacted in Section 2(29)(d) of 2003 Act is a means & inclusive definition; a transaction that would not conventionally amount to sale is deemed to be a sale by virtue of inclusive part of the definition; the transfer of right to use goods for consideration without anything more constitutes a sale and therefore, attracts levy.

(3) Admittedly, STBs are provided to the subscribers in terms of statutory obligation and they have to be of a prescribed standard; they have to be installed by the Cable Network Operators at the place of subscribers who make use of them in choosing channels of display on TVs or such other devices; the so-called *activation charges* are nothing but a consideration for the transfer of right to use.

(4) The decisions cited on behalf of the Assessees do not support their case; a Division Bench of Hon'ble Tripura High Court in ***BHARTI TELEMEDIA LTD. vs. STATE OF TRIPURA***[1], having considered all aspects of the matter has ruled against Assessees of the kind; decision of Hon'ble Allahabad High Court in ***THE COMMISSIONER COMMERCIAL TAX U.P. LUCKNOW vs. S/S. MANSION CABLE NETWORK PVT. LTD***[2]*,* does not lay down any ratio, being fact specific.

(5) Sections 173 & 174 of 2017 Act have to be construed as cognate provisions; Sub-sections (2) & (4) of Section 174 have to be harmonized to give effect to the intent of legislature; Section 174(4) virtually enacts Section 6 of the Mysore General Clauses Act, 1899; in any event, the Notification issued by the State Government under Section 174(2) has to be taken with its face value & effect, there being no challenge thereto.

IV. Having heard the learned counsel appearing for the parties and having perused the Petition papers, we decline indulgence in the matter for the following reasons:

A. SCOPE OF REVISIONAL JURISDICTION:

(1) In our legal system, difference is conventionally maintained between Appeal and Revision. Right of Appeal is a creature of law, whereas such a terminology is not used when it comes to Revision. To put it broadly, Revision is more a matter of power of the Revising

[1] (2015) 79 VST 561
[2] Nuetral Citation – 2019:AHC:166077.

Authority than the right of revisionist. Several Statutes provide for *suo moto* Revision whereas *suo moto* Appeals are almost unknown. We hasten to add that there is nothing that bars a legislature from providing for *suo moto* appeals.

(2) The scope of Appeal or Revision depends upon the text of the provision of a statute which creates the right of Appeal, or vests revisional power. It has been a long settled position of law that normally scope of Appeal is wider than that of Revision. Ordinarily, first appeal is both on law and facts unless the statute otherwise says. What is observed in ***HINDUSTAN PETROLEUM CORPN. LTD. vs. DILBAHAR SINGH***[3] being relevant is reproduced:

> ***"****31. We are in full agreement with the view expressed in Sri Raja Lakshmi Dyeing Works [Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar, (1980) 4 SCC 259] that where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate*

[3] *(2014) 9 SCC 78*

power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision".

B. CHAPTER VII OF 2003 ACT:

This chapter contains the provisions for Appeals & Revisions. Appeal to the Appellate Tribunal is provided by section 63 which has as many as twelve sub-sections that fairly indicate the scope, grounds, limitation & procedure. On the other hand, Section 65 provides for Revision by High Court 'in certain cases'. Section 65 has as many as twelve elaborate provisions. The entire section is reproduced for ease of understanding:

"65. Revision by High Court in certain cases.-

(1) Within [one hundred and Eighty days] from the date on which an order under sub-section (5) or (8) or (9) of Section 63 was communicated to him, the appellant or the respondent may prefer a petition to the High Court against the order on the ground that the Appellate Tribunal has either failed to decide or decided erroneously any question of law:

(2) The High Court may admit a petition preferred after the period of 1[one hundred and Eighty days] aforesaid if it is satisfied that the petitioner has sufficient cause for not preferring the petition within that period.

(3) The petition shall be in the prescribed form, shall be verified in the prescribed manner, and shall, when it is preferred by any person other than an officer empowered by the Government under sub-section (1) of Section 63, be accompanied by a fee of one hundred rupees.

(4) If the High Court, on perusing the petition, considers that there is no sufficient ground for interfering, it may dismiss the petition summarily:

(5) The High Court shall not dismiss any petition unless the petitioner has had a reasonable opportunity of being heard in support thereof.

(6) (a) If the High Court does not dismiss the petition summarily, it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question or questions of law raised and either reverse, affirm or amend the order against which the petition was preferred or remit the matter to the Appellate Tribunal with the opinion of the High Court on the question or questions of law raised or pass such other order in relation to the matter as the High Court thinks fit.

(b) Where the High Court remits the matter to the Appellate Tribunal under clause (a) with its opinion on questions of law raised, the latter shall amend the order passed by it in conformity with such opinion.

(7) Before passing an order under sub-section (6) the High Court may, if it considers necessary so to do remit the petition to the Appellate Tribunal and direct it to return the petition with its finding on any specific question or issue.

(8) Notwithstanding that a petition has been preferred under sub-section (1), the tax shall be paid in accordance with the assessment made in the case.

(9) If as a result of the petition, any change becomes necessary in such assessment, the High Court may authorize the prescribed authority to amend the assessment and the prescribed authority shall amend the assessment accordingly and thereupon the amount overpaid by the person concerned shall be refunded to him without interest or the additional amount of tax due from him shall be collected in accordance with provisions of this Act, as the case may be.

(10) (a) The High Court may, on the application of either party to the petition, review any order passed by it under sub-section (6) on the basis of facts which were not before it when it passed the order.

(b) The application for review shall be preferred within such time and in such manner as may be prescribed, and shall where it is preferred by any person other than an officer empowered by the Government under sub-section (1) of Section 63 be accompanied by a fee of one hundred rupees.

(11) (a) With a view to rectifying any mistake apparent from the record, the High Court may, at any time within five years from the date of the order passed by it under subsection (6), amend such order.

(b) The High Court shall not pass an order under this sub-section without giving both parties affected by the order a reasonable opportunity of being heard.

(12) In respect of every petition preferred under sub-section (1) or (10), the costs shall be in the discretion of the High Court."

C. A THUMB NAIL DESCRIPTION OF SECTION 65:

(1) It specifically states that Revision is available '*in certain cases*'. Such an expression is not employed in section 63A and section 64 which too provide for revision respectively by the Joint Commissioner and by Additional Commissioner/Commissioner. This cannot be *sans* any significance. Since in Indian legislative practice, even titles to the sections are voted, they are part of the statute, although they may not control the substantive provisions. Sub-section (1) employs the expression '*Tribunal has either failed to decide or decided erroneously any question of law'* and therefore, involvement of a question of law is a *sine qua non* for invoking/exercising the revisional jurisdiction. The Revisionist has to demonstrate either the question of law has been left undecided or that it has been erroneously decided. We will come to this aspect of the matter a bit later.

(2) Sub-section (2) prescribes 180 days as limitation period and provides for condonation of delay on sufficient cause being shown. Sub-section (3) prescribes the form of Revision and payment of a court fee of Rs.100/- when Revisionist is the Assessee. Sub-section (4) provides for summary dismissal of Revision if no grounds do exist; however, Sub-section (5) mandates a reasonable opportunity of being heard. Sub-section (6) provides that the court has to determine the question of law raised, after hearing both the parties. Court may reverse, affirm

or amend the order put in Revision; it may remand the matter on the question(s) of law. In moulding the relief, court has more discretion than otherwise since this provision says that court may also make such other order as it thinks fit. Sub-section (7) empowers the High Court to call for a report of findings on any specific question or issue. The payment of tax is not exempted merely because Revision is filed, says Sub-section (8).

(3) In terms of order on Revision, Assessment Orders have to be modified and any excess payment has to be refunded to and any deficit is to be made good by the Assessee, says Sub-section (9). Sub-section (10)(a) provides for review of the order made on Revision on the basis of facts that were not there when the Revision was decided. Sub-section (10)(b) empowers the government to make rules prescribing limitation period for Review and the manner in which Review should be preferred. Sub-section (11) is on par with section 152 of Code of Civil Procedure, 1908 and it provides for rectification of mistakes in the order made in Revision. This would include order made in review as well. Rectification can be sought for at any time within five years; before effecting rectification, stakeholders need to be heard. Sub-section (12) provides for discretionary levy of cost while making orders on Revision.

D. AS TO WHAT IS A QUESTION OF LAW WITHIN THE MEANING OF SECTION 65:

(1) Now, let us come to the substantive provision of Revision to High Court, namely sub-section (1) of Sec.65. Textually, it requires a question of law that was raised but the Tribunal has '*failed to decide*' or '*decided erroneously*'. Therefore, we have to examine as to what is meant by '*question of law*'. Salmond's Jurisprudence[4], says that all questions that arise before court are broadly of four types: (i) questions of law, (ii) questions of fact, (iii) questions of opinion & (iv) questions of discretion. We are not much concerned with item Nos.(ii), (iii) & iv). Salmond further says that ordinarily, a question assumes the character of law, if answer to that has to be found by turning the pages of statute book. However, that would be too restrictive an approach when it comes to the realm of adjudication process like this, in the light of statutory provisions. By now, it is well settled that a question may be treated as of law even if in Salmondian sense, it is not: when a finding of fact is recorded without evidence or contrary to

[4] 12th Edition by P J Fitzgerald, pages 65 to 70

evidence or founded on inadmissible evidence, ordinarily they are treated as questions of law. It may also arise when, on the basis of evidentiary material on record, no reasonable person in the armchair of the authority would have entered a finding, that has a bearing on the outcome of the proceeding. These are only illustrative.

(2) We have also noted a broad proposition canvassed by the learned AGA that in a statutory hierarchical setup of Appeal/Revision, when concurrent findings have been recorded on mixed questions of law & facts, this court ordinarily does not undertake their deeper examination in revisional jurisdiction, of course subject to all just exceptions. We have already succinctly stated the version and counter version of the parties herein above. The following principal issues are canvassed for our consideration:

(i) whether STBs are goods within the meaning of section 2(15) of the Act…?

(ii) whether the STBs are capable of being exclusively used by the subscriber…?

(iii) whether right to use the STBs is transferred to the subscribers …?

(iv) whether such a transfer is for valuable consideration…?

It is the specific case of Assessees that a finding in the form of answers in the affirmative has been recorded to the above questions without or contrary to evidentiary material; this has been done in disregard of decisions of Apex Court and High Courts. Therefore, we are of the considered opinion that the preliminary objection as to maintainability of the Revision Petitions is not sustainable.

E. AS TO WHETHER A SET TOP BOX IS GOODS U/S.2(15) OF THE ACT:

(1) It is the submission of learned counsel appearing for the Assessees that a Set Top Box or a Set Top Unit is only an Information Appliance Device and it does not answer the definition of "goods" u/s.2(15). Therefore, the examination of STB assumes importance. Section 2(15) reads as under:

> "'*Goods' means all kinds of movable property (other than newspaper, actionable claims,*

> *stocks and shares and securities) and includes livestock, all materials, commodities and articles (including goods, as goods or in some other form) involved in the execution of a works contract or those goods to be used in the fitting out, improvement or repair of movable property, and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale."*

Textually, the definition is too wide. Its building blocks would make it wider than what conventionally a "means & includes" definition would import. The expression "*all kinds of movable property*" employed by the legislature lends support to this view. What is significant is the choice of term namely "*all kinds of*" and not "*all types of*". It is intended to be all pervasive, barring the specified exclusions in the definition. Apparently, STB does not fall into any of these exclusions. Whether it would fit into the substantive part of the definition, can be ascertained by a deeper examination of the commodity.

(2) What the learned Author Mr.W.Fischer writes[5] can be a prelude to our discussion in this regard:

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[5] Digital Video and Audio Broadcasting Technology, A Practical Engineering Guide

> '*In the case of digital television, it is advisable to use an RGB (SCART) connection or a Y/C connection for the cabling between the receiver and the TV monitor in order to achieve optimum picture quality. In digital television only frames are transmitted, no fields. It is only at the very end of the transmission link that fields are regenerated in the set top box or in the decoder of the IDTV receiver. The original source material, too, is provided in interlaced format which must be taken into account in the compression (field coding).*'

Experts in the domain throw light on the issue by the following observation:

> *"Broadcasting can be either analogue or digital on each of the three delivery platforms i.e., Digital Terrestrial Television, Digital Cable and Digital Satellite. In DTT, digital compression technology is employed and it allows roughly six times as many channels to be broadcast with the same amount of spectrum used by one analogue channel. DTT signals are received through conventional TV aerials and can be converted into analogue form by a STB or viewed with an integrated digital television set which gives viewers access to an increased supply of basic channels*[6]*."*

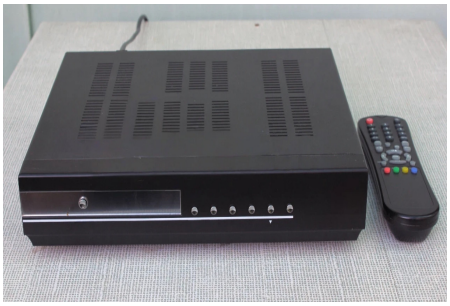
(3) A Set Top Box (STB), also known as a cable box, receiver box, and historically a television decoder or a converter, is an Information Appliance Device is true. A

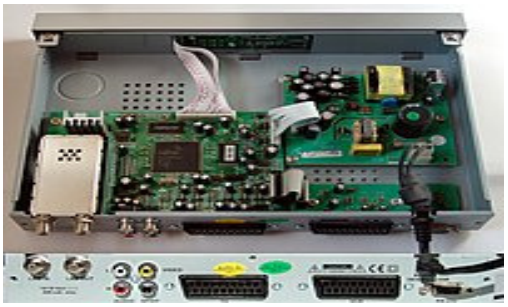
[6] The Transition to Digital Television, OXFORD JOURNALS, OXFORD UNIVERSITY PRESS by Jerome Adda. Marco Ottaviani, Gabrielle Demange and Emmanuella Auriol, Vol.20, No.41 (Jan. 2005), pp. 159+161-209

Set Top Box is designed to be placed alongside or "on top" of a television set, hence the name. Such a device generally contains a TV tuner input and displays output to a television set, turning the source signal into content in a form that is displayed on the television screen or other display device, as has been averred in some of these petitions itself. The Oxford Journals Set-top boxes are used in cable TV, satellite TV, terrestrial TV and Internet Protocol TV Systems, as well as other uses such as Digital Media Players ("streaming boxes"). Learned AGA Mr.Aditya Vikram Bhat is right in telling us that alternatives to Set Top Boxes are the smaller dongles, and TV sets with built-in TV tuners. The signal source might be an Ethernet cable, a satellite dish, a coaxial cable, a telephone line (including DSL connections), broadband over power lines (BPL), or even an ordinary VHF or UHF antenna. Content, in this context, could mean any or all of video, audio, Internet web pages, interactive video games or other possibilities. Satellite & Microwave based services also require specific

external receiver hardware. Set Top Boxes can also enhance source signal quality.

(4) A Set Top Box is an appliance between cable outlet and a subscriber's receiver, cannot be disputed. Regulation 2(z) of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 defines "Set Top Box" means a device, which is connected to, or is part of a television and which allows a subscriber to receive in unencrypted and descrambled form subscribed channels through an addressable system. For ease of ocular understanding, prototype images are reproduced below:





(5) It is not out of place to refer to a Central Government Office Memorandam dated 13.08.2014 which says that STBs fall within the definition of goods for the

purpose of Central Sales Tax Act, 1956 and therefore, Form-C facility to be extended to them. The said OM reads as under:

"F.No.32011/2/2014-SO(ST)
Government of India
Ministry of Finance
Department of Revenue
State Taxes Section
***
New Delhi, Dated 13th August, 2014

OFFICE MEMORANDUM

Subject:- Inclusion of Set Top Boxes in the definition of goods for sue in the "Telecommunications Network" under Section 8 (3)(b) of Central Sales Taxes Act, 1956, to extend the facility of Form 'C' to Set-Top Boxes.

The undersigned is directed to refer to D.O.No.35(5)/2013-IPHW dated 13th February, 2014 and 2nd July, 2014 from Secretary, Department of Electronics and Information Technology on the subject noted above and to say that the matter of inclusion of Set Top Boxes in the definition of goods for use in the "Telecommunication Network" under Section 8(3)(b) of Central Sales Tax Act, 1956 and to extend the facility of Form 'C' to Set-Top Boxes has been considered in consultation with Ministry of Information & Broadcasting, Ministry of Micro, Small and Medium Enterprises and Department of Telecommunications.

2. Considering the confirmation from Department of Telecommunication vide their OM No.18-06/2014-IP dated 30th June, 2014 that Set Top Boxes (STBs) are a part of telecommunication network it has been decided by the competent authority that the facility of Form 'C' may be extended to Set Top Boxes defined as goods for use in the "Telecommunications Network" under Section 8(3)(b) of Central Sales Tax Act, 1956.

3. All the States are requested to take necessary action as above.

Sd/-
(Mahendra Nath)
Under Secretary to the Government of India"

(6) AS TO RULINGS CITED AT THE BAR AS TO STBs BEING GOODS OR NOT:

(i) On behalf of the Assessees, ***BHARAT SANCHAR NIGAM LIMITED vs. UNION OF INDIA***[7] was cited to contend that the electromagnetic waves are not goods and therefore, SIM cards employed in mobile phone instruments are not goods within the meaning of Article 366(29A). The Apex Court at paragraph 87 observed "*what a SIM card represents is ultimately a question of fact..*" Therefore, matter was remitted to the authorities

[7] (2006) 3 SCC 1

which after verification of the factuals, held that SIM cards are not goods. This ultimately received imprimatur at the hands of the Apex Court in ***BHARAT SANCHAR NIGAM LTD. vs. STATE OF ANDHRA PRADESH REVENUE DEPARTMENT***[8]. There is a sea difference between a SIM card and a STB. Structurally & functionally, they are poles apart. It hardly needs to be stated that a case is an authority for the proposition that is actually laid down in a given fact matrix and not for all that which would follow from what has been so laid down vide ***QUINN vs. LEATHEM***[9]*.*

(ii) The second decision pressed into service on behalf of the Asessees was *THE COMMISSIONER COMMERCIAL TAX U.P, supra.* A learned Single Judge of Allahabad High Court vide order dated 16.10.2019 at paragraphs 5 & 6 observed as under:

> *"5. During the assessment year in question, the assessee was engaged in providing cable television network to its subscribers against value. It had been subjected to service tax as a*

[8] (2023) 5 Centax 287
[9] (1901) UKHL 2

> *service provider. The Tribunal has set aside the assessment order under the UP VAT Act, 2008 (hereinafter referred to as the 'Act') on the reasoning that the assessee was only a service provider.*
>
> *6. Learned Standing Counsel has contended that there was some element of sale of goods namely, set top box in the value Rs.1,200/- received by the assessee from each subscriber. The argument so advanced, even if found to be factually correct, to any extent, may not itself lead to an assessment of tax liability under the Act, in absence of any enabling provision being first shown to exist on the basis of such calculation or bifurcation or apportionment of the total value may have been made."*

The decision does not mention any specific provision of law nor does it refer to Article 366(29A) of the Constitution, either. This decision is bereft of any precedential value. Much is not necessary to specify.

(iii) Learned AGA pressed into service a Division Bench decision of Tripura High Court in *BHARATI TELEMEDIA LIMITED supra.* It has treated the subject matter with appreciable depth & dexterity. The decision has treated STBs to be goods. It has specifically observed that the right to use the same having been accorded to

the customers for consideration, State has full authority to levy VAT on the sale part of the transaction.

F. AS TO WHETHER STB IS CAPABLE OF EXCLUSIVE USE BY THE SUBSCRIBERS:

(1) Learned advocates appearing for the Assessees secondly argued that section 2(29) of the 2003 Act defines 'sale' in an inclusive way and clause (d) of it makes transfer of the right to use any goods for consideration also a sale and therefore, user potential of STB is a precondition for the invocation of this sub-clause. Section 2 enacts dictionary clause of the Act. Substantive part of sub-section 29 reads as under:

> *"(29) 'Sale' with all its grammatical variation and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and includes,-*
>
> *(a) a transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;*

> *(b) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;*
>
> *(c) a delivery of goods on hire purchase or any system of payment by installments;*
>
> *(d) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration."*

(Explanations not being relevant, are not reproduced).

(2) The above definition is coined by the State Legislature in the light of 46th Amendment to the Constitution of India whereby, clause (29A) came to be introduced to the definition clause enacted in Article 366. This Amendment expands the concept of sale and thereby, enlarges the power of State Legislatures to tax the transactions simulating sales but not conforming to the conventional meaning of sale under the Sale of Goods Act, 1930. Clause (29A)(d) being relevant, is reproduced below:

> *"tax on the sale or purchase of goods" includes—*
>
> *(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a*

specified period) for cash, deferred payment or other valuable consideration;"

In ***STATE OF MADRAS vs. GANNON DUNKERLEY & CO.,***[10] the *Supreme Court had held that the expression "sale of goods" used in the Constitution involves an existence of any agreement between the parties for the sale of goods in which eventually property passes.* To a great extent, the substratum of this decision is altered by introducing a fiction by which six instances of transactions are treated as sale, one of them being the transfer of the right to use any goods for any purpose for consideration. Incidentally, the validity of this Amendment came to be upheld in ***BUILDERS ASSOCIATION OF INDIA vs. UNION OF INDIA***[11]. There is force in the submission of learned Sr. Advocate Mr.Suryanarayana that section 2(29) has to be read with section 2(15) and Article 366(29A)(d) of the Constitution, since they have a thick kinship.

(3) The submission that STB is not capable of being exclusively used by the subscriber is bit difficult to

[10] AIR 1958 SC 560
[11] (1989) 2 SCC 645

countenance. Let us drift a bit to the cognate provisions of law namely 2012 Regulations again. Regulation 17 obligates every Multi Service Operator like the Assessees herein to provide to the subscribers STBs conforming to standard, set by the Bureau of Indian Standards, with a minimum warranty of one year, unless the subscriber himself has bought one on his own. There is a statutory obligation to repair the STBs within 24 hours of the complaint that too, free of cost. It is admitted before us by both the sides that the STBs are installed in the premises of subscriber only, albeit license to visit the same for service/repair is accorded under the subject agreements. In deciding the question, what are the goods involved in a sale transaction of the kind and with what intent the parties have entered into it, would assume importance. The seller and purchaser, the words being used in their widest amplitude have to be *ad idem* as to the subject matter of the arrangement. To this to be added, the intent of law also. In finding answers to questions of the kind, the approach of the court should be

of a reasonable person of average intelligence. This view gains support from ***M/S ASSOCIATED CEMENT COMPANIES LTD* vs. *COMMISSIONER OF CUSTOMS***[12]*.* If STBs had no user potential at the hands of subscribers, the statutory obligations enacted in 2012 Regulations would not have been made so meticulously. Added, without the STBs subscribers may not be in a position to make use of the channels of their choice.

(4) Learned advocates appearing for the Assessee vehemently argued that even if user potential is assumed, what needs to be demonstrated is the exclusive use of STBs at the hands of the subscriber. In support of this they relied upon a Co-ordinate Bench decision of this court in ***INDUS POWERS LTD., vs. DEPUTY COMMISSIONER OF COMMERCIAL TAXES***[13]*.* This decision refers to Apex Court Ruling in BSNL vs. UOI *supra* wherein it is observed that to constitute transfer of right to use goods, it should be *inter alia* to the exclusion of transferor since it is not just merely a license to use. In the light of that, the Bench

[12] (2001) 4 SCC 593
[13] (2013) 29 Taxmann.com 301 Karnataka

after perusing various terms of the contract, observed at para 64 as under:

> *"It is well settled that, whether the transaction amounts to transfer of right or not cannot be determined with reference to a particular word or clause in the agreement. The agreement has to be read as a whole to determine the nature of the transfer. From a close reading of all the clauses in the agreement it appears to us that under the terms of the contract there is no transfer of right to use the passive infrastructure conferred on the sharing operator/mobile operator. What is permitted under the contract is, a permission in the nature of a licence to have access to the passive Infrastructure and permission to keep the equipments of the mobile operator in the pre-fabricated shelter with permission to have ingress and egress only to the authorized representatives of the mobile operator… in the facts of this case- if we look into the various terms of the agreement it is clear under the contract, the assessee has not transferred any right in the passive infrastructure to the mobile operators. The right that is conferred on the mobile operator is a permission to have access to the passive infrastructure, a permission to keep the active infrastructure in the site belonging to the assessee, a permission to mount the antenna on the tower erected by the assessee and to have the benefit of a particular temperature so as to operate the equipments belonging to the mobile operator. No sale of goods or transfer is involved in the transaction in question. Therefore, it does not fall within the mischief of Article 366(29A)(d) of the Constitution."*

(5) The above Ruling does not come to the aid of Assessees since it has been rendered in the peculiar fact matrix as was ascertained from the terms of contract involved therein. A perusal of those terms, the Bench observed, revealed a case of pure license as contradistinguished from a substantive right granted to the user to the exclusion of the Assessee. However, that is not the case here inasmuch as a full right is given to the subscribers to make use of STBs. In ***COMMISSIONER OF SERVICE TAX vs. QUICK HEAL TECHNOLOGIES LTD.,***[14] at paragraph 54.4 it is observed as under:

> *"54.4 the effective or general control does not mean always physical control and, even if the manner, method, modalities and the time of the use of goods is decided by the lessee or the customer, it would be under the effective or general control over the goods."*

(6) It has been held in ***AGARWAL BROTHERS vs. STATE OF HARYANA***[15], that a mere transfer of the right to use goods for consideration is sufficient to attract

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[14] (2023) 5 SCC 469
[15] (1999)9 SCC 182

Article 366(29A)(d) of the Constitution and that the transfer of goods itself is not necessary. This view has been reiterated in ***STATE OF ORISSA vs. ASIATIC GASES LTD***[16]*.*

(7) The Tripura High Court in *BHARATI TELEMEDIA supra,* at para 33 has observed as under:

> "*One of the most important elements of determining whether the right to use goods has been transferred or not is by ascertaining who has effective control over the goods. As far as STBs are concerned they are in total control of the customer. Under his effective control the STBs are installed in the house of the customer. He can use the STB when he wants to. He can use the STB to view whichever channel he wants to view. He may or may not use the STB. The company does not even have the power of entering the premises of the customer. Most importantly as per the terms of the agreement, the companies are responsible for the functioning of the STBs only for a period of 6(six) months. The warranty is valid only for six months and thereafter there is no warranty. Therefore, if STB of a customer is spoiled after six months he will have to pay for repair or replacement of the same. We are of the considered view that this amounts to transfer of the right to use goods.*"

[16] (2007) 5 SCC 766

We are in complete agreement with this view, there being nothing to substantiate pervasive control of the Assessee over the STBs, merely because they have license to gain entry to the premises of the subscriber for periodic inspection/repair.

G. AS TO CONSIDERATION FOR TRANSFER OF RIGHT TO USE STBs:

(1) In Cable Networks of the kind, almost invariably STBs are employed and that they are installed in the house of the subscribers, is not in dispute. The submission of the Assessees that even if the subscribers are held to be using the STBs, unless the same is for consideration, the requirement of section 2(29)(d) of the 2003 Act read with Article 366(29A)(d) of the Constitution of India is not satisfied as a proposition, is true. In a fictional sale too, law requires consideration inasmuch as the expression "*for cash, for deferred payment or other valuable consideration*" is employed both in the said provisions. The simple question is whether the transfer of right to use STBs is for consideration or it is free. The Authorities and

the Tribunal have held that the consideration for right to use STB is Rs.2,000/-. That estimate is made *inter alia* on the basis of a clause in the Inter-connect Agreement that obtained between the Assessees and their local cable operators. A clause in the agreement prescribes Rs.2,000/- payable by the local operator if STB is damaged or it is not used for the purpose for which it is installed. Added, there is subscription charge/installation charge.

(2) In BHARTI TELE MEDIA *supra* at para 32 it is observed as under:

> *"True it is that the petitioner-companies have not sold the STBs to the customers. There can however be no manner of doubt that the right to use these goods, i.e., the STBs has been transferred to the customers. In today's world, nothing is given free of cost. The cost of the STB is obviously included in the activation charges and/or the monthly subscription. Under the TVAT Act even where payment of the goods is made by way of deferred payment the goods can be subjected to tax. The main issue is whether the contract can be easily divided and the value of the goods can be ascertained with exactitude."*

The above observations apply to the case of Assessees. The authorities having accumulated expertise in the matter have formed a considered opinion that a sum of Rs.2,000/- is the consideration for transferring the right to use the STBs. A Court exercising a limited revisional jurisdiction cannot run a race of opinions with the authorities and Tribunals which have recorded concurrent findings.

H. AS TO THE CONTENTION THAT SERVICE TAX & VAT ARE MUTUALLY EXCLUSIVE:

(1) The vehement submission of the Assessees that they have paid service tax as Cable Operator Services u/s.65(105)(zs) of the Finance Act, 1994 and therefore the same charges cannot be subjected to VAT under 2003 Act, appears attractive at the first blush. However, a deeper examination shows its fallacy: A transaction may involve a composite arrangement comprising of service & sale. In such an instance, there may be transfer of a right to use goods as in the case of a telephone connection, which would also include service. It is competent for the

State to tax the sale element provided there is a discernable sale and only to the extent relatable to such a sale. True it is, that in ***IMAGIC CREATIVE PRIVATE LIMITED vs. COMMISSIONER OF COMMERCIAL TAXES***[17] has said that the payment of service tax and remittance of VAT are mutually exclusive, the nature of levies being different. However, different aspects of a single transaction can be taxed under different statutes.

(2) There can be levy of more than one tax on a subject matter, if incidence of each of the taxes is different from the other and such taxes may be imposed under different statutes. A tax on the sale of goods is envisaged under Entry 54 of List II (Sales Tax) of Schedule 7 of the Constitution and the taxable event is transfer of goods including fictional sale envisaged under Article 366(29A). In the case at hand, sales tax is levied under the State Enactment. There the State is not levying tax on service aspect of the transaction, since that exclusively belongs to the domain of the Parliament,

[17] (2008) 2 SCC 614

which has enacted Finance Act, 1994. Therefore, reliance of the Assessees on *QUICK HEAL TECHNOLOGIES supra* would not come to their aid, especially when sale element is discernible from the transaction.

(3) Learned AGA made use of the very same decision by drawing our attention to what has been articulated at paragraph 53.5, 53.6 & 53.9 as under:

> *"53.5 In the case of Article 366(29A)(d) the goods are not required to be left with the transferee. All that is required is that there is a transfer of the right to use goods. In such a case taxable event occurs regardless of when or whether the goods are delivered for use. What is required is that the goods should be in existence so that they may be used.*
>
> *53.6 The levy of tax under Article 366(29A)(d) is not on the use of goods. It is on the transfer of the right to use goods which accrues only on account of the transfer of the right.*
>
> *53.9 The locus of the deemed sale, by transfer of the right to use goods, is the place where the relevant right to use the goods is transferred. The place where the goods are situated or where the goods are delivered or used is not relevant."*

The above observations lend credence to the stand of the Revenue.

I. AS TO GOVERNMENT NOTIFICATION DATED 15.03.2021; ITS RETROSPECTIVITY, ETC.

(1) Learned Sr.Advocate Mr.Suryanarayana appearing for the Assessees lastly contended that the Government Notification dated 15.03.2021 having been issued u/s.174(2) of the KGST Act 2017 could not be retrospective in operation and therefore the Repeal of 2003 Act u/s.173(1)(vii) would make all impugned orders *non est.* This submission is on the premise that Section 174(2) requires a notification by the Government and the said provision does not delegate power to issue one with retrospective effect. In all fairness he agrees that this notification is in the nature of a delegated legislation. The proposition that a delegate cannot quasi legislate with retrospective effect unless parent statute accords such power, cannot be much disputed.

(2) Section 173(1) of 2017 Act *inter alia* repeals the 2003 Act. Section 174 enacts a saving clause; sub-section (1)(d) & (e) have the following text:

> *"(1) The repeal of the Acts specified in section 173 shall not –*
>
> *(a) …*
>
> *(b) …*
>
> *(c) …*

> *(d) affect any tax, surcharge, penalty, fine, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the repealed Acts; or*
>
> *(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so repealed; …"*

A perusal of these clauses shows that there is a limited deeming of non-repeal of the Act, at least in effect. This is as of necessity.

(3) Now let us examine the text & context of Sub-section (2) of Sec.174 which reads as under:

> *"(2) Not withstanding anything contained in section 173, for the purpose of giving effect to subsection (1), the State Government may, by notification, in the Official Gazette make such*

> *provision as appears to it necessary or expedient,-*
>
> *(a) for making omissions from, additions to and adaptations and modifications of the rules, notifications and orders issued under the repealed Acts;*
>
> *(b) for specifying the authority, officer or person who shall be competent to exercise such functions exercisable under any of the repealed Acts or any rules, notifications or orders issued thereunder as may be mentioned in the said notification".*

Obviously this is an enabling provision that empowers the government even to tinker with the purport & effect of repeal enacted in sub-section (1). The provision is marked by the enormity of power vested in government of the day. Section employs the word 'may' and therefore, a wide discretion lies with the government whether to tweak with the scope & effect of sub-section (1). By notification issued under sub-section (2), the government can make omissions from, additions to, adaptations/modifications of the Rules. Issuance of such a notification is not a *sine qua non* for the independent operation of sub-section (1) as an island provision.

(4) The above apart, Sec.164 of 2017 Act delegates rule making power to the State Government. Sub-section (3) reads as under:

> *"The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force."*

Thus, obviously this sub-section provides for making rules with retrospective effect. We are of the considered view that sub-section (2) of Sec.174 has to be read with sub-section (3) of Sec.164. Added, sub-section (4) of Sec.174 in a way enacts Sec.6 of the Mysore General Clauses Act, 1899. In view of this, it cannot be assumed that the tax regime during the transition period between repeal of 2003 Act and enactment of 2017 Act, was ever intended to be left as a vacuum creating a limited/partial tax heaven, in the mere absence of a notification under sub-section (2) of Sec.174. If legislature intended to make operation of sub-section (1) of Sec.174 dependent upon a notification to be issued under sub-section (2), the language of the provision would have been much different. An argument to the

contrary would offend the tax jurisprudence evolved over centuries, in civilized jurisdictions. Therefore, the vehement submission made on behalf of the Assessees that the notification of 2021 could not have been issued with retrospective effect, pales into insignificance.

In the above circumstances, these petitions being devoid of merits, are liable to be dismissed and accordingly they are, costs having been made easy.

Before parting with the papers, we place on record our deep appreciation for the assistance given by learned AGA Mr.Aditya Vikram Bhat and Research Assistant Mr.Raghunandan K.S.

**Sd/-
(KRISHNA S DIXIT)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

Snb/cbc
List No.: 1 Sl No.: 1