2025 INSC 757

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO.9301 OF 2013

STATE OF KERALA & ANOTHER **APPELLANTS**

VERSUS

ASIANET SATELLITE COMMUNICATIONS LTD. & OTHERS **RESPONDENTS**

WITH

CIVIL APPEAL NO.1629 OF 2020

CIVIL APPEAL NOS.1765-1766 OF 2020

CIVIL APPEAL NO.1531 OF 2020

CIVIL APPEAL NO.1533 OF 2020

CIVIL APPEAL NO.1534 OF 2020

CIVIL APPEAL NO.1752 OF 2020

CIVIL APPEAL NO.1753 OF 2020

CIVIL APPEAL NO.1755 OF 2020

WRIT PETITION (C) NO.699 OF 2014

CIVIL APPEAL NO.1532 OF 2020

CIVIL APPEAL NO.1687 OF 2020

CIVIL APPEAL NO.1688 OF 2020

CIVIL APPEAL NO.1689 OF 2020

CIVIL APPEAL NO.1690 OF 2020

CIVIL APPEAL NOS.1548-1549 OF 2020

CIVIL APPEAL NO. OF 2024
(Arising out of Special Leave Petition (Civil) No.9025 of 2023)

CIVIL APPEAL NO.1630 OF 2020

CIVIL APPEAL NO.1726 OF 2020

CIVIL APPEAL NO.1725 OF 2020

CIVIL APPEAL NO.10114 OF 2011

CIVIL APPEAL NO.2147 OF 2012

CIVIL APPEAL NO.1543 OF 2020

CIVIL APPEAL NO.1547 OF 2020

CIVIL APPEAL NO.1680 OF 2020

CIVIL APPEAL NO.1754 OF 2020

CIVIL APPEAL NO.1756 OF 2020

CIVIL APPEAL NO.1530 OF 2020

WRIT PETITION (C) NO.748 OF 2015

CIVIL APPEAL NO.1628 OF 2020

CIVIL APPEAL NO.5867 OF 2012

CIVIL APPEAL NO.5228 OF 2012

CIVIL APPEAL NO.1535 OF 2020

CIVIL APPEAL NO.1679 OF 2020

CIVIL APPEAL NOS.1681-1682 OF 2020

CIVIL APPEAL NO.1683 OF 2020

CIVIL APPEAL NO.1684 OF 2020

CIVIL APPEAL NO.1685 OF 2020

CIVIL APPEAL NO.1686 OF 2020

CIVIL APPEAL NO.1580 OF 2020

CIVIL APPEAL NOS.1581-1583 OF 2020

CIVIL APPEAL NO.1536 OF 2020

J U D G M E N T

NAGARATHNA, J.

I N D E X

Leave granted in Special Leave Petition (Civil) No.9025 of 2023.

1.1 Since common questions of law and facts arise in these civil appeals and writ petitions, they have been heard together and are being disposed of by this common judgment.

1.2 The Civil Appeals arise from the judgments of the High Courts of Allahabad, Delhi, Gauhati, Gujarat, Jharkhand, Kerala,

Madras, Orissa, Punjab & Haryana, Rajasthan and Uttarakhand while two writ petitions have been filed before this Court under Article 32 of the Constitution by M/s Tata Play & Another and M/s Tata Play Ltd.

Bird's Eye View of the Controversy:

2. The assessees have filed these appeals assailing the provisions of the respective State Acts under which tax on entertainment has charged on them on the premise that their activity is relatable to the field of entertainment as envisaged under Entry 62 – List II of the Seventh Schedule to the Constitution. It is their contention that they are not liable to pay entertainment tax (or luxury tax) under the respective provisions of the State enactments. It is further case of the assessee that they are engaged in broadcasting of signals etc. through television channels to the subscribers of those channels hence, possibly they are liable to pay service tax to the Central Government under Entry 97 – List I of the Seventh Schedule of the Constitution. There are however two writ petitions filed by certain assessees who have also ventilated their grievance that they are not liable to pay service tax as well. The question whether the appellants-assessees are liable to pay

entertainment tax under the provisions of the respective State enactments which are relatable to Entry 62 – List II of the Seventh Schedule of the Constitution and are also liable to pay service tax under the provisions of the Finance Act, 1994 as amended from time to time as a provider of a taxable service namely broadcasting service within the scope and ambit of Entry 97 – List I which is a residuary entry for the relevant purpose of assessment is the moot question which arises in these appeals.

2.1 The State of Kerala being aggrieved by the striking down of the sub-section (iv) of proviso to Section 4 under which the cable operators who have less than 7,500 connections are being exempt from payment of entertainment tax and whereas those who have over and above 7,500 connections are liable to pay the same tax being discriminatory in nature and being strike down by the Kerala High Court is questioned by the State of Kerala in its appeal. While considering the controversy between the parties, the doctrine of pith and substance in interpreting the entries of the Seventh Schedule of the Constitution as well as the aspect theory as referred to by the learned senior counsel and learned counsel who have appeared for the respective parties shall be dealt with.

2.2 Since the fields of legislation are in the Seventh Schedule to the Constitution of India and would be referred to during the course of discussion primarily in List I and List II (Union List and State List respectively) in these cases, it shall be understood that any reference to these Lists is only with reference to the Seventh Schedule to the Constitution of India.

Facts in brief:

3. For the sake of convenience, some of the relevant facts are delineated in the form of a table which is as under:

S.No.	Case No.	Cause Title	Impugned order dated	Name of enactment
1.	**C.A. No. 9301/2013** Arising out of SLP(C) No. 17573/2013	State of Kerala Versus Asianet Satellite Communications Ltd.	28.06.2012	The Kerala Tax on Luxuries Act,1976
2.	**C.A. No. 1629/2020** Arising out of SLP(C) No. 1173/2011	Tata Sky Limited Versus State of Uttarakhand	26.07.2010	Uttarakhand (Uttar Pradesh Entertainment and Betting Tax Act, 1979) (Amendment) Act, 2009
3.	**C.A. Nos. 1765-1766/2020** Arising out of SLP(C) Nos. 34237 - 34238/2014	M/s. Tata Sky Ltd. Versus State of Rajasthan	19.08.2014	Rajasthan Entertainments & Advertisements Tax Act, 1957 and Rajasthan Entertainments & Advertisements Tax Rules, 1957

S.No.	Case No.	Cause Title	Impugned order dated	Name of enactment
4.	**C.A. No. 1531/2020** Arising out of SLP(C) No. 17300/2015	Sun Direct TV Pvt. Ltd. Versus State of Gujarat	12.03.2015	Gujarat Entertainment Tax (Amendment) Act, 2009 and Gujarat Entertainment Tax (Exhibition by means of Direct-to-Home (DTH) Broadcasting Services) Rules, 2010
5.	**C.A. No. 1533/2020** Arising out of SLP(C) No. 22171/2015	Dish TV India Ltd. Versus State of Gujarat	12.03.2015	Gujarat Entertainment Tax (Amendment) Act, 2009 and Gujarat Entertainment Tax (Exhibition by means of Direct-to-Home (DTH) Broadcasting Services) Rules, 2010
6.	**C.A. No. 1534/2020** Arising out of SLP(C) No. 20511/2015	Bharat Business Channel Ltd. (Now Known as Videocon D2H Ltd.) Versus State of Gujarat	12.03.2015	Gujarat Entertainment Tax (Amendment) Act, 2009 and Gujarat Entertainment Tax (Exhibition by means of Direct-to-Home (DTH) Broadcasting Services) Rules, 2010
7.	**C.A. No. 1752/2020** Arising out of SLP(C) No. 4855/2014	Bharti Telemedia Ltd. Versus State of Jharkhand	30.01.2014	Jharkhand Entertainment Tax Act, 2012

S.No.	Case No.	Cause Title	Impugned order dated	Name of enactment
8.	**C.A. No. 1753/2020** Arising out of SLP(C) No. 6690/2014	Tata Play Limited Versus State of Jharkhand	30.01.2014	Jharkhand Entertainment Tax Act, 2012
9.	**C.A. No. 1755/2020** Arising out of SLP(C) No. 8421/2014	Reliance Big TV Ltd. Versus State of Jharkhand	30.01.2014	Jharkhand Entertainment Tax Act, 2012
10.	**W.P.(C) No. 699/2014**	Tata Play Ltd. Versus Union of India		Section 65(105)(zk) and Section 65(15) of Finance Act, 1994
11.	**C.A. No. 1532/2020** Arising out of SLP(C) No. 18164/2015	Bharati Telemedia Ltd. Versus State of Gujarat	12.03.2015	Gujarat Entertainment Tax (Amendment) Act, 2009 and Gujarat Entertainment Tax (Exhibition by means of Direct-to-Home (DTH) Broadcasting Services) Rules, 2010
12.	**C.A. No. 1687/2020** Arising out of SLP(C) No. 11304/2018	IndusInd Media and Communications Ltd. Versus State of Uttar Pradesh	19.04.2018	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009
13.	**C.A. No. 1688/2020** Arising out of SLP(C) No. 13949/2018	MultiTech Digital Services Pvt. Ltd. Versus State of Uttar Pradesh	09.04.2018	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh

S.No.	Case No.	Cause Title	Impugned order dated	Name of enactment
				Entertainments and Betting Tax (Amendment) Ordinance, 2009
14.	**C.A. No. 1689/2020** Arising out of SLP(C) No. 14077/2018	Siti Networks Limited Versus State of Uttar Pradesh	09.04.2018	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009
15.	**C.A. No. 1690/2020** Arising out of SLP(C) No. 22181/2018	Bling Ice Network Pvt. Ltd. Versus State of Uttar Pradesh	09.04.2018	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009
16.	**C.A. Nos. 1548-1549/2020** Arising out of SLP(C) No. 4233 - 4234/2020	Mansion Cable Networks Private Limited Versus State of Uttar Pradesh	09.04.2018	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009
17.	**C.A. No. of 2025** Arising out of SLP(C) No. 9025/2023	Subhash Chand Versus State of U.P.	11.04.2018	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009

S.No.	Case No.	Cause Title	Impugned order dated	Name of enactment
18.	**C.A. No. 1630/2020** Arising out of SLP(C) No. 1185/2011	Dish TV India Ltd. Versus State of Uttarakhand	26.07.2010	Uttarakhand (Uttar Pradesh Entertainment and Betting Tax Act, 1979) (Amendment) Act, 2009
19.	**C.A. No. 1726/2020** Arising out of SLP(C) No. 4755/2011	Bharti Telemedia Ltd. Versus State of Punjab	25.10.2010	Punjab Entertainment Duty Act 1955 (as amended in 2010)
20.	**C.A. No. 1725/2020** Arising out of SLP(C) No. 13448/2011	M/s Tata Sky Ltd Versus State of Punjab	25.10.2010	Punjab Entertainment Duty Act 1955 (as amended in 2010)
21.	**C.A. No. 10114/2011** Arising out of SLP(C) No. 28836/2011	Tata Play Ltd. Versus Govt. of NCT of Delhi	05.09.2011	The Delhi Entertainments and Betting Tax Act, 1996 and the Delhi Entertainments and Betting Tax (Amendment) Rules, 2010
22.	**C.A. No. 2147/2012** Arising out of SLP(C) No. 265/2012	Bharti Telemedia Ltd. Versus Government of NCT of Delhi	05.09.2011	The Delhi Entertainments and Betting Tax Act, 1996 and the Delhi Entertainments and Betting Tax (Amendment) Rules, 2010
23.	**C.A. No. 1543/2020** Arising out of SLP(C) No. 18256/2012	Tata Sky Ltd. Versus State of Assam	22.02.2012	The Assam Amusement and Betting Tax Act, 1939 and Rules 9 and 9A of the Rules framed thereunder

S.No.	Case No.	Cause Title	Impugned order dated	Name of enactment
24.	**C.A. No. 1547/2020** Arising out of SLP(C) No. 18766/2012	Bharati Telemedia Ltd. Versus State of Assam	22.02.2012	The Assam Amusement and Betting Tax Act, 1939 and Rules 9 and 9A of the Rules framed thereunder
25.	**C.A. No. 1680/2020** Arising out of SLP(C) No. 28058/2012	Tata Sky Ltd. Versus State of Uttar Pradesh	20.07.2012	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009
26.	**C.A. No. 1754/2020** Arising out of SLP(C) No. 7100/2014	Dish T.V India Ltd. Versus State of Jharkhand	30.01.2014	Jharkhand Entertainment Tax Act, 2012
27.	**C.A. No. 1756/2020** Arising out of SLP(C) No. 10192/2014	Dish TV India Ltd. Versus State of Jharkhand	30.01.2014	Jharkhand Entertainment Tax Act, 2012
28.	**C.A. No. 1530/2020** Arising out of SLP(C) No. 17005/2015	Tata Play Limited Versus State of Gujarat	12.03.2015	Gujarat Entertainment Tax (Amendment) Act, 2009 and Gujarat Entertainment Tax (Exhibition by means of Direct-to-Home (DTH) Broadcasting Services) Rules, 2010

S.No.	Case No.	Cause Title	Impugned order dated	Name of enactment
29.	**W.P.(C) No. 748/2015**	Tata Play Limited Versus Union of India		
30.	**C.A. No. 1628/2020** Arising out of SLP(C) No. 1182/2011	Bharati Telemedia Ltd. Versus State of Uttarakhand	26.07.2010	Uttarakhand (Uttar Pradesh Entertainment and Betting Tax Act, 1979) (Amendment) Act, 2009
31.	**C.A. No. 5867/2012** Arising out of SLP(C) No. 16255/2012	Dish TV India Limited Versus Government of NCT of Delhi	05.09.2011	The Delhi Entertainments and Betting Tax Act, 1996 and the Delhi Entertainments and Betting Tax (Amendment) Rules, 2010
32.	**C.A. No. 5228/2012** Arising out of SLP(C) No. 20902/2012	Dish TV India Ltd. Versus Government of NCT of Delhi	05.09.2011	The Delhi Entertainments and Betting Tax Act, 1996 and the Delhi Entertainments and Betting Tax (Amendment) Rules, 2010
33.	**C.A. No. 1535/2020** Arising out of SLP(C) No. 23533/2012	Tata Play Ltd. Versus State of Orissa	24.04.2012	The Orissa Entertainment Tax Act, 2006 and Orissa Entertainment Tax (Amendment) Act, 2010 along with the Orissa Entertainment Tax (Amendment) Rules, 2010

S.No.	Case No.	Cause Title	Impugned order dated	Name of enactment
34.	**C.A. No. 1679/2020** Arising out of SLP(C) No. 31532/2012	Tata Sky Limited. Versus State of Uttar Pradesh	20.07.2012	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009
35.	**C.A. Nos. 1681-1682/2020** Arising out of SLP(C) Nos. 29366 – 29367 /2012	New Era Entertainment Network Ltd. Versus State of Uttar Pradesh	20.07.2012	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009
36.	**C.A. No. 1683/2020** Arising out of SLP(C) No. 31096/2012	Independent T.V. Ltd. Versus State of Uttar Pradesh	20.07.2012	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009
37.	**C.A. No. 1684/2020** Arising out of SLP(C) No. 31416/2012	Bharti Telemedia Ltd. Versus State of Uttar Pradesh	20.07.2012	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009

S.No.	Case No.	Cause Title	Impugned order dated	Name of enactment
38.	**C.A. No. 1685/2020** Arising out of SLP(C) No. 31342/2012	Bharati Telemedia Ltd. Versus State of Uttar Pradesh	20.07.2012	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009
39.	**C.A. No. 1686/2020** Arising out of SLP(C) No. 32123/2012	Sun Direct TV Pvt. Ltd. Versus State of Uttar Pradesh	20.07.2012	Uttar Pradesh Entertainments and Betting Tax Act, 1979 and Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009
40.	**C.A. No. 1580/2020** Arising out of SLP(C) No. 10555/2013	Tata Sky Limited Versus The State of Tamil Nadu	19.10.2012	The Tamil Nadu Entertainments Tax Act, 1939 as amended by Tamil Nadu Entertainments Tax (Second Amendment) Act, 2011
41.	**C.A. Nos. 1581-1583/2020** Arising out of SLP(C) Nos. 10658 - 10660 /2013	Bharati Telemedia Ltd. Versus Union of India	19.10.2012	The Tamil Nadu Entertainments Tax Act, 1939 as amended by Tamil Nadu Entertainments Tax (Second Amendment) Act, 2011
42.	**C.A. No. 1536/2020** Arising out of SLP(C) No.	Bharti Telemedia Ltd. Versus State of Orissa	14.11.2012	The Orissa Entertainment Tax Act, 2006 and Orissa

S.No.	Case No.	Cause Title	Impugned order dated	Name of enactment
	12692/2013			Entertainment Tax (Amendment) Act, 2010 along with the Orissa Entertainment Tax (Amendment) Rules, 2010

3.1 From the above table, it is evident that most of the Civil Appeals have been filed by the assessees while Civil Appeal No. 9301 of 2013 has been filed by the State of Kerala assailing the judgment of the said High Court dated 28.06.2012.

3.2 The Civil Appeals have been filed by the assessees assailing the orders passed by the High Courts referred to above dismissing the writ petitions while the State of Kerala has filed its appeal being aggrieved by some of the findings arrived at by the Kerala High Court in the context of Article 14 of the Constitution *vis-à-vis* the plea regarding discrimination raised by the respondents in the said Appeal.

3.3 The bird's eye view of the orders and judgements passed by the Eleven High Courts referred to above can be gleaned as under:

3.3.1 The High Court of Uttarakhand by way of impugned judgment dated 26.07.2010 passed in ***Tata Sky Limited vs. State of Uttarakhand, Writ Petition (M/B) No. 4 of 2010*** held that amendments to Uttar Pradesh Entertainment and Betting Tax, 1979 levying entertainment tax on DTH services was fully within the legislative competence of the State and did not encroach upon the field which the Parliament exclusively has authority to legislate. Relying on the judgment of this Court in ***State of West Bengal vs. Purvi Communication Pvt. Ltd., (2005) 3 SCC 711 ("Purvi Communication")***, it was observed that the activity carried on by petitioners therein was not different from that carried out by cable operators in ***Purvi Communication***. To explain the distinctions between the imposition of service tax and entertainments tax the High Court noted that the 'incidence' of service tax is on the license agreement obtained from the Ministry of Information and Broadcasting whereas the 'incidence' for the levy of entertainment tax is based on the individual contracts executed by the petitioner with its customers.

3.3.2 Similarly, the High Court of Punjab and Haryana High Court in the impugned judgment dated 25.10.2010 held that the

levy of entertainment duty falls under Entry 62 - List II which operates in a completely different field from Entry 92C - List I. Affirming the application of aspect theory to the present facts, it was observed that levies of service tax and entertainment tax can co-exist and can be harmonized as they concern different aspects. Therefore, the High Court upheld the *vires* of the Punjab Entertainment Duty Act, 1955, as amended in 2010, which levied entertainment duty on DTH services and dismissed the petition.

3.3.3 The impugned judgment dated 05.09.2011 of the Delhi High Court passed in ***Bharti Telemedia Ltd. vs. Government of NCT of Delhi, W.P.(C) No. 4935/2011*** applied aspects theory to the facts in hand and held that the State legislature is competent to levy an entertainment tax on all payments for admission through DTH. It was observed that the transaction in question has an aspect of service which is amenable to service tax and an aspect of entertainment which is amenable to entertainment tax. The writ petitions were dismissed and challenge to Section 7 of the Delhi Entertainments and Betting Tax Act, 1996 was rejected.

3.3.4 Subsequently, Gauhati High Court at Guwahati *vide* impugned judgment dated 22.02.2012 dismissed the petitions challenging the relevant provisions of Assam Amusement and Betting Tax Act, 1939 in terms of the judgments of the Uttarakhand High Court dated 26.07.2010 and Punjab and Haryana High Court dated 25.10.2010. The Gauhati High Court was of the view that the issues raised were already covered by the aforesaid judgments.

3.3.5 By way of impugned order dated 24.04.2012, the High Court of Orissa at Cuttack dismissed the writ petition being ***M/s. Tata Sky Ltd. vs. State of Orissa, Writ Petition (C) No. 8966 of 2011,*** and held that the aforesaid decision of the Punjab and Haryana High Court dated 25.10.2010 was squarely applicable to the facts before it.

3.3.6 The High Court of Judicature at Allahabad also dismissed the writ petition preferred before it *vide* impugned judgment dated 20.07.2012. The High Court thought it fit to respect the broad latitude given to legislature in fiscal legislation and thereby rejected the argument that the rate of entertainment was discriminatory in comparison with cable operators. It also agreed with the findings

of the Delhi High Court on the application of aspect theory. In the present batch of petitions, subsequent orders of the Allahabad High Court dated 09.04.2018, 11.04.2019 and 19.04.2018 are also challenged. These orders which were passed in terms of the impugned judgment dated 20.07.2012 are also challenged.

3.3.7 On 19.10.2012, the High Court of Judicature at Madras *vide* its order and judgment impugned herein held, in principle, that there could be a levy of entertainment tax on entertainment received through DTH services and the pith and substance of the levy contemplated under Entry 62 - List II is a levy on 'entertainment' in contradistinction to service tax levy on providing of service. The High Court also rejected the argument that Entry 62 - List II only refers to public entertainment and not entertainment through DTH *vis-à-vis* public entertainment. However, in the specific facts and circumstances, the High Court also held that the impugned charging provision i.e. Section 4-I of the Tamil Nadu Entertainments Tax Act, 1939 is inadequate due to no explicitly mention of the chargeable event and incidence of tax. Therefore, the writ petitions challenging the levy of entertainment tax were allowed. In so far as the matters arising

from Madras High Court are concerned, the questions with regard to legislative competence under Entry 62 – List I and whether DTH services were exclusively within Entry 92C/97 – List I are considered in these appeals. Further, the correctness of the findings of the High Court with regard to the charging section being defective is assailed by the State of Tamil Nadu in separate appeals which are not part of this batch of appeals.

3.3.8 The High Court of Jharkhand at Ranchi *vide* impugned judgment dated 30.01.2014 held that the Jharkhand Entertainment Tax Act, 2012 levying tax on "entertainment" through DTH, in pith and substance, is on entertainment which falls under Entry 62 - List II. According to the High Court, the aforesaid levy is distinguished from tax on "broadcasting service" under Entry 62 - List II. Having found the State Legislature competent to levy such "entertainment tax" the High Court dismissed all the writ petitions.

3.3.9 Impugned order dated 19.08.2014 passed by Rajasthan High Court conducted a survey of the extant judgments of different High Courts on the issues raised and of ***Purvi Communication***.

Finally, the High Court dismissed all three writ petitions by way of the impugned order.

3.3.10 Soon thereafter, the High Court of Gujarat at Ahmedabad by way of impugned judgment dismissed the challenge to the Gujarat Entertainment Tax (Exhibition by means of DTH Broadcasting) Rules, 2010 for similar reasons as other High Courts. The Gujarat High Court relied on Aspect Theory to dissect the two taxable events herein, *firstly*, the service of enabling flow of content and *secondly*, entertainment from content.

3.3.11 Finally, *vide* Impugned judgment dated 28.06.2012, the Kerala High Court allowed WP(C) No.33966 of 2006 (R) on the ground that the provisions of the impugned Act were discriminatory inasmuch as they authorized levy and collection of luxury tax on cable TV operators including petitioners only with connections of 7500 or above as discriminatory. According to the High Court, there could be no reasonable classification between cable TV operators with connections below 7500 and cable TV operators with connections above 7500 with reference to object of legislation.

Writ Petitions filed before this Court:

W.P. (C) No.699/2014:

3.4 W.P. (C) No.699/2014 has been preferred by the petitioner Tata Sky Ltd. (now Tata Play Ltd.) challenging the constitutional validity of Section 65 (105) (zk) read with Section 65(15) of the Finance Act, 1994, which impose service tax on the provision of "Direct to Home" ("DTH") broadcast facility provided by the petitioner to its subscribers. In short, the petitioner's case is that the entire operation carried on by the petitioner is one single operation and since only service tax is being imposed on this activity, the petitioner has been paying service tax on this activity since the year 2006. However, later the Jharkhand Entertainment Tax Act, 2012 (Act. No.13 of 2012) came into force taxing, *inter alia*, the activity of the petitioners as an entertainment. As a challenge to the legality of this imposition has been rejected by the High Court of Jharkhand at Ranchi and several other High Courts, which is now before this Court, this writ petition has been preferred contending that once an activity is found to be subject of an enactment under Entry 62 – List II, the same cannot also be subject to service tax, which is imposed taking strength from Entry 97 –

List I. Therefore, it is prayed that this Court may declare unconstitutional the imposition of service tax on the petitioner's activity. In the alternative, it is prayed that this Court may declare that the activity of broadcasting does not constitute providing entertainment and is thereby amenable to service tax. The prayers sought for in this writ petition read as under:

> "a) Declare that Section 65 (105) (zk) and Section 65(15) of the Finance Act, 1994, insofar as they purport to impose a tax on the "Direct to Home" activity provided by the Petitioner, are lacking in legislative competence and are thereby unconstitutional;
>
> b) Issue a writ of mandamus and/or such other appropriate writ, order or directing Respondent No.1, the Union of India, to pay to the various States, which seek to collect tax by way of entertainment tax, the amount collected by them towards service tax in discharge of the Petitioner's liability towards entertainment tax;
>
> c) In the alternative, declare that the activity of broadcasting does not constitute providing entertainment and is thereby amenable to service tax, and a tax by the States on such activity under Entry 62, List II, Sch. 7 of the Constitution of India is lacking in legislative competence;
>
> d) If prayer (c) above is allowed, then issue a writ of mandamus and/or such other appropriate writ, order or directing the Respondent States which collect tax by way of entertainment tax, to pay over the tax collected by them towards entertainment tax on the service provided by the Petitioner to the Union of India in discharge of the Petitioner's liability towards service tax.

e) Pass such other orders as this Hon'ble Court may deem fit and proper in the interest of justice."

W.P. (C) No.748/2015:

3.5 The issues raised in W.P.(C) No.748/2015 are similar to W.P.(C) No.699/2014 inasmuch as the petitioner, M/s Tata Play Ltd., challenges the constitutional validity of Section 65 (105) (zk) read with Section 65(15) of the Finance Act, 1994, which imposes service tax on the provision of DTH broadcast facility provided by the petitioner to its subscribers. Petitioner also challenges the constitutional validity of Sections 3(10), 3(11) and Section 15A of the Andhra Pradesh Entertainment Tax Act, 1939, and the Assessment Order RC No.A2/424/2014-15 (ET) dated 27.08.2015 issued by the Government of Telangana, Commercial Taxes Department for FY 2011-22, 2012-13 and 2013-14. After re-organization, the State of Telangana adopted the aforementioned Act. The petitioner's principal contention is that the petitioner cannot be burdened with imposition of 'service tax' and 'entertainment tax' on the same taxable event i.e. 'transmission of signals'. It is also contended that the petitioner as a DTH operator does not fall within the ambit of a 'Master Cable Operator' within

the meaning of the state enactment and therefore no entertainment tax can be levied on the petitioner's activity. Furthermore, it is argued that the State of Telangana cannot seek to levy Entertainment Tax for the period prior to the existence of the State of Telangana especially for the areas which now form part of the Andhra Pradesh. The prayers sought for in this writ petition read as under:

> "(A) Issue an appropriate writ, order or direction declaring Section 65 (105) (zk) r/w Section 65(14) of the Finance Act, 1994 insofar as they purport to impose a tax on the "Direct to Home" activity provided by the Petitioner, as lacking legislative competence and thereby unconstitutional;
>
> (B) In the alternative, declare that the activity of broadcasting does not constitute providing entertainment and is thereby amenable to service tax and a tax by the States on such activity under Entry 62, List II, Schedule 7 of the Constitution of India is. lacking in legislative competence;
>
> (C) Issue an appropriate Writ, Order or direction, declaring the Section 3(10), 3(11) and Section 15 A of the Andhra Pradesh Entertainment Tax Act as adopted by the State of Telangana, in so far as it purports to impose a tax on the activities carried on by the Petitioner as lacking legislative competence;
>
> (D) Issue a Writ of certiorari or any other writ, order or direction setting aside the Assessment Order (Rc. No. A2/ 424/2014-2015 (ET) dated 27.08.2015 (received by the Petitioner on 07.09.2015) issued by Respondent No. 3 as illegal, and having been issued without the authority of law;

(E) Pass such other orders as this Hon'ble Court may deem fit and proper in the interest of justice."

Submissions:

4. We have heard learned senior counsel and learned counsel appearing for the respective assessees/appellants herein and learned senior counsel and learned counsel for the respective State as well as learned senior counsel appearing for the Union of India at length and on several dates.

Submissions on behalf of Appellants:

4.1 Learned senior advocate, Sri Datar, appearing on behalf of the appellant in C.A. No. 2147/2012, drew our attention to the conscious use of the word 'entertainments' in Entry 62 - List II. It was contended that the word 'entertainments' is not the plural of 'entertainment' but is *nomen juris.* This line of argument was advanced to contend that the State cannot expand its taxing power by including DTH services within the meaning of the word "entertainments". To buttress his submission, he took us through the consistent use of the word 'entertainments' from the year 1622 onwards in British legislation. It was his argument that this consistent usage reflects the continuing and underlying intention

of constitutional makers for 'entertainments' to mean only public entertainment to the exclusion of private entertainment. Reliance in this regard was also placed on ***Cantonment Board Poona vs. Western India Theatres Ltd., AIR 1954 BOM 261,*** wherein the Bombay High Court held that 'entertainments' is used as a common noun and is to mean 'entertainments in public'.

4.2 Sri Datar also argued that Entry 31 – List I refers to 'communication' and 'broadcasting'. Therefore, even in the absence of an express entry taxing telecommunication or broadcasting, it was contended that these are "services" and can be taxed only by the Union, even if used for television channels. As "broadcasting service" includes DTH service, the States do not have the competence to tax the same service. He also drew our attention to the omission of Section 129 of the Government of India Act, 1935 that permitted imposing of fees on construction, use of transmitters, and use of receiving apparatus. This was contended in light of the fact that DTH operators use an apparatus to receive signals and further decode them.

4.3 It was further contended that *vide* Circular No. 61/10/2003-ST dated 14.07.2003, the Ministry of Finance directed Doordarshan and All India Radio to pay service tax as a provider of broadcasting services. It was therefore contended that, even if there is any entertainment through Doordarshan and All India Radio, it has always been treated as part of broadcasting service. By way of analogy, it was argued that Radio Tax was also levied by the Post and Telegraph Department even though radio provided entertainment. It was put forth that while Entry 31 - List I covers broadcasting and "other like forms of communication", Entry 13 - List II applies to communications not specified in List I (which actually concerns surface transport).

4.4 Our attention was also drawn to Entry 92C – List I of the Constitution, which was inserted but not notified. Relying on a judgment of the Constitution Bench of this Court in ***State of Kerala vs. Mar Appraem Kuri Company Ltd., (2012) 7 SCC 106,*** Sri Datar argued that the subject service tax is within the exclusive domain of Parliament even though Entry 92C was not notified. Therefore, it was contended that under Article 246(1) read with

Article 248, only Parliament can levy tax on any kind of services after the insertion of Entry 92C.

4.5 Furthermore, Sri Datar highlighted that, even the Negative List under Section 66D of the Finance Act, 1994 in the service tax regime also specifically excludes tax on entertainments, which, according to him, means only public entertainments. Therefore, it was contended that entertainments in public places, theatres, etc. will be subject to State taxes; whereas the same cinema shown on a personal device or on DTH/Cable TV can be taxed only by the Centre as being part of broadcasting service.

4.6 It was also contended by Sri Datar that all the impugned enactments passed by States have merely included "DTH Services" or broadcasting service as part of the definition of entertainment and therefore the tax is levied on the service itself and not on the entertainment, particularly because the entire value is taxed.

4.7 On the application of aspect theory, learned senior counsel Sri Datar's categorical argument was that "Double Aspect" theory only comes into play when both the Union and States have legislative competence. However, as Parliament in 2001 declared

its intent to tax DTH services, the aspect theory will have no application here.

4.8 Furthermore, on the relevancy of ***Purvi Communication*** to the matter at hand, it was pointed out by Sri Datar that while Parliament levied a tax in the year 2001, the judgment in ***Purvi Communication*** was pronounced in 2005 and has not noted the legislative history of entertainments and also did not refer to any entries pertaining to broadcasting or communications.

4.9 As an argument in the alternative, it was contended that even if the aspect theory was to apply, the impugned enactments are liable to be struck down as they ignore that in all composite transaction with different aspects, the legislature provides for bifurcation; however, herein the State legislatures have not provided for computation of the value attributable to entertainment. Only the States of Delhi and Assam have not levied entertainment tax on the gross consideration. It was contended that taxation on gross value is prohibited in law and the value of entertainment cannot be included in the value of service and *vice-a-versa, vide* ***Bharat Sanchar Nigam Limited vs. Union of***

India, (2006) 3 SCC 1 ("Bharat Sanchar Nigam Limited"); ***K. Damodarasamy Naidu & Bros. vs. State of Tamil Nadu, (2000) 1 SCC 521.***

4.10 In that context, it was also argued that where the services are availed by the weaker section of the society as well, an interpretation that avoids double taxation should be preferred.

4.11 Sri S.K. Bagaria, learned senior counsel appearing on behalf of the appellant in Civil Appeal No.1680 of 2020 and Writ Petition (Civil) No.699 of 2014, contended that the activity of the appellants herein is primarily broadcasting and has been treated and taxed as such under the statutes enacted by the Parliament. To show that the entire field of DTH services is occupied by the Central Government, Sri Bagaria drew our attention to the order dated 15.03.2001 of the Ministry of Information and Broadcasting, Government of India, by which DTH broadcasting was permitted in India.

4.12 According to Sri Bagaria, the fact that neither Entry 62 - List II nor any other entry in the State List explicitly mentions taxes on broadcasting shows that any and all taxes on broadcasting can

be imposed exclusively by the Parliament. Reliance in that regard was placed on Article 248(2) of the Constitution which provides for the Parliament to make any law imposing a tax not mentioned either in the Concurrent list or in the State list. Reliance was placed on the dictum of this Court in ***Association of Leasing & Financial Service Companies vs. Union of India, (2011) 2 SCC 352***.

4.13 It was sought to be advanced that the question before this Court was not merely regarding the scope of taxes on entertainments but also about the conspicuous absence of taxes on broadcasting in Entry 62 - List II. In other words, the question is whether the expression 'taxes on entertainments' can be construed so broadly as to include taxes on broadcasting within it. The argument advanced was that even a reading of the entries in their widest amplitude would not enable the respondents to read into the entry a subject not covered by it. Succinctly stated, the argument of Sri Bagaria is that giving such a wide interpretation to Entry 62 - List II will nullify Parliament's power and legislative competence to levy taxes on broadcasting service as there can be no overlapping in the field of taxation.

4.14 While Entry 31 - List I is undisputedly acknowledged as a regulatory entry, it was also argued that a construction as argued by the appellants will also be fully in line with the structure of the constitutional scheme, especially that of the Seventh Schedule. As broadcasting and other like forms of communication are covered by Entry 31 - List I and service tax on broadcasting is imposed under Entry 97 - List I, it was argued that there is a discernible constitutional scheme which necessitates the widest possible construction of Entry 31- List I. Additionally, it was advanced that the State List has no mention of broadcasting and other like forms of communication or taxes on broadcasting whereas State List does have regulatory entries in the form of Entry 33 – List II concerning sports, entertainments and amusements, and in the form of Entry 34 – List II for betting and gambling. Thus, Entry 62 – List II relates to taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

4.15 Sri Bagaria, learned senior counsel, placed significant reliance on the scheme of regulation and definition of broadcasting by Parliamentary statutes and orders. It was argued that the entire contour of broadcasting is a subject matter of parliamentary

enactments and, therefore, as all forms, types and varieties of broadcasting are covered by Parliamentary Law, it is evident that every facet of regulation of broadcasting is subsumed under Entry 31 – List I and the taxing power for broadcasting is under Entry 97 – List I. Highlighting the importance of broadcasting, it was also argued that broadcasting and other forms of communication are subjects of national importance which were intended by the constitutional framers to be regulated and taxed by the Central Government only. It is the case of the appellants that upholding such an interpretation of Entry 62 – List II would be to truly and correctly reconcile the same with other entries in List I. According to the appellants, the constitutional scheme is with respect to all forms, types and contents of broadcasting. The consequences and effects of broadcasting are not the same thing as legislative subject matter and, consequently, all forms and attributes of broadcasting also fall within List I. It is Sri Bagaria's argument that tax is sought to be levied merely with reference to the entertainment - causing attribute of broadcasting and is, therefore, impermissible in law.

4.16 Reliance was placed on the judgment of this Court in ***Special Reference No.1 of 2001, In Re: Association of Natural***

Gas vs. Union of India, (2004) 4 SCC 489, wherein the validity of Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001 was challenged before the Constitution Bench. The issue before the Court was whether the State had legislative competence to make laws on natural gas and liquefied natural gas under Entry 25 – List II, "*Gas and Gasworks*" or whether the Parliament was competent to make laws under Entry 53 – List I, "*Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable*". While the State of Gujarat argued that Entry 25 – List II must be given the widest possible interpretation and that it includes all types of gases especially when there are no words of limitation in the entry itself, this Court considered the consistent legislative practice in various legislations to hold that the term "petroleum" or "petroleum products" has been given a wide meaning to include within itself natural gas and other similar products. Sri Bagaria, learned senior counsel, contended that similarly, central legislations passed by Parliament over several decades included within "broadcasting" any form of

communication like signals, images, sounds of all kinds by transmission of electromagnetic waves irrespective of the contents and their natures or types. It was further contended that this reading will not make Entry 62 – List II a "useless lumber" because any or all forms of broadcasting was never intended to be covered by the expression "entertainments".

4.17 It was categorically argued that the aspect theory has no application to the activity at hand as the activity of broadcasting is taxed by the Parliament and the state legislatures have no legislative competence to tax the same under Entry 62 - List II as tax on 'entertainments'. Sri Bagaria would argue that even in ***Federation of Hotel & Restaurant Association of India vs. Union of India, (1989) 3 SCC 634 ("Federation of Hotel & Restaurant Association of India")*** this Court rejected the challenge to the central statute impugned therein as it found that the subject matter of the impugned statute was in pith and substance a tax on expenditure and not on luxuries or sale of goods.

4.18 Sri Gulati, learned senior advocate, argued that at a foundational level, far from carrying out any activity of entertainment, the appellant only acts as a conduit in the entire process of transmission of signals to the subscriber of television channels. In this context, he outlined that appellants perceive the nature of their activity as follows:

(i) entire activity of appellants is in relation to transmission of DTH signals; and

(ii) neither do appellants exercise any control over the content received from the broadcaster nor do they control exhibition of the content.

4.19 It was contended that the said activity is aptly described as only rendering broadcasting service which was earlier amenable to service tax under Section 65(105)(zk) of the Finance Act, 1994 and was specifically expanded in 2005 to include DTH signals. That from the year 2007 onwards, the appellant was discharging service tax on the entire monthly subscription charges under 'broadcasting services' without charging any additional consideration for set-top boxes and dish antenna. It was argued

that, in substance, this position continued even after the Negative List regime was brought about in 2012.

4.20 Sri Gulati highlighted that States have enacted statutes under Entry 62 – List II intending to tax the very same activity as that of providing "broadcasting service", which is already amenable to service tax imposed by the Parliament. According to Sri Gulati, the provisions of various State enactments levying Entertainment tax can be categorized as follows:

i. Levy of tax is on admission to entertainment by way of a DTH connection;
ii. Levy is on entertainment through DTH service, and
iii. No taxable event is specified in the charging provision.

4.21 It was contented that herein there is only one activity of providing DTH signal and that itself is a service. Reliance was placed on ***All India Federation of Tax Practitioners vs. Union of India, (2007) 9 SCR 527 ("All India Federation of Tax Practitioners")*** to submit that a service is also an activity. Thus, it was contended that the only taxable event here being providing the service of broadcasting, there are no two aspects to the service

provided by the Appellants and only one taxable event i.e. provision of DTH service does not enable the States under the guise of Entry 62 - List II to levy entertainment tax on the same aspect.

4.22 It was stressed on behalf of the appellants that though entertainment may, *inter alia,* be a consequence of DTH service, but entertainment tax cannot be levied on the activity of provision of DTH service, *vide* ***Godfrey Phillips Ltd. vs. State of U.P., (2005) 2 SCC 515 ("Godfrey Phillips").*** It was contended that there being only one taxable event, there can be no confounding of the service provided herein as both: a service and an entertainment.

4.23 In the same vein, reliance was placed on ***Godfrey Phillips*** to contend that the word 'entertainments' contemplates a tax on 'activities' of entertainments and not on any person being entertained or receiving entertainment *per se*. As no entertainment is inherently embedded in the activity conducted by appellants, namely, broadcasting service, there can be no levy of entertainment tax on them.

4.24 It was also pressed that the position of law permits tax under Entry 62 - List II only on the act of entertaining and not on the consequence of an activity being entertainment *vide* ***Western India Theatres vs. Cantonment Board, Poona, 1959 Supp (2) SCR 63 ("Western India Theatres")***. Highlighting the multitude of content transmitted by appellants, it was advanced that the activity of appellants cannot be seen as providing entertainment insofar as informational and educational shows, news, etc. as these may not have any element of entertainment at all.

4.25 Another line of argument of appellants advanced before us relates to a distinction between public entertainment and private entertainment. By way of analogy to cinema theaters, it was contended that mere provision of DTH services does not constitute a ticket "for admission to an entertainment"/or provision of "entertainment". It was also contended that for an entertainment to be taxed as such, it should be open to public where members are invited. That is to say, Entry 62 – List II is restricted to entertainments of a public color. – *vide* ***Geeta Enterprises vs. State of Uttar Pradesh, (1983) 4 SCC 202 ("Geeta Enterprises")***. However, as DTH service is provided to a subscriber

in a private place, the appellants contended that the aspect of providing DTH service levy of entertainment tax is constitutionally impermissible. According to Sri Gulati, learned senior counsel, the words appearing alongside 'entertainments' in Entry 62 – List II must also be taken aid of to interpret the entry as having a public colour. It was argued that the juxtaposition of amusements, betting and gambling within one entry indicates that the tax contemplated is on establishments providing entertainment activities. Similarly, it was highlighted that the taxable event in various state legislations is the "admission for an entertainment" and not the consequence of entertainment.

4.26 The next line of contention taken by the appellants is that there is no overlap in taxing entries and that it is settled law that taxing entries must be construed with clarity and precision as to maintain exclusivity. - ***Commissioner of Central Excise and Customs, Kerala vs. Larsen and Toubro Ltd., (2016) 1 SCC 170*** and ***Hoechst Pharmaceuticals Ltd. vs. State of Bihar, (1983) 4 SCC 45 ("Hoechst Pharmaceuticals").***

4.27 On the question of applicability of aspect theory, which has been relied on by various High Courts, the appellants contend that the activity of broadcasting is only one indivisible transaction which cannot be artificially split into two taxable events and, therefore, the aspect theory would have no applicability here as splitting is permitted only when the activity represents two distinct and separate contracts which are discernible as such. - ***Bharat Sanchar Nigam Limited.***

4.28 In substance, the contention of the appellants was that the provision of providing DTH service is only one taxable event which cannot be split into various aspects to become amenable to taxation as both a broadcasting service and as entertainments. Reliance was also placed on the fact that the appellants are mandated to avail license granted under Section 4 of the Indian Telegraph Act, 1885 for providing telecommunication services. It was also highlighted that this Court in ***Bharat Sanchar Nigam Limited*** observed that the license under Section 4 of the Indian Telegraph Act is for providing telecommunication service and not for supply of any goods or transfer of right to use any goods. In furtherance of the same, it was noted by this Court that the

integrity of the telecommunication service or license would therefore be mutilated if it were to be broken down into pieces to be taxed as supply of goods or transfer of right to use goods.

4.29 Sri Gulati, learned senior counsel, furthermore argued that there being no divisible event, the correct test to ascertain the true nature of the activity herein is the dominant nature test. Having argued vehemently that the dominant intention of the appellant is to act only as a conduit for receipt and transmission of broadcasting signals, he highlighted that the aspect theory will be of no avail to the States to entrench upon the Union List and tax services by including the cost of such service in the value of the goods, *vide* ***Bharat Sanchar Nigam Limited; Imagic Creative (P) Ltd. vs. CCT, (2008) 2 SCC 614 ("Imagic Creative"); Larsen and Toubro Limited vs. State of Karnataka, (2014) 1 SCC 708***.

4.30 Sri Gulati took us through the origin of the aspect theory in the Canadian jurisprudence whilst highlighting at the outset a significant distinction between the Canadian and Indian jurisprudence that must be borne in mind. In ***Lyle Francis Smith vs. Her Majesty the Queen, (1960) SCR 776***, and in several

decisions since then, it has been observed by the Supreme Court of Canada that within the Canadian constitutional scheme, an overlap is inevitable between the subjects outlining the areas of legislations to be legislated on by the Parliament of Canada and provincial legislatures due to the general wording of the subjects under Sections 91 and 92 of the British North America Act, 1867 respectively. However, it is settled law that in India, there is no overlap between the taxation entries in List I and List II. It was highlighted that the double aspect doctrine has been developed to resolve these situations of inevitable overlap and has been applied to allow both federal and provincial regulation where powers overlap. It was contended that the doctrine has, however, never been allowed to enable the dominion and provincial legislatures to separately tax two aspects of the same transaction. It was therefore contented that any transplantation of the doctrine to the Indian Constitution must be tempered and exercised with caution given that in the Indian constitutional scheme, there cannot be any overlap in respect to the entries pertaining to taxation.

4.31 Furthermore, it was contended that the true nature of the activity of DTH services must be ascertained while keeping in mind

that the DTH operator has no control over the content that is broadcast or received. It was contended that as the activity would continue to be a service even if no entertainment value is transmitted, it must be held that the true nature of the activity is predominantly that of a broadcasting service. It was repeatedly and vehemently argued on behalf of appellants that any element of entertainment is purely incidental to the provision of service.

4.32 Sri Gulati further argued that the pith and substance of the state legislations, impugned herein, is in the nature of a broadcasting service. This argument links to the foundational argument that the activity of providing broadcasting services is not in the nature of entertainment, and therefore, the levy imposed on purported entertainment isn't different from service on which service tax is levied by the central government. It was contended that states cannot simply deem the whole activity undertaken by appellant as 'entertainment' which in fact is, fundamentally, a broadcasting service.

4.33 The argument further advanced on behalf of the appellants was that there is no machinery to exclude the value of service from

the value of entertainment. This was argued as the impugned legislations, except those of the States of Delhi, Gujarat, and Assam, do not exclude the value of service from the value of entertainment before levying entertainment tax. According to the appellants, it is impermissible to levy entertainment tax on the value of the gross amount received by the appellants from its subscribers without segregating the value of service from the value of entertainment. In substance, the contention of the appellant was that in the absence of any machinery to compute the measure of tax for the purpose of levy of entertainment tax, the charge of entertainment tax itself would fall, *vide* ***Commissioner of Income Tax, Bangalore vs. B.C. Srinivasa Setty, (1981) 2 SCC 460.***

4.34 Notably, a three-judge bench of this Court in ***Purvi Communication*** has already found that entertainment tax was leviable against cable operators. However, learned senior counsel Sri K.K. Venugopal argued that the decision of this Court in ***Purvi Communication*** failed to consider the tests laid down in ***Geeta Enterprises*** and to that extent is *per incuriam* and *sub silentio*. Appellants also contended that the decision in ***Purvi Communication*** is distinguishable as that case was not concerned

with attempts of both Central Government and State Governments to levy a tax on the same activity but instead dealt with the conflict between Entry 62 – List II and Entry 31 – List I i.e. between a taxing entry and a regulatory entry, whereas the conflict herein is between two taxing entries being Entry 97 – List I and Entry 62 – List II.

4.35 The appellants also contended that if the State legislatures are held competent to levy entertainment tax under Entry 62 – List II, then the taxable event would fall within the exclusive jurisdiction of the State legislature and consequently the Central Government would lose competence to levy service tax under Entry 97 – List I.

4.36 Without prejudice to the foregoing arguments, learned senior counsel appearing for the appellants argued that the impugned legislations promulgated by the states of Tamil Nadu, Odisha, Assam and Gujarat fail to provide for a clear and unambiguous taxable event as they only deem the operations of DTH operators as entertainment. Therefore, it was contended that these legislations do not satisfy the test laid down by this Court in ***Govind Saran Ganga Saran vs. CST, 1985 Supp SCC 205***

("Govind Saran Ganga Saran") and must be held to be unconstitutional. As only the Madras High Court accepted this argument, learned counsel for the appellants contended that the impugned judgments arising out of the High Courts including Orissa, Gauhati and Gujarat are bad in law.

4.37 It was further contended that Section 3 of the Jharkhand Entertainment Tax Act, 2012, which is the charging section, merely provides a tax on entertainment and lacks any clear and unambiguous stipulation to tax entertainment through DTH. Therefore, in the absence of such express words in the charging section, there cannot be any levy of entertainment tax. It was also contended that the Notification dated 14.05.2012 issued by the State Government under Section 1(3) of the Jharkhand Entertainment Tax Act, 2012 appointing 27.04.2012 as the date of implementation of the Act suffers from the vice of imposing retrospective taxation in the absence of any express legislative provision providing for it.

4.38 Ms. Shirin Khajuria, learned senior counsel appearing on behalf of the subscribers, took us through the scheme of the

impugned Act promulgated by the State of Kerala and brought to our attention that there was a stay on the levy of luxury tax for the period 2006 to 2010 and therefore the tax has to be collected only if leviable and not otherwise.

Submissions of Respondent-States:

State of West Bengal:

5. Sri Jaideep Gupta, learned senior counsel appearing for the State of West Bengal in W.P.(C) 699/2014, commenced his arguments by noting that the writ petitioners have not pressed the prayers challenging the constitutional validity of Section 65 (105)(zk) and Section 65(15) of the Finance Act, 1994. Further, arguing in support the constitutional validity of the entertainment tax imposed under the State enactment, he contended that there is no conflict between Entry 62 – List II and Entry 97 – List I.

5.1 According to learned senior counsel, this Court's approach must be to first interpret Entry 62 – List I, followed by an examination of the scope of Entry 33 – List I. It was argued that the scope of Entry 62 – List II can be informed by the judgment of this Court in ***Western India Theatres*** wherein it was held that a

State imposition is on the activity of entertainment. In that case, it was on the happening of a show in a theater. Reliance was placed on the following paragraph from ***Western India Theatres***:

> "As pointed out by this Court in Navinchandra Mafatlal v. The Commissioner of Income Tax, Bombay City (1), following certain earlier decisions referred to therein, the entries in the legislative list should not be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. It has been accepted as well settled that in construing such an entry conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein. In view of this well established rule of interpretation, there can be no reason to construe the words " taxes on luxuries or entertainments or amusements " in entry 50 as having a restricted meaning so -as to confine the operation of the law to be made thereunder only to taxes on persons receiving the luxuries, entertainments, or amusements. The entry contemplates luxuries, entertainments, and amusements as objects on which the tax is to be imposed. If the words are to be so regard- ed, as we think they must, there can be no reason to differentiate between the giver and the receiver of the luxuries, entertainments, or amusements and both may, with equal propriety, be made amenable to the tax. It is true that economists regard an entertainment tax as a tax on expenditure and, indeed, when the tax is imposed on the receiver of the entertainment, it does become a tax on expenditure, but there is no warrant for holding that entry 50 contemplates only a tax on moneys spent on luxuries, entertainments or amusements. **The entry, as we have said, contemplates a law with respect to these matters regarded as objects and a law which imposes tax on the act of entertaining**

is within the entry whether it falls on the giver or the receiver of that entertainment. ..."

(emphasis supplied)

Applying the aforesaid to the facts of the instant cases, it was argued that irrespective of the nomenclature of broadcasting or entertainment, the activity of the petitioner ends with the TV set and is therefore carried out for the purpose of entertainment.

5.2 Sri Gupta further argued that where taxing entries are not in conflict, then there is no need to go the doctrine of pith and substance. Furthermore, examining the application of aspect theory in ***Federation of Hotel & Restaurant Association of India***, he argued that the same has been followed in ***All India Federation of Tax Practitioners***. It was also argued that ***Purvi Communication*** is not *per incuriam* and was rightly decided it being distinguished from ***Geeta Enterprises*** for multiple reasons.

State of Uttar Pradesh:

5.3 Learned senior counsel Sri Raizada appearing for the State of Uttar Pradesh, contended that the judgment in ***Geeta Enterprises*** was adjudicated on the anvil of interpretation of '*places of entertainment*' as it appeared in the 1937 Act whereas the

present impugned levy is imposed under the revised 1979 Act. It was highlighted that the period of the controversy herein is from 2005–2009 and any dictum under the 1937 Act would have no bearing on the present case. Furthermore, it was argued that if for a single transaction two levies are made out or use a measure of another tax then such an imposition would not be *ultra vires* the Constitution. Therefore, it was contended that '*entertainments*' as it appears in Entry 62 – List II must be given a widest possible interpretation and it would be erroneous to define entertainment in a myopic, rigid or straightjacket formula.

State of Odisha:

5.4 Sri Preetesh Kapur, learned senior advocate, appearing for the State of Odisha in C.A. No.1536/2020 contended that Entry 62 – List II must be read in the widest amplitude possible and a correct reading of the same allows imposition of tax on the act of entertaining whether it falls on the provider or receiver of entertainment, *vide* ***Western India Theatres***. Furthermore, in ***Express Hotels (P) Ltd. vs. The State of Gujarat, 1989 3 SCC 677 ("Express Hotels")***, this Court, while interpreting Entry 62 – List II on the context of luxuries, observed that a legislative entry

takes within it everything that can fairly and reasonably be said to be comprehended in it while the actual measure of the levy is a matter of legislative policy and will be held to be good in law as long as it has a reasonable nexus with the concept of luxuries. It was also canvassed that the actual utilization or derivation of entertainment was irrelevant for the imposition of tax and could be of any kind including one which may be purely educative *vide* ***Express Hotels*** or ***Geeta Enterprises.***

5.5 It was further argued that the Orissa Entertainment Tax Act, 2005 as well as the Amendment Act of 2010 are, in pith and substance, relatable to Entry 62 - List II. Applying the test expounded by a three-Judge Bench of this Court in ***Purvi Communication*** to ascertain whether a tax falls within the ambit of Entry 62 - List II, learned senior counsel contended that the amendment in question, whereby entertainment tax was imposed on DTH operators, is a tax on entertainment.

5.6 Sri Kapur argued that this Court in *para 46* of ***Purvi Communication*** has held that the appropriate test is whether the activity being taxed has a direct and proximate nexus with the

provision (or enjoyment) of entertainment. It was also argued that once the law is found to be in pith and substance relatable to Entry 62 - List II, the mere imposition of service tax cannot by itself denude the State legislatures of their legislative competence.

5.7 Sri Kapur sought to contend that when neither entry is subject to the other, then both entries are required to be constructed so harmoniously that they are given full effect in their respective fields. Therefore, both entries herein, though they may seem overlapping, can indeed be given full effect as they deal with distinct aspects. States have also placed significant reliance on 'aspect theory' or the 'double aspect doctrine' to establish that both Central and State Acts are valid as they seek to levy tax on entirely different aspects even though they may form part of the same activity.

5.8 According to Sri Kapur, had the liability been imposed directly upon the subscriber, the distinction between service tax on the services rendered by the DTH operator and entertainment tax upon the subscribers would have been self-evident. It is settled law that entertainment tax, for administrative convenience, can either

be on the receiver or equally be upon the provider of the content without causing any alteration to its nature. – ***Federation of Hotel & Restaurant Association of India.*** The same case was also relied upon to contend that a measure of tax is not determinative of the nature of the levy.

5.9 Furthermore, it was contended that the argument advanced by the appellants herein would render Entry 62 – List II redundant as almost every provision of entertainment would necessarily be borne out of rendition of some service. According to Sri Kapur, this is precisely why the distinction between the two aspects must always be kept in mind.

5.10 On the application of aspects theory, it was contented that the same is neither contrary to the pith and substance doctrine nor is it an exception, but only compliments the latter. The operationalization of aspect theory is explained by suggesting that two competing enactments, if they deal with distinct aspects of a transaction, will not restrict each other and will continue to apply in their respective fields without inviting any question of overlap or repugnancy. It was submitted that the aspect theory is helpful at

the stage of a "seeming" conflict to determine whether the aspects legislated upon are distinct and whether there is an overlap or not at all.

5.11 In response to the arguments of the appellants that Entry 31 read with Entry 97 – List I must be seen as taking out from Entry 62 – List II a tax on entertainment provided by means of broadcasting, the State of Orissa contended that such an argument overlooks the distinct aspects involved in rendition of services and entertainment. Neither could Entry 31 – List I being a regulatory entry whittle down the scope of Entry 62 – List II nor could Entry 97 – List I being a residuary entry cull out any aspect from a specific taxing entry in the State List.

5.12 Pertinently it was also highlighted that this Court in ***State of Karnataka vs. State of Meghalaya, (2023) 4 SCC 416 ("State of Karnataka")***, specifically rejected the contention that a regulatory entry in the Union List must be construed as also covering all facets of taxation along with and through the residuary entry, even if that tax may squarely fall within the State List.

5.13 Furthermore, in response to the contentions on ***Geeta Enterprises*** and ***Purvi Communication***, it was contended that the judgment in ***Geeta Enterprises*** categorically notes that this Court was concerned with the definition of entertainment under a particular statute and not under Entry 62 – List II. That it would be wholly erroneous to transplant the limitations and interpretations made in the context of a statute to be taken to govern the interpretation of an entry in the Seventh Schedule of the Constitution, which must be given an interpretation of the widest possible amplitude.

5.14 It was also highlighted that this Court in ***Suresh vs. State of T.N., (1997) 1 SCC 319 ("Suresh")*** had already considered the argument and expressed agreement with the view of the States herein.

5.15 Summarily, it was also argued that the imposition of tax on goods or an activity that a person may ultimately enjoy or consume at home cannot be construed as an invasion of the right to privacy.

5.16 To the argument of the appellants that they are merely conduits in the chain between broadcasters and subscribers, it was

responded that it is settled law that a tax under Entry 62 – List II can be on the provider of entertainment as well as or on the receiver. It was also contended that the DTH operator evidently has a direct and proximate nexus with the subscriber inasmuch as it is the DTH operator who enrolls and provides the setup box along with dish antenna to the subscriber. Finally, it was contended that the argument of merely being a conduit overlooks the well settled position that tax can be collected at any convenient stage as long as a rational connection is maintained. – *vide* ***CCE vs. Grasim Industries Ltd., (2018) 7 SCC 233.***

5.17 It was also argued that the appellants have erred in relying on ***Bharat Sanchar Nigam Limited*** to contend that the dominant intention of the activity must be seen and that there must be splitting of charges between services and entertainment. Learned senior counsel submitted that this argument ought to be rejected as it would be totally erroneous to draw an analogy between entertainment tax on the one hand and tax on sale of goods on the other, as in the case of entertainment the entire service rendered by the provider is for the purpose of entertainment. Even though it might be one activity, it is on one aspect, the price for services

rendered and, from the point of view of the subscribers, the price for entertainment. – ***Federation of Hotel & Restaurant Association of India.***

5.18 According to learned senior counsel, the Court in ***Bharat Sanchar Nigam Limited*** held that tax on sale of goods cannot be levied on a separate and severable component i.e. services as goods are only a component of the deemed severable transaction by way of a fiction. In other words, in ***Bharat Sanchar Nigam Limited,*** it was held that the States lacked jurisdiction to tax the services component and consequently, lacked the competency to include the price of services as a measure of tax for sale of goods and *vice-versa.* It was for this reason that the judgment in ***Bharat Sanchar Nigam Limited*** held that value of services cannot be included in the value of goods. By way of analogy, it was contended that had it been the case that electromagnetic waves had also been deemed to be goods and there was an overlap of the entire consideration, only then would the judgment in ***Bharat Sanchar Nigam Limited*** be similar to the facts herein.

5.19 It was also contended that the argument of splitting the consideration between services and entertainment is an indirect manner of contending that the entire subscription amount cannot form the measure of tax. It was argued that in case of a composite transaction including services and sale of goods, a measure for one is distinct from the other by virtue of there being two deemed separate transactions. However herein, as the employment of aspect theory as laid down in the *Federation* is justified, the full subscription amount can indeed constitute the measure for both taxes as the rational nexus between the levy and the measure is maintained. – *vide* ***Mineral Area Development Authority vs. Steel Authority of India, 2024 SCC OnLine SC 1796.***

State of Tamil Nadu:

5.20 Sri Radhakrishnan, learned senior counsel appearing on behalf of Respondent-State of Tamil Nadu in C.A. No.1580/2020 and C.A. No.1581/2020, invited this Court's attention to the history of the legislation on the subject in the State of Tamil Nadu. Promulgated in 1939, the preamble to the Tamil Nadu Entertainments Tax Act, 1939 reflects that the Act was intended "*to impose a tax on amusement and other entertainments in the*

Province of Madras." *Vide* Act No.XVII of 1949 w.e.f. 1st August 1949, the words "a tax" was substituted by "taxes" and by Madras Act No.V of 1958, the words "amusements and other entertainments" were substituted by the word "entertainments".

5.21 Thus, as it stands today, the Tamil Nadu Entertainments Tax Act, 1939 is "an Act to impose taxes on entertainments in the State of Tamil Nadu". It was shown that Section 3(4) of the Act, which defines "entertainment" was amended to levy tax on gross collection per show made by the theatres-touring, permanent and semi-permanent.

5.22 Of note is the charging section of the Act i.e., Section 4 which sought to tax entertainment provided through cinematograph exhibition in the theatres on payment for admission. The system of levy gradually underwent changes to pay a percentage on gross collection and based on theatre location. Pertinently, it was submitted that in the wake of new age medium of recreation on television screen through a VCR or cable television network, the legislature in its wisdom inserted Section 4-D to the Act w.e.f. 17.05.1984. The aforesaid Section was substituted by

Amendment Act 37 of 1994 with effect from 01.09.1994, which inserted a charging provision under Section 4-E to levy tax on entertainment through cable television at 40% of contribution or subscription or installation or connection charges or charges collected in any manner for television exhibition. Similarly, appropriate changes were made to the definition of "entertainment" under Section 3(4) of the Act to include cable TV and another source of entertainment. Thereafter, the State of Tamil Nadu, having taken note of further technological advancement in offering entertainment through DTH and through IPL matches, inserted section 4-I in the said Act to levy tax. Therefore, DTH service and cricket tournaments conducted by the IPL were brought within the definition of the term 'entertainment'.

5.23 Aggrieved, several DTH service providers preferred Writ Petitions before Madras High Court challenging the levy of entertainment tax. By judgment dated 19.10.2012, the High Court accepted the contention of DTH service providers that the charging section was defective and the levy of entertainment tax is contrary to Article 14; however, the High Court held that the State

Legislature was competent to levy tax on the entertainment aspect of the DTH services.

5.24 Learned senior counsel submitted that while construing an entry in a List conferring legislative power, the widest possible construction according to their ordinary meaning must be given to the words used therein. – *vide* ***Navinchandra Mafatlal vs. Commissioner of Income-Tax, Bombay City, AIR 1955 SC 58.*** It was submitted that the most liberal and widest construction must be given to accommodate within an organic Constitution the changing meaning of the text in tune with an evolving society. In that context, it was submitted that in today's society, it is pedantic to contend that the term 'entertainment' does not cover within its ambit DTH service providers. Furthermore, it was argued that merely because individuals can derive entertainment in their private space does not denude the public character of entertainment through DTH services. The facility of choosing the time, place, mode or content does not convert entertainment through DTH into private entertainment and therefore, the subject matter of tax is not a justifiable ground to read any limitation into this expression.

5.25 Learned senior counsel vehemently argued that the theory of occupied field advanced by the appellants herein has already been rejected by this Court. Our attention was drawn to the judgment of Madras High Court dated 30.11.1994 in ***Tamil Nadu Cable TV Organisers vs. Government of Tamil Nadu, W.P. No. 16237/1994***. Therein, Section 4-E of the State legislation which levied an entertainment tax on the entertainment aspect of service provided by cable operators was challenged in the aforementioned petition before the Madras High Court. Rejecting the challenge, it was held that there being nothing in Entry 62 – List II to warrant a restrictive meaning, the definition of entertainment would not be restricted to cinematographic exhibitions alone and would include other forms of entertainment as well. It was submitted that the challenge made therein was most similar to the challenge made here against Section 4-I of the same Act. As noted, the Madras High Court rejected the restricted interpretation of entertainments and rejected the contention based on the theory of occupied field as it found that in pith and substance the impugned legislation fell within Entry 62 - List II. Thereafter, an appeal was preferred before this Court by cable TV operators which was rejected in ***Suresh,***

while observing that there was no reason as to why the entertainment aspect of the transaction could not be taxed.

5.26 It was further argued that in India, the subject of tax can be the person, thing or activity on which the tax is imposed and herein the subject of tax is the receiver of entertainment by subscription to DTH: ***Godfrey Phillips***.

5.27 Sri Radhakrishnan referred to the distinct and different senses in which the words 'levied', 'paid' and 'recoverable' are used in Section 4-I of the Act. While the tax is 'levied' on entertainment, it is 'paid' on all payments for admission to an entertainment and it is 'recovered' by the proprietor and paid to the government. Sri Radhakrishnan also agreed that even if the DTH service provider only acts as a conduit between content providers and the subscribers, since it is clarified that the subject matter of the tax is the entertainment derived from the content, there is no scope for confusing the entertainment with the service of enabling the flow of content through the DTH system. It was also argued that there are two aspects of the DTH service; i.e. the service aspect and the entertainment aspect. The taxable event for the former being the

flow of content through satellites and for the latter being the entertainment derived from the subscription of the content.

5.28 It was also canvassed that the specific power of taxation within the legislative competence of State of Tamil Nadu cannot be fettered by the general power of regulation or the residuary power of taxation available to the Union Government under Entry 31 or even Entry 97 – List I. It was contended that this Court has already observed that legislative competence of the State to levy entertainment tax could not be fettered by the enactment of any regulatory enactment law, *vide* ***Purvi Communication.***

5.29 It was therefore contended that the state's specific power of taxation cannot be cut down by regulatory power of the Union. To assail any question of overlapping in the present case, learned senior counsel submitted that Entry 62 – List II operates in an entirely different sphere to that of Entry 92C or Entry 97 – List I.

5.30 It was further contended that a reading of Entry 33 – List II makes it evident that entertainment and amusement is a class by itself not subject to Entry 60 – List I. Although cinemas mentioned in Entry 33 – List II are made subject to Entry 60 – List I relating

to sanctioning of cinematographic films for exhibition, but other forms of entertainment *qua* which general power of regulation is given to the state are not made subject to any entries in List I.

5.31 It was reiterated that this Court has held that under the Indian Constitution, the scheme of division of taxing powers is not based on any criterion depending on the incidence of the tax. – ***Chhotabhai Jethabhai Patel and Co. vs. Union of India, AIR 1962 SC 1006.*** The importance of the doctrine of pith and substance in deciding the scope of legislation *qua* the entries in the three Lists was also emphasized. - ***MPV Sundararamier & Co. vs. State of Andhra Pradesh, AIR 1958 SC 468 ("MPV Sundararamier").*** It was also contended that to decide the true nature and character of a particular levy with reference to legislative competence, the Court has to look into the pith and substance of the legislation as a whole. - ***All India Federation of Tax Practitioners.*** On an application of the aforesaid principles to the facts of these cases, the learned senior counsel concluded that taxes on DTH service is on a different subject when compared to taxes on entertainment as the pith and substance of the relevant state legislation is to tax the subject of entertainment.

5.32 Sri Radhakrishnan submitted that the question in ***Geeta Enterprises*** was limited to the interpretation of the word 'entertainment' as used in Section 2(3) of the United Provinces Entertainment and Betting Tax Act, 1937 and therefore non-consideration of the *ratio* of the said case does not make the judgment in ***Purvi Communication*** bad in law.

5.33 Additionally, it was also argued that DTH operators are not merely engaged as conduits in the service of broadcasting but also create their exclusive content and channels available to their subscribers.

State of Rajasthan:

5.34 Dr. Manish Singhvi, learned senior counsel appearing on behalf of the State of Rajasthan, submitted that if the activity of the petitioners is within Entry 62 – List II then nothing more is to be seen and the imposition of service tax is wholly irrelevant. After taking us through the provisions of the relevant Act promulgated by the State of Rajasthan Act, it was argued that imposition of service tax is not a tax on entertainment, validity of which needs to

be determined only by testing if in pith and substance it is traceable to Entry 62 – List II.

State of Punjab:

5.35 Learned senior counsel Sri Farasat appearing for the State of Punjab, argued that broadcasting is merely a means to the entertainment derived, by the content being delivered and that the imposition of service tax would not detract from the competence of the State Legislature to levy entertainment tax under Entry 62 – List II. In the absence of any conclusive intent apparent from the Constituent Assembly Debates, he argued against drawing any myopic inference on the scope of Entry 62 – List II.

State of Nagaland:

5.36 Ms. K. Enatoli Sema, learned counsel appearing for the State of Nagaland in W.P.(C) No.699/2014, brought to our attention that the relevant state Act was amended in the year 2011 and that the definition of entertainment includes DTH operators. That the enactment promulgated by the State of Nagaland has not been challenged and that in fact even after filing of the writ petition,

entertainment tax has in fact been paid by the writ petitioner without any protest.

State of Andhra Pradesh:

5.37 Sri Sahel, learned counsel appearing for the State of Andhra Pradesh in W.P.(C) No.748/2015, similarly highlighted that there is no challenge to the State Act in the writ petition.

Union of India:

5.38 Learned senior counsel Ms. Nisha Bagchi appearing for the Union of India in W.P.(C) No.699/2014, submitted that the issue of service tax has been conceded in almost all High Courts and has not been disputed as such. She submitted that in view of the dismissal of the C.A. No. 261/2013 and C.A. Nos. 1582-1583/2020 the prayers (a) and (b) in W.P. Nos. 699/2014 and 748/2015 do not survive for consideration. She particularly highlighted that the Delhi High Court dismissed the challenge to the constitutional validity of service tax, as did Madras High Court, on the basis of categorical concessions made by the assessees. Learned senior counsel also submitted that no controversy with regard to payment

of service tax arises in the Civil Appeal arising from the decision of the Kerala High Court.

Reply Arguments:

5.39 We have heard the arguments made by way of reply by the respective senior counsel and counsel appearing for the parties.

5.40 We have perused the voluminous material on record as well as the judicial dicta cited before us.

Points for Consideration:

6. Whether the judgments of the High Courts (Eleven High Courts) impugned in these cases would call for any interference and if so, to what extent?

6.1 Whether ***Purvi Communications*** has been correctly decided by this Court?

6.2 Whether the prayers sought for in the writ petitions are to be granted and if so, to what extent?

6.3 What order?

6.4 On 11.09.2024, learned senior counsel Ms. Nisha Bagchi submitted that in view of the dismissal of CA No.261/2013 and CA

Nos.1582-1583/2020 by this Court, prayers (a) and (b) in WP Nos.699/2014 and 748/2015 would not survive for consideration. By way of response, learned senior counsel Sri Bagaria has also conceded that the controversy in these writ petitions is essentially on the imposition of entertainment tax and therefore, prayer (a) in the writ petitions would not be pressed.

6.5 His submission is placed on record.

6.6 Learned senior counsel Ms. Bagchi also submitted that in the Civil Appeal which arises from the decision of the Kerala High Court dealing with luxury tax, there is no controversy with regard to the payment of service tax by appellants therein.

6.7 The said position is not disputed at the Bar.

6.8 In view of the aforesaid submissions, the issue regarding the payment of service tax on broadcasting service would be considered only in light of the issue whether the activity of the appellants herein is within the scope and ambit of Entry 62 – List II, namely, providing entertainment to the subscribers or receivers of entertainment by means of broadcasting through television

channels and the relevant technology applicable for providing entertainment through television to the subscribers.

6.9 In view of the fact that the correctness of the findings of the High Court of Madras with regard to the charging section of the State enactment being defective is assailed by the State of Tamil Nadu in separate appeals which are not part of this batch of appeals, the question of correctness or otherwise of the finding of the High Court does not come up for our consideration here.

Legal Framework:

7. Before proceeding further, it is useful to refer to the relevant provisions of the Constitution, relevant entries of the Seventh Schedule of the Constitution and the relevant provisions of the State Act under considerations. We also would advert to the relevant provisions of the Finance Act, 1994 as amended from time to time having a bearing on the controversy in question.

7.1 The following provisions of the Constitution of India are adverted to as under:

> **"245. Extent of laws made by Parliament and by the Legislatures of States**.—(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of

a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

246. Subject-matter of laws made by Parliament and by the Legislatures of States.- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

xxx

248. Residuary powers of legislation.- (1) Subject to Article 246A, Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

xxx

265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law."

Relevant Entries of the Seventh Schedule of the Constitution:

7.2 In order to understand the foundation of the controversy in these cases, it is necessary to consider Article 246 of the Constitution and the relevant entries of the two Lists which can be usefully extracted as under:

"List I – Union List

xxx

31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

xxx

92C. Taxes on Services.

[Omitted by the Constitution (One Hundred and First Amendment) Act, 2016, Section 17(a)(ii) (with effect from 16.09.2016). Prior to omission it read as aforementioned.]

xxx

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

xxx

List II – State List

33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.

xxx

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling."

Finance Act, 1994 with Relevant Amendments:

7.3 Chapter V of the Finance Act, 1994 (2001 amended) which deals with various types of service tax, perhaps under the said Act has defined "broadcasting" as under-

> "65. *Definitions*.- In this Chapter unless the context otherwise requires,-
>
> (13) "broadcasting" has the meaning assigned to it in clause (c) of Section 2 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 (25 of 1990);"

7.3.1 In view of the aforesaid definition reference has to be made to Section 2 (c) of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 ("Prasar Bharti Act, 1990", for short), which define "broadcasting" as under:-

> "2. **Definitions**- In this Act, unless the context otherwise requires,-
>
> (c) broadcasting' means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the

medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly."

7.3.2 Section 65(63) of the Finance Act, 1994 (amended in 2001) defines "service tax" as under:

"65. *Definitions.*- In this Chapter unless the context otherwise requires,-

(63) "service tax" means tax leviable under the provisions of this Chapter;"

7.3.3 Section 65 (72) (zk) defines “taxable service” with regard to “broadcasting agency” as a “service provider” as under:

"65. *Definitions.*- In this Chapter unless the context otherwise requires,-

(72) "taxable service" means any service provided,-

xxx

(zk) to a client, by a broadcasting agency or organization in relation to broadcasting, in any manner;

And the term "service provider" shall be construed accordingly;"

7.3.4 Section 66(5) specifics the quantum of tax liability on a 'service provider" providing broadcasting services which is extracted as :

"66. Charge of service tax.-(5) With effect from the date notified under Section 137 of the Finance Act, 2001, there shall be levied a service tax at the rate of five per Cent of the value of the taxable services referred to in sub-clauses (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn) and (zo) of clause (72) of Section 65 and collected in such manner as may be prescribed."

Thus, tax at the rate of five per cent of the value of taxable services was levied on a broadcasting agency (i.e. five per cent of the gross amount charged by the service provider).

7.3.5 The term "broadcasting" was re-defined under Section 65(14) of the Finance Act, 1994 by way of 2002 Amendment which reads as under:-

"65. Definitions.- In this Chapter, unless the context otherwise requires,-

(14). "broadcasting" has the meaning assigned to it in clause(c) of Section 2 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 (25 of 1990) and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be; and in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges on behalf of the said agency or

organization, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner;"

7.3.6 The term "broadcasting agency or organization" was also re-defined under Section 65(15) by way of an amendment in the year 2002 to the Finance Act, 1994, which is extracted as under:-

"65. *Definitions.*- In this Chapter, unless the context otherwise requires,-

(15) "broadcasting agency or organization" means any agency or organisation engaged in providing service in relation to broadcasting in any manner and, in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting broadcasting charges on behalf of the said agency or organization;"

7.3.7 Section 65 (80) defines the term “service tax” by way of an amendment to the Finance Act, 1994 in the year 2002, which reads as under:-

"65. *Definitions.*- In this Chapter, unless the context otherwise requires,-

(80) "service tax" means tax leviable under the provisions of this Chapter;"

7.3.8 Section 65 (90) (zk) again while defining "taxable services", it included therein a "broadcasting agency" as a "service provider". Section 65 (90) (zk) of the Finance Act, 2002 is reproduced hereunder:-

> "65. *Definitions.*- In this Chapter, unless the context otherwise requires,-
>
> xxx
>
> (90). ''taxable service" means any service provided,-
>
> (zk) to a client, by a broadcasting agency or organization in relation to broadcasting in any manner and, in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting broadcasting charges on behalf of the said agency or organization.
>
> *Explanation.*- For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be a taxable service in relation to broadcasting, even if the encryption of the signals or beaming thereof through the satellite might have taken place outside India;
>
> And the term "service provider" shall be construed accordingly;"

7.3.9 Section 66 (5) of the Finance Act, 2002 specified the quantum of tax liability on a service provider, providing broadcasting service to the following effect. Section 66(5) aforesaid is reproduced hereunder:-

> "66. Charge of service tax.-(5) With effect from the date notified under Section 137 of the Finance Act, 2001 (14 of 2001), there shall be levied a service tax at the rate of five per cent of the value of the taxable services referred to in sub-clauses (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn) and (zo) of clause (90) of Section 65 and collected in such manner as may be prescribed."

7.3.10 A perusal of the provisions of the Finance Act, 2002 reveals, that as hitherto before (under the Finance Act 2001) service tax at the rate of five per cent of the value of taxable service was leviable on a service provider rendering broadcasting services (i.e. five per cent of the gross amount charged by the service provider) even under the Finance Act, 2002.

7.3.11 Under the Finance Act, 2003, the term "broadcasting" was re-defined through Section 65(15), which is being extracted hereunder:-

"65. Definitions.- In this Chapter, unless the context otherwise requires.-

xxx

(15) '(broadcasting" has the meaning assigned to it in clause (c) of Section 2 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 (25 of 1990) and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be; and in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges on behalf of the said agency or organization, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner;"

7.3.12 The Finance Act, 2003 also defined the term ''broadcasting agency or organization" in Section 65(16). Section 65(16) of the Finance Act, 2003 is also being reproduced hereunder:-

"65. *Definitions.*- In this Chapter, unless the context otherwise requires.-

(16) "broadcasting agency or organization" means any agency or organization engaged in providing service in relation to broadcasting in any manner and, in the case of a broadcasting agency or

organization, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges on behalf of the said agency or orgnisation;"

7.3.13 Section 65 (95) of the Finance Act, 2003, defines the term "service tax".

Section 65 (95) aforesaid is being reproduced hereunder:-

"65. *Definitions*.- In this Chapter, unless the context otherwise requires.-

xxx

(95) "service tax" mean tax leviable under the provisions of this chapter;"

7.3.14 Section 65 (105) (zk) of the Finance Act, 2003 again while defining the term 'taxable service", it included therein a "broadcasting agency" as a 'service provider". Section 65(105) (2k) aforesaid is being extracted hereunder:

"65. *Definitions*.- In this Chapter, unless the context otherwise requires.-

xxx

(105) “taxable service" means any service provided,-

(zk) to a client, by a broadcasting agency or organization in relation to broadcasting in any manner and, in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges on behalf of the said agency or organization.

Explanation.- For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be a taxable ser vice in relation to broadcasting, even if the encryption of signals or beaming thereof through the satellite might have taken place outside India;"

and the term "service provider" shall be construed accordingly;”

7.3.15 Section 66(1) of the Finance Act, 2003 specified, that quantum of tax liability on a service provider providing broadcasting services as under:-

"66. *Charge of service tax.*-(l) There shall be levied a tax (hereinafter referred to as the service tax) at the rate of eight per cent of the value of the taxable services referred to in sub-clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k),

(l), (m), (n), (o), (p), (q), (r), (s), (t) (u), (v), (w), (x), (y), (z), (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn), (zo), (zp), (zq), (zr), (zs), (zt) (zu), (zv), (zw), (zx), (zy), (zz) and (zza) of clause (105) of Section 65 and collected in such manner as may be prescribed."

7.3.16 A perusal of the aforesaid provisions reveals, that under the Finance Act, 2001, service tax levied on service providers rendering broadcasting services were enhanced from five per cent to six per cent of the value of taxable service (i.e. eight per cent of the gross amount charged by the service provider) under the Finance Act, 2003.

7.3.17 The provisions of the Finance Act, 2004 on the subject matter of the controversy in hand were identical to the ones incorporated under the Finance Act, 2002, and as such, the relevant provisions of the Finance Act, 2004 are not being reproduced here.

7.3.18 Insofar as the Finance Act, 2005 is concerned, it re-defined the term "broadcasting" under Section 65(16). Section 65(16) of the Finance Act, 2005 is being reproduced hereunder:-

"65. *Definitions*.- In this Chapter, unless the context otherwise requires.-

xxx

(15) “broadcasting” has the meaning assigned to it in clause (c) of Section 2 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 (25 of 1990) and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be; and in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means to cable operator including multisystem operator or any other person on behalf of the said agency or organization, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner;"

7.3.19 Likewise, the term "broadcasting agency or organization" was again re-defined under Section 65(16) of the Finance Act, 2005, which is being reproduced hereunder:-

"65. *Definitions*.- In this Chapter, unless the context otherwise requires.-

xxx

(16) "broadcasting agency or organization" means any agency or organization engaged in providing service in relation to broadcasting in any manner and, in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing' picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home multisystem operator or any other person on behalf of the said agency or organization;"

7.3.20 The term "service tax" retained the same definition as was assigned to it by the Finance Act, 2003 even for the Finance Act, 2005. However, sub-clause (zk) as defined in the Finance Act, 2005 was given a different meaning and effect. In this behalf Section 65(105)(zk) of the Finance Act, 2005 is being reproduced hereunder:-

"65. *Definitions.*- In this Chapter, unless the context otherwise requires,-

xxx

(105) "taxable service" means any service provided,-

(zk) to a client, by a broadcasting agency or organization in relation to broadcasting in any manner and, in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multisystem operator or any other person on behalf of the said agency or organization.

Explanation.- For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be a taxable service in relation to broadcasting, even if the encryption of signals or beaming thereof through the satellite might have taken place outside India;

and the term "service provider" shall be construed accordingly;"

7.3.21 The quantum of service tax under the Finance Act 2005, on service providers, rendering broadcasting services was sustained at the same rate as in the preceding Finance Act, 2004.

7.3.22 A perusal of the provisions of the various Finance Acts reproduced hereinabove, according to the learned counsel for the petitioners, reveals, that "service tax" was levied on "Direct-to-Home" (DTH) broadcasting services thereunder. The aforesaid 'legislation, according' to the learned counsel for the petitioners had obviously been enacted by the Parliament under Entry 92C of the Union List, contained in the Seventh Schedule of the Constitution of India.

Relevant Provisions of the State Enactments:

Assam Amusements and Betting Tax Act, 1939:

7.4 The relevant State Acts can be adverted to as under:

(a) The relevant provisions of ***Assam Amusements and Betting Tax Act, 1939*** are as under:

> **"2. Definitions. –** In this Chapter, unless there is anything repugnant in the subject or context –
>
> xxx

(3B) "Cable service" means the transmission by cables of programme including transmission by cables of any broadcast television signal;

Explanation-- For the purpose of this clause--

(a) "cable operator" means any person who provides cable service directly to customer or transmits signal to a sub-cable operator through a cable television network otherwise controls or is responsible for the management and operation of a cable television network;

(b) "sub-cable operator" means a person other than any owner or person who is a cable operator referred to in this Explanation who, on the basis of an agreement, contract or any other agreement made between him and such cable operator, receives signal from such cable operator and provides cable service for exhibition of performance, film or any programme to the customers".

(3C) "cable television network" means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment designed to provide cable service for reception by multiple subscribers".

(3CC) "direct to home service" means a service for multi channel distribution of programmes direct to subscribers' premises by up-linking to a satellite system";

(4) "Entertainment" includes any exhibition, performance, amusement, game, sport, music, cultural and dramatic performances, entertainment by electronic devices and entertainment by direct to home service and cable television network or a series of exhibitions, performances, amusements, games, sports, music, cultural and dramatic performances, entertainment by electronic devices and entertainment by direct to home service and cable television network, to which persons are admitted for payment, and the continuity of which is either broken or unbroken as the case may be, or is only broken by such

intervals as are in the opinion of the State Government a normal or usual feature thereof.

xxx

(8) 'Proprietor' in relation to any entertainment means the owner and shall also include manager, organiser and any person responsible for, or, for the time being, in charge of the management thereof;

xxx

(10) "Subscriber" means a person who receives the signal of cable television network or of direct to home service at any place indicated by him without further transmitting to any other person;

Explanation- In case of hotels, each room or premise where signals of cable television network or of direct to home service are received shall be treated as a subscriber"

xxx

Section 3C : Tax on cable service and direct to home service. - (1) The proprietor of a cable television network providing cable service [and the service provider of the direct to home service]1 shall be liable to pay entertainment tax at such rates not exceeding rupees one thousand and two hundred for every subscriber for every year, as the Government may from time to time, notify in this behalf.

(2) Nothing in sub-section (1) shall preclude the Government from notifying different rates of entertainment tax for household or for different categories of hotels.

(3) Where the subscriber is a proprietor of a hotel, he shall pay the entertainment tax to the Government on such condition, and in such manner as may be prescribed and at such rate as the Government may from time to time notify and different rates of tax may be notified for different categories of such subscribers.

(4) The tax payable under this section shall be paid, collected or realised in such manner as may be prescribed."

Delhi Entertainments and Betting Tax Act, 1996:

(b) The relevant provisions of ***Delhi Entertainments and Betting Tax Act, 1996*** are as under:

"**2. Definitions**

In this Act, unless the context otherwise require,-

(a) "addressable system" means an electronic device or more than one electronic devices put in an integrated system through which television signals and value added services can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within limits of the authorization made, on the choice and request of such subscriber, by the service provider to the subscriber;

(aa) "admission to an entertainment" includes admission to any place in which the entertainment is held and in case of entertainment through cable service and direct-to-home (DTH) service with or without cable connection, each connection to a subscriber shall be deemed to be an admission for entertainment'

xxx

(ha) "direct-to-home (DTH) service" means distribution of multi-channel television and radio programmes and similar content by using a satellite system, by providing signals directly to subscriber's premises without passing through an intermediary or otherwise;

(i) "entertainment" means any exhibition, performance, amusement, game, sport or race (including horse race) or in the case of cinematograph exhibitions, cover exhibition of news-reels, documentaries, cartoons, advertisement shorts or slides, whether before or during the exhibition of a feature film or separately, and also includes entertainment through cable service and direct-to-home (DTH) service;

xxx

(m) "payment for admission" includes—

xxx

(vi) any payment made by a person by way of contribution, subscription, installation or connection charges or any other charges collected in any manner whatsoever for entertainment through direct-to-home (DTH) broadcasting service for distribution of television signals and value added services with the aid of any type of addressable system, which connects a television set, computer system at a residential or non-residential place of subscriber's premises, directly to the satellite or otherwise.

xxx

(s) "subscriber" means a person who receives the signals of television network and value added services from multi-system operator or from cable operator or from direct-to-home (DTH) broadcasting service at a place indicated by him to the service provider, without further transmitting it to any other person;

Explanation I: In case of hotels, each room or premises where signals of cable television network are received shall be treated as a subscriber;

Explanation II : In case of direct-to-home (DTH), every television set or computer set receiving the signals shall be treated as a subscriber;

xxx

7. Tax on cable, video service and direct-to-home (DTH) service.- (1) Subject to the provisions of this Act, there shall be levied and paid an entertainment tax on all payments for admission to an entertainment through a direct-to-home (DTH) or through a cable television network with addressable system or otherwise, other than entertainment to which section 6 applies, at such rates not exceeding rupees six hundred for every subscriber for every year as the Government may, from time to time, notified in this behalf, which shall be collected by the proprietor and paid to the Government in the manner prescribed.

xxx

8. Information before holding entertainment.-

xxx

(2) No proprietor of a cable television network or video cinema or Direct-to-Home (DTH) shall provide entertainment unless he obtains permission from the Commissioner in the manner prescribed."

Gujarat Entertainments Tax Act, 1977:

(c) The relevant provisions of ***Gujarat Entertainments Tax Act, 1977*** are as under:

"2. Definitions. – In this Act, unless the context otherwise requires,

xxx

(dd) Direct-To-Home (DTH) Broadcasting Service means a system of distribution of multi-channel television programmes in Ku Band by using Satellite system, by providing television signals direct to the subscriber's premises without passing through an intermediary such as cable operator.

Explanation.- For the purpose of this clause and clause (g), "Ku Band" ordinarily means the 11.7 – 12.7 GHz (Giga Hertz) frequency band which splits into two segments, viz. the first having the frequency of 11.7 – 12.7 GHz, known as FSS (Fixed Satellite Service) and the other having the frequency of 12.2 – 12.7 GHz, known as BSS (Broadcasting Satellite Service), or it may have such other band width as may be approved by the Government of India from time to time;

2(e) 'entertainment' includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment or in the case of television exhibition with the aid of any type of antenna with a cable network attached to it or cable television, for which persons are required to make payment by way of contribution or subscription or installation charges of connection charges or any other charges collected in any manner whatsoever.

Explanation. - For the purpose of this clause, the expression "exhibition" includes any exhibition by cinematograph including video exhibition or television exhibition with the aid of any type of antenna with a cable network attached to it or cable television; or Direct-To--Home (DTH) Broadcasting System;

xxx

2(g) '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 tax or more tax is required;

(ii) any payment for seats or other accommodation in a place of entertainment;

(iii) any payment for a programme or synopsis of an entertainment;

(iv) any payment made for the loan or use of any instrument or contrivance which enables a person to get a normal or better view or hearing of the entertainment which, without the aid of such instrument or contrivance, such person would not get;

(v) any payment for any purpose whatsoever connected with an entertainment which a person is required to make a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment;

(vi) any payment for admission of a motor vehicle into the auditorium of a cinema known as Drive-in-Cinema;

(vii) any payment made by a person by way of contribution or subscription or installation charges or connection charges or any other charges collected in any manner whatsoever for television exhibition with the aid of any type of antenna with a cable network attached to it or cable television;

(viii) any payment made by a person to the proprietor of a Direct-To-Home (DTH) Broadcasting Service by way of contribution, subscription, installation charges or connection charges, or any other charges collected in any manner whatsoever for Direct-To-Home (DTH) Broadcasting Service with the aid of any type of set top box or any other instrument of like nature which connects television set at a residential or non-residential or any other place of connection-holder directly to the Satellite;"

2(gg) 'place of entertainment' includes a house, building, tent or any other place where the books of account, ticket books and other relevant records pertaining to the entertainment or pertaining to the management of providing cable connections from any type of antenna or cable television or pertaining to the management of providing Direct-To-Home (DTH) Broadcasting Service are kept or are believed to have been kept;"

xxx

2(j) 'proprietor' in relation to any entertainment, includes the owner thereof, and any person –

(i) responsible for, or for the time being in charge of, the management thereof, or

(ii) connected in whatsoever manner with the organization of the entertainment for any duration, or

(iii) charged or entrusted or authorized with the work of admission to the entertainment, or

(iii-a) a company registered under the Companies Act, 1956, having license to provide Direct-To-Home (DTH) Broadcasting Service by the Government of India under section 4 of the Telegraph Act, 1885 and the Wireless Telegraphy Act, 1933 or;

(iv) responsible for, or for the time being in charge of, management of providing of maintaining or operating cable connection from any type of antenna or cable television;

Whether or not he has obtained license or Certificate of Registration, if any, for such entertainment under any law for the time being in force;

2(jj) 'set top box' means an apparatus connected to a television set at a residential or non-residential or any other place which receives encrypted television signals through dish antenna from satellite directly and provides decrypted television signals to the television set, which enables the viewers to tune into multi-channel television programmes in Ku Band, on payment, by the connection-holder, of the charges collected in any manner whatsoever by the proprietor;

xxx

6C. Registration.- (1) No proprietor providing an entertainment with the aid of any type of antenna or cable television or Direct-To-Home (DTH) Broadcasting Service shall carry on television exhibition without obtaining a valid Certificate of Registration from the prescribed officer.

(2) The provisions of sub-section (1) shall not be deemed to have been contravened if the proprietor having applied for such registration as provided in this section within three months from the date of the commencement of the Gujarat Entertainments Tax (Amendment) Act, 1993, carries on television exhibition with the aid of any type of antenna with a cable network attached to it or cable television.

(2A) The provisions of sub-section (1) shall not be deemed to have been contravened if the proprietor having applied for such registration as provided in this section within three months from the date of the commencement of the Gujarat Entertainments Tax (Amendment) Act, 2009, carries on television exhibition with the aid of Direct-To--Home (DTH) Broadcasting Service.

(3) Every proprietor providing an entertainment with the aid of any type of antenna or cable television or Direct-To-Home (DTH) Broadcasting Service shall apply in such form, in such manner and on payment of such fee as may be prescribed to the prescribed officer.

(4) If the prescribed officer is satisfied that the requirements of provisions of this Act and the rules made thereunder have been complied with, he shall issue a Certificate of Registration.

xxx

6E (1) Notwithstanding anything contained in section 3, 4, 6, 6A or 6B or any other provisions of this Act, there shall be levied and paid, by the proprietor of every Direct-To-Home (DTH) Broadcasting Service, to the State Government, the entertainments tax, per television set which receives radio frequency signals for exhibition of films or moving pictures or series of pictures with the aid of a set top box or any other apparatus attached to it for securing transmission through Direct-To-Home (DTH) Broadcasting Service, a tax at the annual rate of Rs.200 per television set for which such proprietor has provided Direct-To-Home (DTH) Broadcasting Service Connection.

(2) Where the number of Direct-To-Home (DTH) connection holders increase in any month during the financial year, the proprietor shall be liable to pay the tax proportionately in the manner as may be prescribed.

(3) The tax leviable under this section shall be paid in advance in quarterly installment of one-fourth of the annual rate within such period and in such manner as may be prescribed.

Explanation. - For the purpose of this section, 'quarter' means a period of three months commencing on the 1st day of April, 1st day of July, 1st day of October or the 1st day of January of each year, and the term 'quarterly' shall be construed accordingly."

The relevant provision of ***Gujarat Entertainments Tax (Exhibitions by means of Direct-To-Home (DTH) Broadcasting Service) Rules, 2010*** are as under:

"**3. Application for Certificate of Registration. -** A proprietor providing an entertainment with the aid of Direct to Home (DTH) Broadcasting Service shall apply for the Certificate of Registration under Section 6C in Proforma-I in triplicate I and shall be renewable after every twelve months.

4. Granting of Certificate of Registration.- (1) The Commissioner may, on receipt of an application in Proforma-I under rule 3 and having satisfied that all the rules have been complied with, grant Certificate of Registration to the proprietor. The Commissioner shall, while deciding whether to grant or refuse such a certificate shall have regard to the following matters namely:

(i) the interest of the public generally;

(ii) status of antecedents and the previous experience, if any, of the proprietor;

(iii) the adequate precaution made for safety, convenience and comfort of the persons covered under Direct-to-Home (DTH) Broadcasting Service as per the guidelines issued by the Government of India from time to time.

Explanation. For the purpose of sub-rule (1) the expression 'antecedents' means the conduct of the applicant in relation to the regular payment of any tax or other dues payable by him.

(2) The Certificate of Registration under section 6C shall be issued Proforma-2 and the Commissioner may prescribe special condition or conditions to be fulfilled, in the certificate.

5. Refusal to Grant Certificate.- The Commissioner shall have absolute discretion to refuse a Certificate of Registration for grounds to be recorded in writing for refusal of granting the Certificate of Registration. The Commissioner before refusing the Certificate shall afford to the proprietor an opportunity of being heard.

6. Fees.- The fees for a Certificate of Registration shall be rupees 10 lacs, the fees for renewal of Certificate of Registration shall be ten thousand and the fees for duplicate Certificate of Registration shall be rupees five thousand.

7. Security Deposits.- Every proprietor shall furnish as required under section 7, security amount of rupee ten lacs in form of Demand Draft to the Commissioner or shall deposit the National Savings Certificate or furnish Bank Guarantee of a Nationalized Bank in favour of Government of Gujarat, Information and Broadcasting Department on obtaining Certificate of Registration.

xxx

11. Applicability of other Acts.- The proprietor shall comply with such of the provisions of the Electricity Act, 2003 (36 of 2003), the Wireless Technology Act, 1933 (17 of 1933), the Telegraph Act, 1885 (13 of 1885), Guidelines, Policies and Notifications issued by Government of India

from time to time and such other Acts and the rules made thereunder as are applicable to the Direct-to-Home (DTH) Broadcasting Services.

12. Free access or public servants on duty.- Free access to any place in respect of which a certificate is issued under these rules for Direct-to-Home (DTH) Broadcasting Service shall be given at all hours to the Commissioner or any officer authorized by the Commissioner, the Collector or any other officer as may be authorized by the State Government in the execution of their duties.

13. Receipt for payment.- The proprietor shall give a receipt to the connection holder for every payment and shall also furnish the connection number to such connection holder when he receives payment for installation charges or any other charges by whatsoever it may be called. A copy of the receipt shall be kept in the receipt book by the proprietor till the assessments is completed and thereafter for a period of one year.

14. Return.- (1) The returns under clause (b) of sub-section (1) of section 8 shall be furnished to the prescribed officer.

(2) The returns relating to the payment of tax under section 6E shall be furnished quarterly in every financial year by the proprietor to the prescribed officer in Proforma-3, Proforma-4 and Proforma-5 along with challan within fifteen days of the completion of the respective quarter:

Provided that the return relating to the second and third quarter of the financial year 2009-10 shall be furnished within fifteen days from the publication of these rules in the official Gazette.

(3) Every proprietor shall maintain a register in Proforma-6 for each financial year.

xxx

16. Order of Assessment.- (1) The assessment of tax in the respect of an entertainment shall be made within thirty days after the return in respect of such entertainment is furnished.

(2) After the assessment is made, the prescribed officer shall serve a notice upon the proprietor for payment of tax, if any additional amount of tax is found to be due."

Jharkhand Entertainment Tax Act, 2012:

(d) The relevant provisions of ***Jharkhand Entertainment Tax Act, 2012*** are as under:

"2. Definitions. - In this Act, unless there is anything repugnant in the subject or context,-

xxx

(k) "**Direct to Home (DTH) Service**" means a system of distribution of multi-channel television programmes by using a Satellite system by providing television signals through Antenna direct or any other similar devices to the subscriber's premises/hotels/clubs, without passing through an intermediary such as cable service;

(l)"**Direct to Home (DTH) Service provider**" means any person or proprietor or agency, who provide Direct to Home (DTH) Service, whether by means of "Set top boxes" or any such antenna or instruments or equipments or any other similar devices and includes the activation or renewal of such DTH service.

(m)"**Entertainment**" includes any exhibition, performance, amusement, game shows or sports to which persons are admitted for payment, or in the case of television exhibition with the aid and any type of antenna with a cable network attached to it or cable television network or Direct-to-Home (DTH) Service, for which persons are required to make payment by way of

contribution or subscription or installation or rent or security and connection charges or by any other charges collected in any manner whatsoever; but does not include magic show and temporary amusement including games and rides;

For the purposes of this clause -

The expression "**exhibition**" includes any exhibition by cinematograph including video exhibition or television exhibition with the aid of any type of antenna with a cable network attached to it, or cable television network as provided by the cable operator incidental to cable service(s);

Explanation. - For the purpose of this provision, exhibition shall include exhibitions in Multiplex Cinema Complex(s).

The expression "**game**" includes video games which are played with the aid of machine which is operated electronically or mechanically or electro-mechanically for the purposes of entertainment or otherwise and;

The expression "**temporary amusement**" means the amusement rides and games which are not provided on fairly permanent basis like in amusement park or meals or fair.

(n)"**Entertainment Tax**" means a tax levied on "entertainment" under this Act.

xxx

2(s) "**Payment for entertainment**" includes –

xxx

(iv) any payment made by a person by way of contribution or subscription or installation or connection charges or valuable consideration or any other charge collected in any manner whatsoever for television exhibition with the aid of any type of antenna with a cable network attached to it or cable television network as provided by the cable operator; or

(v) any payment made by a person to the proprietor of a Direct to Home (DTH) service by way of contribution, subscription, installation or rent or security or activation charges or connection charges, or valuable consideration or any other charges collected in any manner whatsoever for Direct to Home (DTH) service with the aid of any type of set-top box(s) or any other instrument/equipment of like nature, or any other similar devices, which connects television set at a residential/hotels/clubs or non-residential place or a connection holder directly to the Satellite.

Explanation. - For the purposes or this sub-clause any expenditure incurred by any co-operative housing society, residential complexes as valuable consideration or by the management of any factory, hotels, lodge, bar, permit room pub, or by a person or group of persons, for the purchase of any type of antenna or any other apparatus equipments for securing transmission through the cable network of cable television attached to it, for its members, or for workers or customers or for himself or themselves, as the case may be, shall be deemed to be the payment made under this sub-clause for the television exhibition with the aid of any type of antenna with cable network attached to it or cable television network no DTH service provider.

xxx

3. Incidence of entertainment tax. - (1) Save as provided in sub- section (2), there shall be levied and paid to the State Government by an assessee: a tax on the entertainment at the rate(s) as specified in the notification issued under this Act.

Provided that the State Government may specify different rate or rates of entertainment tax in respect to different categories of the entertainments for the different specified periods and for different specified areas.

Provided further that the rate of entertainment tax shall not exceed thirty percent of the value of gross collection / admission charge(s) / subscription(s) / contribution(s) /

rent / security / sponsorship / activation charges or by any other valuable consideration(s) received or receivable for providing entertainment(s).

(2) Notwithstanding anything contained in sub-section (1), entertainment tax shall be levied in relation to cinematograph exhibition on the proprietor of an entertainment at compounded rate(s) as specified in the schedule.

Provided that the state Government may specify different rate or rates of tax in respect to the different specified areas and for different specified periods.

Provided further the State Government may specify different rates in relation to the separate units of Multiplex Cinema Complex, depending upon their respective sitting capacity.

4. Assesses to collect entertainment tax from persons admitted to entertainment. - Save as provided under sub-section (2) of Section 3 of this Act, every assessee shall be entitled to collect, from persons admitted to the entertainment(s), an amount equal to the entertainment tax payable in respect to the valuable consideration of tickets or complimentary tickets or the sponsorship amount.

5. Payment of tax. - Subject to the provisions of this Act and such rules as may be prescribed, entertainments tax shall be payable by every assessee for the following class of entertainments-

(i) For the cinematograph exhibition falling under sub-section (2) of Section 3, before commencing of the week;

(ii) For the video exhibition falling under sub-section (2) of Section 3 read with serial number 2 of the schedule, before commencing of the week;

(iii) for the Multiplex Cinema Complex exhibition falling under sub-section (2) of Section 3 read with serial number 3 of the schedule, before commencing of the week;

(iv) for the sponsored programmes falling under clause (x) and (ad) of Section 2, before commencement of such sponsored programmes

(v) for the cable operators, operating cable television network and Direct-to-Home Service Provider, and all other descriptions of entertainment falling under sub-section (2) of Section 3 read with serial number 4, 5 and 6 of the Schedule; by 7th day of the month after the expiry of the respective month.

Explanation. - If the specified date happens to be holiday, the next working day shall be treated to be the payment day."

Kerala Tax on Luxuries Act, 1976:

(e) The relevant provisions of ***Kerala Tax on Luxuries Act, 1976*** are as under:

"2. Definitions. – In this Act, unless the context otherwise requires.-

xxx

(ca) "cable operator", means a person engaged in the business of receiving and distributing satellite television signals, communication network including production and transmission of programmes and packages for a monetary consideration.

xxx

(ee) "luxury" means a commodity or service that ministers comfort or pleasure;

xxx

(fa) "Luxury provided by a cable operator" means any service by means of transmission of television signals by wire, where subscriber's television set is linked by metallic

co-axial cable or optic fibre cable to a central system called the 'headend' and by using a video cassette or disc or both, recorder or player or similar such apparatus on which pre-recorded video cassettes or disc or both are played or replayed and the films or moving pictures or series of pictures which are viewed and hear on Television receiving set at a residential or a non residential place of a connection holder.

xxx

(g) "prescribed" means prescribed by rules made under this Act;

(h) "Proprietor" in relation to a hotel, house boat, hall auditorium, home stay, hospital Kalyanamandapam or place of like nature includes the person who for the time being is in charge of the management of such hotel, house boat, hall, auditorium home stay, hospital or kalyanamandapam or place of like nature as the case may be.

xxx

4. Levy and collection of luxury tax. – (1) Subject to the provisions of this Act, there shall be levied and collected a tax, hereinafter called the 'luxury tax' in respect of any luxury provided, -

(i) in a hotel, house boat, hall, auditorium or kalyanamandapam or including those attached to hotels, clubs, Kalyanamandapam and places of the like nature which are rented for accommodation for residence or used for conducting functions, whether public or private, exhibition;

(ii) by cable operators;

(iii) in a hospital; and

(iv) in a home stay

Provided that the sub-section shall not apply to halls and auditoriums located within the premises of 'places of worship' owned by such institutions;

Provided that the sub-section shall not apply to halls and auditoriums located within the premises of 'places of worship' owned by such institutions.

(2) Luxury tax shall be levied and collected, -

xxx

(d) in respect of a cable TV operator at the rate of rupees five per connection per month,

and shall be collectable from the person enjoying the luxury:

Provided that no luxury tax shall be payable in respect of a connection provided by a cable operator engaged in the distribution of programmes of Doordarshan channels only:

Provided further that luxury tax, if any, collected shall be paid over to the Government:

xxx

Provided also that a proprietor of a hotel who had claimed exemption under sub-clause (1) of clause 4 of the Kerala Finance Bill, 2006 (Bill No. 355 of the XI Kerala Legislative Assembly) from the 1st day of April 2006 being the charges of accommodation below rupees two hundred per room per day, shall be permitted to avail such exemption till 30th June, 2006.

xxx

(3) The luxury tax shall be collected by the proprietor and paid within such period and in such manner as may be prescribed, into a Government treasury" or a Nationalised Bank notified by Government in this behalf.

xxx

5. Returns. – Every proprietor liable to pay luxury tax under this Act shall submit such return in such manner and within such period as may be prescribed.

xxx

The Kerala Finance Act, 2006

3. Amendment of Act 32 of 1976.- In the Kerala Tax on Luxuries Act, 1976 (32 of 1976), -

(1) in Section 2, -

xxx

(c) after clause (f), the following clause shall be inserted, namely:-

"(fa) "Luxury provided by a cable operator" means any service by means of transmission of television signals by wire, where subscriber's television set is linked by metallic co-axial cable or optic fibre cable to a central system called the headend and by using a video cassette or disc or both, recorder or player or similar such apparatus on which pre-recorded video cassettes or disc or both are played or replayed and the films or moving pictures or series of pictures which are viewed and heard on Television receiving set at a residential or a non-residential place of a connection holder;";

xxx

The Kerala Tax on Luxuries Rules, 1976

3. Filing of return. – (1) The return referred to in section 5 shall be

xxx

(b) in Form 1A in the case of cable TV Operator;

xxx

The Kerala Tax on Luxuries Act, 1976

(Act 32 of 1976)

(Incorporating Amendments up to the Finance Act, 2010)

2. Definitions: - In this Act, unless the context otherwise requires: -

xxx

(ca) "cable operator" means a person engaged in the business of receiving and distributing satellite television signals, communication network including production and transmission of programmes and packages for a monetary consideration"

xxx

"(da) "Direct-To-Home (DTH) Broadcasting Service" means a system of distribution of multi-channel television programmes in ku band using a satellite system of providing television signals direct to the subscriber's premises in an encrypted form which will be received by an antenna and decrypted by an electronic device, thus providing television signals to the television set or other viewing devices of the subscriber, without passing through an intermediary such as cable operator.

(db) "Direct-To-Home (DTH) Broadcasting Service Provider" means, a company registered under the Companies Act, 1956 (Central Act 1 of 1956) having granted license to provide Direct-To-Home (DTH) Broadcasting Service by the Government of India under section 4 of the Telegraph Act, 1885(Central Act 13 of 1885) and Indian Wireless Telegraphy Act, 1933 (Central Act 17 of 1933) and providing such service within the State.

xxx

(ee) "luxury" means a commodity or service that ministers comfort or Pleasure:

xxx

(fa) "Luxury provided by a cable operator" means any service by means of transmission of television signals by wire, where subscriber's television set is linked by metallic co-axial cable or optic fibre cable to a central system called the 'headend' and by using a video cassette or disc or both, recorder or player or similar such apparatus on which pre-recorded video cassettes or disc or both are played or replayed and the films or moving pictures or series of pictures which are viewed and heard on Television receiving set at a residential or a non-residential place of a connection holder;

xxx

"(fd) "Luxury provided by Direct-To-Home (DTH) Broadcasting Service Provider" means any service by means of transmission of television signals and the films or moving pictures or series of pictures which are viewed and heard on television receiving set or other devices through a Direct-To-Home (DTH) service at a residential or a non-residential place of a subscriber, providing pleasure, comfort and entertainment to the subscribers and viewers.";

xxx

"(l) "subscriber" means a person who enjoys the luxury by receiving the signal of cable television network or a direct-to-home service at a place indicated by him to the cable operator or the Direct-To-Home (DTH) Service Provider, without further transmitting it to any other person.";

xxx

4. Levy and collection of luxury tax: (1) Subject to the provisions of this Act, there shall be levied and collected a tax, hereinafter called the 'luxury tax', in respect of any luxury provided,-

xxx

(ii) by cable operators; ("and by Direct-to-Home (DTH) Service Providers")

xxx

Provided that the sub-section shall not apply to,-

xxx

(iv) to cable operators whose total number of connections, including those given through franchisees, is seven thousand and five hundred or less:

Provided further that the cable operators with seven thousand and five hundred or less connections shall not be liable to tax from 1st July, 2006

(2) Luxury tax shall be levied and collected, -

xxx

(d) in respect of a cable TV operator("and Direct-to-Home(DTH) Broadcasting Provider") at the rate of rupees five per connection per month, and shall be collectable from the person enjoying the luxury :

xxx

Provided that no luxury tax shall be payable in respect of a connection provided by a cable operator engaged in the distribution of programmes of Doordarshan channels only:

Provided further that luxury tax, if any, collected shall be paid over to the Government:

Provided also that a proprietor of a hotel who had claimed exemption under sub-clause (1) of clause 4 of the Kerala Finance Bill, 2006 (Bill No. 355 of the XI Kerala Legislative Assembly) from the 1st day of April 2006 being the charges of accommodation below rupees two hundred per room per day, shall be permitted to avail such exemption till 30th June, 2006.

(2A) Notwithstanding anything contained in sub-section (2), there shall be levied a luxury tax at the rate of rupees one hundred per year per member and the same shall be collected by the person responsible for the management of the club, by whatever name called.

Explanation: For the purpose of this section, 'club' means a club which provides more than two facilities like card room, bar, billiard rooms, snooker room, tennis court, swimming pool, Sauna Jacuzzi and the like, gymnasium, golf course, internet facility, video, video compact disk, digital video disk and computer games and having a membership strength of at least twenty five.

xxx

(4) In computing the luxury tax, a fraction of a rupee, which is not a multiple of five paise, shall be rounded of to the next higher multiple of five paise.

> “(5) Every Direct-To-Home (DTH) Broadcasting Service Provider in the State shall pay luxury tax at the rate of two per cent on the gross charges received or receivable by him every month in any manner including installation charges, subscription charges, recharges, or other charges by whatever name called from the subscribers in the State in respect of the luxury provided by him.";”

xxx

4D. Registration of cable operators and Direct-to-Home(DTH) Broadcasting Service Provider.- Every cable operator ("and Direct-to-Home(DTH) Broadcasting Service Provider") shall get himself registered with such authority and in such manner, as may be prescribed and the application for registration shall be accompanied by a registration fee of Rupees one thousand. The registration shall be for a period of one year and shall be renewed annually.

xxx

5. Returns: - Every proprietor liable to pay luxury tax under this Act shall submit such return in such manner and within such period as may be prescribed.

ACT 10 of 2010

THE KERALA FINANCE ACT, 2010

6. Amendment of Act 32 of 1976. In the Kerala Tax on Luxuries Act, 1976 (32 of 1976),-

(1) in section 2,-

(i) after clause (d), the following clauses shall be inserted, namely:-

"(da) "Direct-To-Home (DTH) Broadcasting Service" means a system of distribution of multi-channel television programmes in ku band using a satellite system of providing television signals direct to the subscriber's premises in an encrypted form which will be received by an antenna and decrypted by an electronic device, thus providing television signals to the television set or other viewing devices of the subscriber, without passing through an intermediary such as cable operator.

xxx

(2) in section 4,-

(i) (a) in sub-section (1), in item (ii), the words, symbols, brackets and letters "and by Direct-To-Home (DTH) Service Providers" shall be added at the end:

(b) for the existing proviso to sub-section (1), the following provisos shall be substituted, namely:-

"Provided that the sub-section shall not apply to.-

xxx

(iv) to cable operators whose total number of connections, including those given through franchisees, is seven thousand and five hundred or less:

Provided further that the cable operators with seven thousand and five hundred or less connections shall not be liable to tax from 1ª July, 2006;

ACT 16 OF 2011

THE KERALA FINANCE ACT, 2011

6. Amendment of Act 32 of 1976.-In the Kerala Tax on Luxuries Act, 1976 (32 of 1976),—

(1) in section 2,-

(i) clause (ca) shall be omitted;

(ii) clause (fa) shall be omitted;

Orissa Entertainment Tax Act, 2006:

(f) The relevant provisions of ***Orissa Entertainment Tax Act, 2006*** are as under:

"2. Definitions. - In this Act, unless there is anything repugnant in the subject or context,—

(a) “admission to an entertainment” includes admission to any place in which the entertainment is held and in case of entertainment through cable service (or Direct-to-Home (DTH) Broadcasting Service) each connection to a subscriber shall be deemed to be an admission for entertainment;

xxx

(d) “cable television network” means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers;

xxx

(e1): Direct-to-Home (DTH) Broadcasting Service” means system of distribution of multi-channel television programme in KU Band by using a satellite system, by providing television signals to a television set with the aid of set-top box direct to subscribers without passing through an intermediary such as Cable Operator.

Explanation.- For the purpose of this clause and clause (k1) “KU Band” ordinarily means the 11.7-12.7 Ghz. (Gigahertz) frequency band which splits into two segments viz. the first having the frequency of 11.7-12.2 Ghz. Known as FSS (Fixed Satellite Service) and the other having the frequency of 12.2-12.7 Ghz. Known as BSS (Broadcasting Satellite Service), or it may have such other brand width as may be approved by the Government of India from time to time.”

(f) “entertainment” means any cinematographic exhibition including exhibition of news reels, documentaries, cartoons, advertisement shots or slides, whether before or during exhibition of a feature film or separately, and includes any other exhibition, performance, amusement and entertainment through cable service (or Direct-to-Home (DTH) Broadcasting Service);

xxx

7. Tax on cable and DTH service. - (1) The proprietor of a cable television network providing cable service (and of a Direct-to-Home (DTH) Broadcasting Service) shall be liable to pay entertainment tax at such rate as specified in Part II of the Schedule.

(2) The tax payable under this section shall be paid, collected or realised in such manner as may be prescribed.

xxx

9. Intimation before holding entertainment.- (1) No entertainment on which tax is leviable shall be held without prior information being given to the Commissioner in the manner prescribed.

(2) No proprietor of a cable television network (or Direct-to-Home (DTH) Broadcasting Service) shall provide entertainment, unless he obtains permission from the Commissioner in the manner prescribed.

xxx

(3a) Notwithstanding anything contained in sub-sections (2) and (3) where any proprietor of a Direct-to-Home (DTH) Broadcasting Service is providing entertainment immediately before the commencement of the Orissa Entertainment Tax (Amendment) Act, 2010 he may continue to provide entertainment,—

(a) for a period of three months from the date of commencement of said amendment Act; or

(b) till the permission under sub-section (2) is granted by the Commissioner, if an application to that effect is made in the prescribed manner within the period specified in clause (a)."

The relevant provisions of ***Orissa Entertainment Tax Rules, 2006*** are as under:

> **"12. Permission to operate cable television network or connection for the Direct-to-Home (DTH) Broadcasting Service. –** (1) The proprietor of a cable television network or a Direct-to-Home (DTH) Broadcasting Service shall submit to the Commissioner an application in Form XA within fifteen days from the date of commencement of these rules bringing the Direct-to-Home (DTH) Broadcasting Service under the purview of the Act or at least fifteen days before the date of such entertainment and shall furnish any other information which may be so required by the Commissioner for the purpose.
>
> (2) The Commissioner, after making such enquiry as he may deem proper and after being satisfied that the application is in order, shall issue certificate in form XIIIA permitting the proprietor of a cable television network or a Direct-to-Home (DTH) Broadcasting Service."

Punjab Entertainment Duty Act, 1955:

(g) The relevant provisions of the ***Punjab Entertainment Duty Act***, ***1955*** are as under:

> **"2. Definitions.** - In this Act unless the context otherwise requires -
>
> (a) 'admission to an entertainment' includes admission to any place in which the entertainment is being held or is to be held and where television exhibition is being provided with the aid of any type of antenna with a cable network attached to it or cable television or direct-to-home television in residential or non-residential areas of which persons are required to make payment by way of contribution or subscription or installation and connection

charges or any other charges collected in any manner, whatsoever.

xxx

(aa) 'antenna' means an apparatus which received television signals which enable viewers to tune into transmissions including national or international satellite transmissions and which is erected or installed for exhibition of films or moving pictures or series of pictures by means of transmission of television signals by wire where subscriber's television sets at the residential or non-residential place are linked by metallic coaxial cable or optio-fibre cable to a central system called the head-end, on payment by the connection holder of any contribution or subscription or installation and connection charges or any other charges collected in any manner whatsoever.

(aaa) 'cable television' means a system organised on payment by a connection holder of any contribution or subscription or installation and connection charges or any other charges collected in any manner whatsoever, for exhibition of films or moving pictures or series of pictures by means of transmission of television signals by wire where subscriber's television set is linked by metallic coaxial cable or optio-fibre cable to a central system called the head-end, by using a video cassette or disc or both, recorder or player or similar such apparatus on which prerecorded vide cassettes or discs or both are played or replayed and the films or moving pictures or series of pictures which are viewed and heard on the television receiving set at a residential or non-residential place of a connection holder.

(b) 'Commissioner' means the Excise and Taxation Commissioner, Punjab, for the time being;

(bb) "direct-to-home television" means the reception of satellite programmes with the aid of a dish by a subscriber in his home or any other place for exhibition of films or moving pictures or series of pictures on payment basis;

(bbb) “dish” means a large circular antenna for receiving television signals from a satellite;”;

(c) 'Entertainment Tax Officer' means the officer appointed as such under this Act;

(d) 'entertainment' includes any exhibition, performance, amusement, game, sport or race to which persons are ordinarily admitted on payment for exhibition of films or moving pictures or series of pictures which are shown in a cinema house or on the television receiving set, with the aid of any type of antenna with a cable net work attached to it or cable television or dish relating to direct-to-home television network for which persons are required to make payment by way of contribution or subscription or installation and connection charges or any other charges collected in any manner whatsoever.

Explanation.- For the purpose of this clause, the expression “Cinema house” shall have the same meaning as has been assigned to it in the Punjab Entertainments Tax (Cinematograph Shows) Act, 1954 (Punjab Act 8 of 1954).

(e) 'payment for admission' includes –

(i) any payment made by a person admitted to any part of a place of entertainment and in a case where such person is subsequently admitted to another part thereof for admission to which an additional payment is required, such additional payment, whether actually made or not;

(ii) in cases of free, surreptitious, unauthorised or concessional entry, whether with or without the knowledge of the proprietor, the payment which would have been made if the person concerned had been admitted on payment of the full charges ordinarily chargeable for such admission;

(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;

(iv) any payment made by a person by way of contribution or subscription of installation and connection charges or any other charges collected in any manner whatsoever for television exhibition with the aid of any type of antenna with a cable network attached to it or cable television or a dish relating to direct-to-home television network.

(f) 'prescribed' means prescribed by rules made under this Act;

(g) 'proprietor' in relation to any entertainment includes the owner, partner or a person responsible for the management thereof and any person responsible for or for the time being incharge of the management for providing cable connection from any type of antenna or cable television or for providing direct-to-home television service.

xxx

3. Duty on payments for admission to entertainments.

(1) A person admitted to an entertainment shall be liable to pay an entertainment duty at a rate of twenty-five per centum, which shall be collected by the proprietor and rendered to the Government in the prescribed manner.

(1-A) Notwithstanding anything contained in sub-section (1), the Government may, by notification, levy lumpsum entertainment duty at a rate not exceeding, -

(a) eight thousand rupees per annum in the local area of a City constituted as such under the Punjab Municipal Corporation Act, 1976, or of a Municipality declared as such under the Punjab Municipal Act, 1911; and

(b) Six thousand rupees per annum in areas other than the local areas specified in clause (a);

in respect of entertainments arranged by a proprietor by replay of video cassette player or video record player and the lumpsum duty so levied shall be recoverable from the proprietor,

(1-B) Notwithstanding anything contained in sub-section (1), a proprietor may, at his option, pay in lump sum entertainment duty on an amusement park at the rates,

specified in the Schedule appended to this Act, per annum per ride.

SCHEDULE

(See Section 3 (1-B)

Category of rides	Description of rides	Rate of duty per ride (in Rupees)
1	2	3
A	1. Dragon Roller Coaster 2. Big Apple 3.Dragon Coaster 4. Roller Coaster 5. Bumper Car 6. Cyclone 7. Striking Cars 8. Go karts 9. Water Chute 10. Octopus 11. Twister 12. Enterprise 13. Kamikaze 14. Rainbow 15. Power Tower 16. Family Swinger	Sixty thousand
B	1. Break Dance 2. Caterpillar 3. Paratrooper 4. Round About	Forty thousand

	5. Train 6. Dream Boat 7. Formula Cars 8. Family Slide 9. Love Boats 10. My Fair Lady 11. Tea Cup or Cup and Saucer 12. Gandola 13. Jumping Frogs 14. Parachute Towers 15. Ship or Pandulum 16. Harakiri 17. Slide 18. Razzle Dazzle 19. Ferris Wheel 20. Rock 'N' Roll 21. Telecombat 22. Bumper Boats	
C	1. Baby Train 2. Toto Train 3. Fun Spin 4. Fun Channel 5. Vintage Cat 6. Jingle Ride 7. Scooters 8. Guided Cars	Twenty thousand

	9. Money Tree 10. Snail 11. Kiddie Boats 12. Coin Operated Rides 13. Children Slide 14. Any other un-specified Ride 15. Merry Go Round 16. Carousel 17. Water Merry 18. Go Round 19. Sun and Moon 20. Mini Coaster 21. Water Canal 22. Crazy Submarine	
D	1. Boating 2. Play Pen 3. Little Kingdo 4. Funny Boats 5. Kids Castle 6. Bike Mania 7. Water Slide	

(1-B) (a) Notwithstanding anything contained in sub-section (1) Government may, by notification, levy lump-sum entertainment duty of amusement park at a rate not exceeding rupees sixty thousand per annum.

(b) A proprietor may, however, opt to pay an entertainment duty either under sub-section (1) or he may pay lump-sum entertainment duty under the proceeding clause (a).

(2) A draft of the proposed order specifying the rate of entertainments duty referred to in sub-section (1) shall be notified for the information of all persons likely to be affected thereby and it shall take effect only after the Government has considered all objections received within a period of thirty days from the date of such publications, and has notified the same again, with or without modification:

Provided that if the Government consider that such an order should be brought into force at once, the final notification may issue without previous publication:

Provided further that Government may impose an entertainments duty on complimentary tickets at a different from that imposed on other kinds of payment for admission subject to the maximum specified in sub-section (1).

(3) Until such time as the duty referred to in sub-sections (1) and (2) has been finally notified, the entertainments duty shall be levied at the rates in force in this behalf immediately before the commencement of this Act.

(3-A) Notwithstanding anything in this section, the amount of duty shall be calculated to the nearest multiple of 5 naye paise by ignoring 2 naye paise or less and counting more than 2 naye paise as 5 naye paise.

(4) The final notification specifying the rates of entertainment duty shall be laid before the Legislature at the session immediately following its publication.

3.A. Entertainment duty is not leviable in case tax is paid under Punjab Act 8 of 1954.- Notwithstanding anything contained in this Act, no entertainment duty shall be leviable on the proprietor who is able to pay entertainment tax under the Punjab Entertainment Tax (Cinematograph Shows) Act, 1954.

(3B) Notwithstanding anything contained in sub-sections (l), (1-A), (2) and (3), in the case of entertainment provided with the aid of antenna or cable television to a connection holder, the proprietor of such entertainment shall pay entertainment duty of fifteen thousand rupees per annum at a time.

(3C) Notwithstanding anything contained in this section, in the case of entertainment, provided with the aid of dish, relating to direct-to-home television, the proprietor of such entertainment shall pay entertainment duty at the rate of ten per cent of the charges, received by such proprietor from the subscriber. The entertainment duty shall be paid by the proprietor by the 10th day, commencing from the close of the concerned calendar month."

Rajasthan Entertainments and Advertisements Tax Act, 1957:

(h) The relevant provisions of the ***Rajasthan Entertainments and Advertisements Tax Act, 1957*** are as under:

"3. Definitions. – In this Act, unless the subject or context otherwise requires,-

xxx

(4A).- "direct to home broadcasting service" means distribution of multi channel television programmes by using satellite system by providing television signals direct to the premises of subscribers without passing through an intermediary such as cable services.

(4AAA.)- "levy of tax on direct to home broadcasting service"- The proprietor of a direct to home broadcasting service shall be liable to pay entertainment tax at such rates, not exceeding twenty percent of the monthly subscription charges per subscriber, as the State Government may from time to time, notify in the Official

Gazette, in this behalf and different may be notified for different categories of subscribers

(5) "entertainment" includes –

(i) any exhibition, (show), performance, amusement, game or sport to which persons are admitted for payment.

(ii) providing cable service to a subscriber.

(iii) providing direct to home broadcasting service and,

(6) "entertainment tax" means the tax levied and charged under section 4, 4AA and 4AAA and the expression 4AA shall be deemed to have been inserted with effect from 26.03.1999 and the expression 4AAA shall be deemed to have been inserted with effect from 25.02.2008 and includes the additional tax payable under section 6A,

xxx

(8) "proprietor" in relation to an entertainment includes any person responsible for, or for the time being in-charge of the management thereof;

xxx

(11A) "subscriber" means a person who receives the signals of cable television network at a place indicated by him to the proprietor of the cable television network without further transmitting it to any other person;

Explanation : In case of hotels each room or premises where facility for receiving signals of cable television network have been attached shall be treated as a subscriber."

The relevant provisions of the ***Rajasthan Entertainments and Advertisements Tax Rules, 1957*** are as under

"Rules 18BBBB.- Permission to be obtained to operate direct to home broadcasting service.

(1) the proprietor of a direct to home broadcasting service shall submit to the Commissioner an application within fifteen days from the date on which these rules come into force or at least within fifteen days of his commencing entertainment through direct to home broadcasting service, whichever is later.

(2) the proprietor shall submit to the Commissioner a security of an amount fixed by the Commissioner along with any other information which may be so required by the Commissioner.

Rules 18BBBBB.- Payment of tax for direct to home broadcasting service.

(1) The proprietor of a direct to home broadcasting service liable to pay tax in accordance with section 4AAA of the Act, shall maintain a true and correct record of the number of subscribers, the amount received from each subscriber and the amount of tax.

(2) The proprietor of a Direct to Home broadcasting service shall be required to deposit tax payable within seven days of the close of each calendar month.

(3) The proprietor of a Direct to Home broadcasting service shall file quarterly return in Form S-7 in duplicate, within fifteen days of the end of each quarter along with proof of deposit of tax payable under the Act."

Tamil Nadu Entertainments Tax Act, 1939:

(i) The relevant provisions of the ***Tamil Nadu Entertainments Tax Act, 1939*** are as under:

"3. Definitions: In this Act, unless there is anything repugnant in the subject or context :

xxx

(3B) “direct to home service” means distribution of multi-channel television programmes by using a satellite system by providing television signals direct to subscribers’ premises without passing through an intermediary such as cable operator;

xxx

3(4) “entertainment” means a horse race or cinematograph exhibition to which persons are admitted on payment; or television exhibition for which persons are required to make payment by way of contribution, or subscription, or installation or connection charges or any other charges collected in any manner whatsoever or an amusement or a recreation parlour where a game such as bowling, billiards, snooker or the like is provided or direct to home service or a cricket tournament conducted by the Indian Premier League.

xxx

3(9) “proprietor” in relation to any entertainment means a licensee of Cinematograph exhibition under the Tamil Nadu Cinemas (Regulation) Act, 1995 (Tamil Nadu Act No.IX of 1955) or the licensee of an Exhibition of Cinematograph film on Television Screen through Video Cassette Recorder or through Cable Television Network under the Tamil Nadu Exhibition of Films on Television Screen through Video Cassette Recorders and cable Television Network (Regulation) Act, 1984 (Tamil Nadu Act No. VII of 1984) or any person providing Television exhibition or any person providing amusement or any person providing recreation parlour or any person providing direct to home service or the Indian Premier League and includes the State Government, any local authority or any person responsible for the management thereof.

xxx

3(11) “Television exhibition” means an exhibition with the aid of any type of antenna with a cable network attached

to it or a cable television, of a film or moving picture or series of moving pictures, by means of transmission of television signals by wire where subscribers' television sets at residential or non-residential place are linked by metallic coaxial cable or optic fibre cable to a central system called the head-end.

xxx

4-I. Tax on direct to home service.—(1) Notwithstanding anything contained in Sections 4 and 7, there shall be levied and paid to the State Government a tax (hereinafter referred to as the "entertainment tax") calculated at the rate of thirty per cent of the gross charges excluding the service tax, received by the provider of a direct to home service.

(2) The tax levied under sub-section (1) shall be recoverable from the proprietor.

(3) The provisions of this Act (other than Sections 4, 7 and 13) and the rules made thereunder shall, so far as may be, apply in relations to the tax payable under sub-section (1).

xxx

4-E. Tax on television exhibition.- (1) Notwithstanding anything contained in Sections 4 and 7, there shall be levied and paid to the State Government a tax (hereinafter referred to as the entertainment tax) on television exhibition at the following rates namely:-

(i)	Within the limits of the Municipal Corporation of Chennai, Madurai, Coimbatore, Tiruchirapalli, Tirunelveli, Salem or any other Corporation that may be constituted under any law for the time being in force;	Six thousand rupees per month.

(ii)	Within the limits of the Municipalities constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act No. V of 1920)	Three thousand rupees per month
(iii)	Within the limits of Town Panchayats constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act No. V of 1920) or any other area not specified in items (i), (ii) , or (iv)	One thousand and five hundred rupees per month
(iv)	Within the limits of Village Panchayats constituted under the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act No. 21 of 1994).	One thousand rupees per month.

(2) The tax levied under sub-section (1) shall be recoverable from the proprietor.

(3) The provisions of this Act other than Sections 4, 4-B, 4-D, 4-F, 4-G, 5-F, 5-G, 6(1), 7 and 13 and the rules made there under shall, so far as may be, apply in relation to the tax payable under sub- section (1).

Uttar Pradesh Entertainment and Betting Tax Act, 1979:

(j) The relevant provisions of ***Uttar Pradesh Entertainment and Betting Tax Act, 1979*** as amended by ***Uttar Pradesh Entertainment and Betting Tax (Amendment) Ordinance, 2009*** are as under:

"**2. Definitions.-** In this Act-

(a) 'admission to an entertainment' includes admission to any place which the entertainment is held or any place wherefrom entertainment is provided by means of the cable television network of Direct to Home service or any other emerging transmission by whatever name called."

(a-1) 'amusement park' mean a place wherein various type of amusements, which includes games or rides or water sports, water park, splash pool etc. but does not include exhibition by means of cinematograph and video, are provided on payment of admission."

xxx

(ee) 'cable operator' means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of cable television network and includes the proprietor of a hotel who provides cable service in the hotel through his own cable television network";

xxx

(f-1) 'Direct-to-Home service' means a system of distribution of multi-channel television programmes in Ku band by using a satellite system, by providing television signals direct to the subscriber's premises without passing through an intermediary such as cable operator."

(g) 'entertainment' includes any exhibition, performance, amusement, game, sport or race (including horse rase) to which persons are admitted for payment and in the case of cinematograph exhibition, includes exhibition of news-real, documentaries, cartoons, advertisement shorts or slides, whether before or during the exhibition of a feature film or separately,; It also includes any activity notified as entertainment by the State Government from time to time."

xxx

(i-1) 'Ku Band' ordinarily means the 11.7 to 12.7 Gigahertz frequency band which splits into two segments namely Fix Satellite Service having the frequency of the 11.7 to 12.2 Gigahertz and Broadcasting Satellite service having the frequency of 12.2 to 12.7 Gigahertz, or any other band of width as may be approved by the Government of India and from time to time."

xxx

(k.1) "Multi System Operator" means a cable operator who receives a programming service from a broadcaster or his authorized agencies and retransmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators, and includes his authorized distribution agencies by whatever name called.

(l) 'payment for admission' includes-

(i) any payment for seats or other accommodation in any form in a place of entertainment;

(ii) any payment for a programme or synopsis of an entertainment;

(iii) any payment made for the loan or use of any instrument or contrivance which enables a person to get a normal or better view of hearing or enjoyment of the entertainment, which without the aid of such instrument or contrivance such person would not get;

(iv) any payment, by whatever name called or any purposes whatsoever, connect with an entertainment, which a person is required to make in any form as a condition of attending or continuing to attend the entertainment, either in addition to payment, if any,

entertainment or without any such payment for admission.

(v) 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 tax or more tax is required.

Explanation.-Any subscription raise or donation collected in connection with an entertainment in any form shall be deemed to be payment for admission;

(vi) Any payment made by a person by way of contribution or subscription or installation and connection charges or any other charges collected in any manner whatsoever, by whatever name called, for television exhibition through cable television network or any other such network by whatever name called, attached to television set or any other device at a residential or non-residential place of a connection holder; or

(vii) Any payment made by person to the proprietor of a Direct-to-Home service or any other service by whatever name called, by way of contribution or subscription or installation and connection charges or any charges collected in any manner by whatever name called either directly or through any agency established for the purpose for Direct-to-Home service with the aid of set top box or any other device of like nature which connects television set or any other device at a residential or non-residential place of a connection holder directly to the satellite without passing through an intermediary such as cable operator;

Explanation-For the purposes of sub-clauses (vi) and (vii) any expenditure incurred by any co-operative society including a co-operative housing society or by the

management of any factory, hotel, lodge, bar, permit room, pub or by a person or group of persons for the purchase of any type of antenna or any other apparatus for securing transmission through cable television network, Direct-to-Home service or any other service by whatever name called, for its member or for workers or customers or for himself or themselves, as the case may be shall be deemed to be payment made under the sub-clause;

(viii) Where in any entertainment admission has been allowed on a gross payment, such gross payment shall be deemed to be aggregate payment".

(l-l) 'Place of entertainment includes-

(i) a house, building, tent, site to be used for purpose of cinema building or other structure and description of transport whatsoever;

(ii) any addition to the place of entertainment;

(iii) a house building, tent or any other place where the books of account, ticket books or any other relevant records pertaining to the entertainment or pertaining to the management of providing cable service or Direct-to-Home service or Broadband service or any emerging transmission services, by whatever name called, are kept or purported to have been kept;.

xxx

(m) 'proprietor' in relation to any entertainment includes any person-

(i) connected with the organisation of the entertainment, or

(ii) charged with the work of admission to the entertainment, or

(iii) responsible for, or for the time being in-charge of the management thereof, or

(iv) any cable operator registered under Section 4 of the Cable Television Network (Regulation) Act, 1995 (Act

No. 7 of 1995) or any person responsible for or for time being in charge of management of providing cable connection through cable television network or any other emerging technology; or

(v) any company registered under the Company Act, 1956 having license to provide Direct-to-Home service or any other emerging transmission services by whatever name called by the Government of India under Section 4 of the Telegraph Act, 1985 and the Indian Wireless Telegraph Act, 1933 or any agent thereof appointed for the purpose of sale, letting on rent or distribution of equipment related thereto;".

xxx

(p-1) television signal receiver' means any device, by whatever name called, used to receive and/or decode the transmission programme of particular channel and without which no person is able to see a particular channel programme."

(p-2) 'television signal receiver agency' means a place of entertainment by whatever name called, where business of selling or letting on hire or distribution or exchange or putting into circulation in any manner whatsoever of television signal receiver.".

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(t) Words and expressions used in this Act but not defined, shall have the meaning respectively assigned to them in the Cable Television Networks (Regulation) Act, 1952.

(u) Words and expression used in this Act not defined, shall have the same meaning as respectively assigned to them in the Uttar Pradesh Cinema (Regulation) Act, 1955 or the rules made thereunder and the Cable Television Network (Regulation) Act, 1995 and the rules made thereunder.

3. Tax on entertainment. - (1) Subject to the provisions of this Act, there shall be levied and paid on all Aggregate payments required for admission to any entertainment

other than an entertainment to which Section 4 or Section 4-A or Section 4-B applies or a compounded payment is made under the proviso to this sub-section an entertainment tax at such rate not exceeding one hundred and fifty per cent of each such payments as the State Government may form time to time notify in this behalf, and the tax shall be collected by the proprietor from the person making the payment for admission and paid to the Government in the manner prescribed.

Provided that a proprietor of a cinema or cable operator in a local area having a population not exceeding one lac. may, in lieu of payment under this sub-section, pay a compounded payment to the State Government on such conditions and in such manner as may be prescribed and at such rate as the State Government may from time to time notify, and different rates of compounded payments may be notified for different categories of local areas.

Provided further that in the case of cable service, the proprietor of the cable service control room/multi system operator shall be liable to pay the tax irrespective of the fact whether he collect it directly from the person making the payment for admission or indirectly through an associate or franchise cable operator or an agent, who in turn collects it from the person making the payment:

Provided also that a proprietor of a cinema, *in lieu* of payment under this sub-section, shall make a lump sum payment to the State Government on such conditions and restrictions and in such manner as may be prescribed and at such rate as the State Government may from time to time notify, and different rates of lump sum payments may be notified for different categories of local areas or cinemas or for different payment for admission.

(2) Nothing in sub-section (1) shall preclude the State Government form notifying different rate of entertainment tax for different areas or for different classes of entertainment or for different Aggregate payment required for admission to entertainment.

(2-a) It shall be lawful for the State Government to notify lump sum rate of entertainment tax for any entertainment or class of entertainments or for different payment for admission to entertainment or for different area;

(3) Where the aggregate payment required for admission to an entertainment together with any other charge leviable under this Act, is not a multiple of one rupee then notwithstanding anything to the contrary contained in sub-section (1) or sub-section (2) or any notification issued thereunder, the tax shall be increase to such extent and be so computed that the aggregate of such aggregate payment and other charges is rounded off to the next higher multiply of one rupee and such increased tax shall also be collected by the proprietor and paid to the State Government in such manner as may be prescribed,

(4) If in any entertainment, referred to in sub-section (1), to which admission is generally on payment, any person is admitted free of charge or on a concessional rate, the same amount of tax shall be payable as would have been payable had such person been admitted on full payment.

(5) Where the Aggregate payment required for admission to an entertainment, referred to in sub-section (1), is made wholly or partly, by means of a lump sum paid as subscription, contribution, donation or otherwise, the tax shall be paid on the amount of such lump sum and on the amount of Aggregate payment required for admission if any made otherwise.

(6) Where in hotel or a restaurant, entertainment by way of cabaret or floor show (by whatever name called, by excluding a mere band in attendance or recorded music) is provided alongwith any meal or refreshment with a view to attracting customers, whether or not Aggregate payment required for admission is charged distinctly for such entertainment, Thirty per cent of the amount payable by the customer such meal or refreshment or the amount charge distinctly for such entertainment, whichever is higher, shall be deemed to be the Aggregate payment

required for admission to such entertainment and the tax shall be levied and pain accordingly.

(7) Where in a hotel, entertainment by way of cable service is provided in rooms or other places, the entertainment so provided in each room or other place shall be deemed to be a separate entertainment and the subscription for admission to each such entertainment shall be deemed to be equal to the amount of subscription charged from a subscriber in the vicinity of the hotel by the cable operator providing cable service in the hotel, and the tax shall be levied and paid on the basis of such subscription:

Provided that where the cable operator himself is the proprietor of the hotel, the subscription for admission to each such entertainment shall be deemed to be equal to the amount of subscription charged from a subscriber in the vicinity of the hotel by any other cable operator.

Explanation.- (1) For the purposes of this sub-section and clause (ee) of Section 2, 'hotel' includes an accommodational unit wherein rooms are provided to the customers on rent, but does not include the units approved under the 'Paying Guest Scheme' of the Department of Tourism of the State Government.

Explanation - (2) For the purposes of this Act, the expression aggregate payment shall mean a sum paid by a person for admission to the entertainment which shall include entertainment tax and other amount required to be paid under this Act but does not include any fee or other charges which is not a part of entertainment tax under this Act."

The State Legislature of Uttarakhand amended the Uttar Pradesh Entertainment and Betting Tax Act, 1979 (as applicable to the State of Uttarakhand) by Act No.4 of 2009 notified on 16.03.2009 which are as under:

"**Section 2 – Definitions.–**

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(ff) "Direct-to-Home (DTH) Broadcasting" a service for multi-channel distribution programmes direct to subscriber's premises without passing through an intermediary such as cable operator by uplinking to a satellite system.

Section 2(g) has been amended as under –

(g) "Entertainment" includes Direct-to-Home Broadcasting service and any and any exhibition, performance, amusement, game, sport or race (including horse race) to which persons are admitted for payment and in the case of cinematograph exhibition, includes exhibition of news-reel, documentaries, cartoons, advertisement shorts or slides, whether before or during the exhibition of a feature film or separately."

Interpretation of Entries of the Lists of the Seventh Schedule of the Constitution:

8. With regard to the distribution of legislative subjects under the three Lists of the Seventh Schedule of the Constitution, it is necessary to state that the Devolution Rules drawn under the Government of India Act, 1919 and thereafter the Government of India Act, 1935 are the precursors to the distribution of legislative powers between the Union and the States. Some of the salient aspects concerning the distribution of legislative powers between the Parliament and State Legislature as per the three Lists in the backdrop of constitutional provisions could be alluded to. Article

246 of the Constitution deals with the distribution of legislative powers between the Union and the States. The said Article has to be read along with the three Lists, namely, the Union List, the State List and the Concurrent List. The taxing powers of the Union as well as the States are also demarcated as separate entries in the Union List as well as the State List i.e. List I and List II respectively. The entries in the Lists are fields of legislative powers conferred under Article 246 of the Constitution. In other words, the entries define the areas of legislative competence of the Union and the State Legislature. ***(vide: State of Karnataka).***

8.1 The legislative power to impose a tax or impost can be traced to either List I - Union List or List II - State List. List III - Concurrent List which gives powers to both Union as well as the States to legislate on a subject does not contain any taxation entry. Entry 47 - List III states that fees in respect of any of the matters in that List but not including fees taken in any Court could be levied and collected by an authority of law either by the Union or the State Legislature. Similarly, Entry 66 - List II states that fees in respect of any of the matters in List II but not including fees taken in any Court could be collected by the State Legislature. In

a similar vein, Entry 96 - List I gives power to levy fee in respect of subjects enumerated in List I but not including fees taken in any Court.

8.2 On the aspect of interpretation of legislative entries in the three Lists, the principles are apposite as discussed in ***State of Karnataka:***

8.2.1 The power to legislate which is dealt with under Article 246 has to be read in conjunction with the entries in the three Lists discussed above which define the respective areas of legislative competence of the Union and State Legislatures. While interpreting these entries, they should not be viewed in a narrow or myopic manner but by giving the widest scope to their meaning, particularly, when the *vires* of a provision of a statue is assailed. In such circumstances, a liberal construction must be given to the entry by looking at the substance of the legislation and not its mere form.

8.2.2 However, while interpreting the entries, in the case of an apparent conflict between the entries in the Lists, every attempt must be made by the Court to harmonise or reconcile them. Where

there is an apparent overlapping between two entries, the doctrine of pith and substance is applied to find out the true character of the enactment and the entry within which it would fall. The doctrine of pith and substance, in short, means, if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, the same cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. Also, in a situation where there is overlapping, the said doctrine has to be applied to determine to which entry, a piece of legislation could be related to by examining the true character of the enactment or a provision thereof. Due regard must be had to the enactment as a whole and to its scope and objects. It is said that the question of invasion into another legislative territory has to be determined by substance and not by degree. According to the pith and substance doctrine, if a law is in its pith and substance within the competence of the Legislature which has made it, it will not be invalid because it incidentally touches upon the subject lying within the competence of another Legislature.

8.2.3 In case of any conflict between entries in List I and List II, the power of Parliament to legislate under List I will supersede when, on an interpretation, the two powers cannot be reconciled. But if a legislation in pith and substance falls within any of the entries of List II, the State Legislature's competence cannot be questioned on the ground that the field is covered by Union list or the Concurrent list (*vide* ***Prafulla Kumar Mukherjee vs. Bank of Commerce, Khulna, AIR 1947 P.C. 60).*** It was further observed that in distinguishing between the powers of the divided jurisdictions under Lists I, II and III of the Seventh Schedule to the Government of India Act, 1935, it is not possible to make a clean cut between the powers of the various legislatures. They are bound to overlap from time to time, and the rule which has been evolved by the Judicial Committee whereby an impugned statute is examined to ascertain its pith and substance or its true character for the purpose of determining in which particular list the legislation falls, applies to Indian as well as to Dominion legislation.

8.2.4 The Privy Council quoted with approval, the observations of Gwyer, CJ in ***A.L.S.P.P.L. Subrahmanyan Chettiar vs. Muttuswami Goundan, AIR 1941 FC 47*** wherein it was observed

that overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdictions. It was observed that "Subjects must still overlap, and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with". In the said case, it was further observed that the dominant position of the Central Legislature (Parliament) with regard to matters in List I and List III is established. But the rigour of the literal interpretation is relaxed by the use of the words "with respect to" which signify "pith and substance", and do not forbid a mere incidental encroachment. The learned Chief Justice Gwyer further added as under:

> "It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial

> Committee whereby the impugned statute is examined to ascertain its "pith and substance", or its "true nature and character," for the purpose of determining whether it is legislation with respect to matters in this list or in that."

8.2.5 Where one entry is made "subject to" another entry, all that it means is that out of the scope of the former entry, a field of legislation covered by the latter entry has been reserved to be specially dealt with by the appropriate legislature. Also, when one entry is general and another specific, the latter will exclude the former on a subject of legislation. If, however, they cannot be fairly reconciled, the power enumerated in List II must give way to List I.

8.2.6 But once the legislation is found to be 'with respect to' the legislative entry in question, unless there are other constitutional prohibitions, the power would be unfettered. It would also extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in that topic or category of legislation ***(****vide* ***United Provinces vs. Atiqa Begum, AIR 1941 FC 16).***

8.2.7 Another important aspect while construing the entries in the respective Lists is that every attempt should be made by the Court to harmonise the contents of the entries so that interpretation of one entry should not render the entire content of another entry nugatory ***(****vide* ***Calcutta Gas Company Ltd. vs. State of West Bengal, AIR 1962 SC 1044).*** This is especially so when some of the entries in a different List or in the same List may overlap or may appear to be in direct conflict with each other. In such a situation, a duty is cast on the Court to reconcile the entries and bring about a harmonious construction. Thus, an effort must be made to give effect to both entries and thereby arrive at a reconciliation or harmonious construction of the same. It is only when such attempt to reconcile fails that the *non-obstante* clause in Article 246(1) should be applied as a matter of last resort as observed in ***Re: The Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, AIR 1939 FC 1*** by Gwyer, C.J. in the following words:

> "for the clause ought to be regarded as a last resource, a witness to the imperfections of human expression and the fallibility of legal draftsmanship".

8.2.8 The sequitur to the aforesaid discussion is that if the Legislature passes a law which is beyond its legislative competence, it is a nullity *ab-initio*. The legislation is rendered null and void for want of jurisdiction or legislative competence *vide* ***RMD Chamarbaugwalla vs. Union of India, AIR 1957 SC 628.***

8.2.9 On a close perusal of the entries in the three Lists, it is discerned that the Constitution has divided the topics of legislation into the following three broad categories:

(i) Entries enabling laws to be made;
(ii) Entries enabling taxes to be imposed; and
(iii) Entries enabling fees and stamp duties to be collected.

8.2.10 Lists I and II are divided essentially into two groups : one, relating to the power to legislate on specified subjects and the other, relating to the power to tax. Thus, the entries on levy of taxes are specifically mentioned. Therefore, as such, there cannot be a conflict of taxation power of the Union and the State. Thus, in substance the taxing power can be derived only from a specific taxing entry in an appropriate List. Such a power has to be determined by the nature of the tax and not the measure or machinery set up by the statute. In ***Hoechst Pharmaceuticals,*** it

has been categorically held that taxation is considered as a distinct matter for purposes of legislative competence.

8.2.11 It would be relevant to discuss the following two judgments of this Court in detail in order to bring out the pertinent principles of interpretation of taxation entries in List II even when regulation of an activity is provided under an entry in List I. They are: (i) ***MPV Sundararamier*** and ***Union of India vs. H.S. Dhillon, (1971) 2 SCC 779 ("H.S. Dhillon").***

8.2.12 In paragraph 51 of ***MPV Sundararamier,*** it was observed as under:

> "51. In List I Entries 1 to 81 mention the several matters over which Parliament has authority to legislate. Entries 82 to 92 enumerate the taxes which could be imposed by a law of Parliament. An examination of these two groups of entries shows that while the main subject of legislation figures in the first group, a tax in relation thereto is separately mentioned in the second. Thus, Entry 22 in List I is "Railways", and Entry 89 is "Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights". If Entry 22 is to be construed as involving taxes to be imposed, then Entry 89 would be superfluous. Entry 41 mentions "Trade and commerce with foreign countries; import and export across customs frontiers". If these expressions are to be interpreted as including duties to be levied in respect of that trade and commerce, then Entry 83 which is "Duties of customs including export duties" would be wholly redundant. Entries 43 and 44 relate to incorporation, regulation and

winding up of corporations. Entry 85 provides separately for corporation tax. Turning to List II, Entries 1 to 44 form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that List form another group, and they deal with taxes. Entry 18, for example, is "Land" and Entry 45 is "Land revenue". Entry 23 is "Regulation of mines" and Entry 50 is "Taxes on mineral rights". The above analysis—and it is not exhaustive of the entries in the Lists—leads to the inference that taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence. And this distinction is also manifest in the language of Article 248 clauses (1) and (2) and of Entry 97 in List I of the Constitution. Construing Entry 42 in the light of the above scheme, it is difficult to resist the conclusion that the power of Parliament to legislate on inter-State trade and commerce under Entry 42 does not include a power to impose a tax on sales in the course of such trade and commerce."

On the above analysis, it was categorically inferred in ***MPV Sundararamier*** that taxation was not intended to be comprised in the main subject in which it might, on extended construction, be regarded as included but is to be treated as a distinct matter for the purpose of legislative competence. But while saying so, in the said case, reliance was also placed on Article 286 of the Constitution.

8.2.13 It was observed in ***H.S. Dhillon*** that Entry 97 - List I conferred the residuary powers on Parliament. Article 248 of the

Constitution which speaks of residuary powers of legislation confers exclusive power on Parliament to make any law with reference to any matter ***not enumerated in the Concurrent List or the State List***. But at the same time, it provides that such a residuary power shall include a power of making any law imposing a tax ***not mentioned in either of those Lists***. It is thus clear that if any power to tax is clearly mentioned in List II, the same would not be available to be exercised by Parliament based on the assumption of a residuary power.

8.2.14 In fact, the judgment in ***H.S. Dhillon*** was by a majority of 4 : 3 to the effect that the power to legislate in respect of a matter does not carry with it a power to impose a tax under our constitutional scheme. Thus, there is nothing like an implied power to tax. The source of power to legislate on a subject which does not specifically speak of taxation cannot be so interpretated by expanding its width as to include therein the power to tax, by implication or by necessary inference. Reliance was also placed on *Cooley on Taxation* to the following effect:

> "There is no such thing as taxation by implication. The burden is always upon the taxing authority to point to the

act of assembly which authorises the imposition of the tax claimed."

8.2.15 Thus, the power to tax is not an incidental power. Although legislative power includes incidental and subsidiary power under a particular entry dealing with a particular subject, the power to impose a tax is not such a power which could be implied under our Constitution. Therefore, it was held that the power to legislate in respect of inter-State trade and commerce (Entry 42 -List I) did not carry with it the power to tax the sale of goods which are subject of inter-State trade and commerce, before the insertion of Entry 92-A - List I and such power belonged to the States under Entry 54 - List II subject to Article 286 of the Constitution. ***(See: Builders' Association of India vs. Union of India, (1989) 2 SCC 645)***

8.2.16 Delving further on the distinction between the power to regulate and control and the power to tax, it has been observed by this Court that there is a significant distinction between the two primary purposes of legislation. The primary purpose of taxation is to collect revenue. Power to tax may be exercised for regulating an industry, commerce or any other activity. The purpose of levying

such tax is the exercise of sovereign power for effectuating regulation although incidentally, the levy may contribute to the revenue. Taking a leaf from Cooley on his work on taxation, it was observed that the distinction between a demand of money under the police power and one made under the power to tax, is not so much one of form as of substance.

8.2.17 In view of the detailed discussion made above, we find that the dictum of this Court in ***MPV Sundararamier*** analysing the entries in Lists I and II dealing with various subjects of legislation and entries concerning taxation being separate and distinct must be borne in mind while interpreting the impugned provisions of the State Acts. That is the constitutional scheme. In this regard, we reiterate what has been observed in ***Hoechst Pharmaceuticals***, to the effect that taxation is considered to be a distinct matter for purposes of legislative competence and the power to tax cannot be deduced from the general legislative entry as an ancillary power. Also, a power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse legislation touching only upon incidental and ancillary matters. But the power to levy tax cannot be considered to be an

incidental and ancillary matter while interpreting an entry in the Lists concerning legislative competence of Parliament or legislature of any State to enact laws on the subjects mentioned in the entry.

8.2.18 As a sequitur, it is observed that Entry 97 - List I which is the residuary entry relatable to Article 248 of the Constitution cannot be invoked or pressed into service when a specific entry empowering Parliament or the Legislature of a State to pass laws regarding the taxation on any subject is specifically enumerated either in List I or List II.

8.2.19 It would also be useful to mention that since the legislative competence to pass a law relating to taxation being specific and distinct in List I or List II, such an entry is not found in List III. In other words, both Parliament as well as the Legislature of a State cannot have the competence to levy tax on a particular subject and hence, there is no specific entry regarding taxation in List III or the Concurrent List. In fact, Entry 47 - List III refers only to power to impose "fees in respect of any of the matters in the List but not including fees taken in any court". The distinction between the power to levy fees and the power to levy a tax is well known and

it would not be necessary to go into that aspect of the matter in the present cases except to highlight that there is no entry for taxation in the Concurrent List. Therefore, while interpreting a taxation entry in List I or List II, all efforts must be made to interpret them in such a way as to give content and meaning to the same having regard to the constitutional scheme under which the distribution of legislative powers have been envisaged in the Seventh Schedule and bearing in mind and the object and intent behind them.

State of Karnataka vs. State of Meghalaya:

8.3 The controversy in the aforesaid case was regarding the interpretation to be given to the expression 'betting and gambling' in Entries 34 and 62 - List II of the Seventh Schedule to the Constitution of India. Further, whether "lotteries organised by the Government of India or the Government of a State", which is a subject in Entry 40 - List I also encompasses the power to levy tax on the said lotteries? Consequently, whether under Entry 62 - List II the State Legislature is denuded of the power to levy tax on the said subject? In other words, whether the subject covered in Entry 40 - List I restricts the scope and ambit of Entries 34 and 62 - List II? If the answer is in the affirmative, whether the State Legislatures

have no legislative competence to levy tax on lotteries organised by the Government of India or the Government of a State. Consequently, the question in these cases was, whether, the Legislatures of the States of Karnataka and Kerala had the legislative competence to enact the Karnataka Act, 2004 and the Kerala Act, 2005 respectively.

8.3.1 After examining the entries in List I and List II, it was observed that the expression "betting and gambling" finds a mention in Entry 34 – List II and taxes on, inter alia, betting and gambling are leviable having regard to Entry 62 – List II. Thus, the activity of betting and gambling and taxes on betting and gambling are subjects falling within List II i.e. they are State subjects. If conduct of lotteries is held to come within the scope of the expression 'betting and gambling' then the regulation and control of the said activity as well as the taxation on lotteries are squarely within the contours of the legislative powers of the State. However, only lotteries organised by the Government of India or the Government of a State, even though, they come within the scope of the expression 'betting and gambling' have been carved out of Entry 34 - List II dealing with betting and gambling inasmuch as

Entry 40 - List I (Union List) deals with lotteries organised by the Government of India or the Government of a State. This implies that conduct of lotteries by the Government of India or the Government of a State, even though, is betting and gambling within the meaning of Entry 34 and Entry 62 - List II, nevertheless, those entries are denuded inasmuch as the State Legislature has no legislative powers to pass any law on the subject lotteries organised by the Government of India or the Government of a State. If such is the simplistic interpretation to be given, the matter would rest. However, that is not so. This Court observed that:

> "158.2 The expression "betting and gambling" is also found in Entry 34 of List II. We have discussed at length above the content of the said expression and as to what it encompasses. The activity of "betting and gambling" includes, inter alia, lotteries. Lotteries can be conducted by the Government of India or the Government of States or authorised by a State or be conducted by private entities in a State. Thus, a lottery conducted by any of the above entities, Government or private is an activity falling within the nomenclature of "betting and gambling" which is the subject in Entry 34 List II. But what has been carved out of Entry 34 of List II is only lotteries conducted by the Government of India or the Government of any State. Therefore, all other types of lotteries continue to remain within the scope and ambit of "betting and gambling" as an activity in Entry 34 of List II."

8.3.2 In the above backdrop, Entry 40 – List I and Entries 34 and 62 - List II were considered to assess whether there is any apparent conflict or overlapping between the same. It was observed that with regard to lotteries organized by the Government of India or Government of a State are concerned, they continue to remain within the scope and ambit of Entry 62 - List II dealing with, *inter alia*, betting and gambling in so far levy of tax is concerned. But in order to have uniformity of laws throughout the country governing such lotteries, the framers of the Constitution had intentionally included the said activity referred to above in Entry 40 – List I. Consequently, Parliament has legislative competence to pass laws on lotteries organized by the Government of India or the Government of any State, uniformly throughout the country, as the conduct of such lotteries by the sovereign State is a source of revenue. Therefore, in order to enhance the faith of the people in the organization and conduct of such lotteries throughout the territories of India by the Government of India or the Government of any State, the said regulation by Parliament is enabled by placing the subject in Entry 40 – List I. Consequently, the Lotteries (Regulation) Act, 1998 had been passed by Parliament which is

regulatory in nature. But the question, whether, while interpreting Entry 40 - List I alongside Entries 34 and 62 - List II, the power to tax lotteries organized by Government of India or the Government of a State was also taken away from Entry 62 - List II and was to be read within the ambit of Entry 40 - List I was considered. It was held that the power to tax remains in Entry 62 – List II with the State Legislature for which in paragraph 158 of the said judgment, twelve reasons were assigned. It was ultimately held that Entry 62 - List II is a specific taxation entry on luxuries, including taxes on entertainments, amusements, betting and gambling. Since lotteries conducted by any entity or organization was nothing but betting and gambling, the State Legislatures would have the power to tax lotteries under Entry 62 - List II as lotteries would come within the nomenclature of betting and gambling irrespective of who conducts them.

8.4 Therefore, before approaching Entry 97 - List I which is a residuary entry in the Union List (List I), it would be necessary to first interpret the relevant taxation entry in the State List and it is only in the absence of there being legislative competence in the relevant taxation entry in the State List could such a power be

traced to Entry 97 - List I in the residuary list provided such a power is not also traceable to any entry in the Union List. This is because in List I itself the entries concerning taxation are separate and distinct. Such entries are from Entries 82 to 92-B and Entry 96 - List I deals with fees in respect of any of the matters in the List but not including fees taken in any court. Therefore, the power to tax can be read under Entry 97- List I which is only a residuary entry, if the same is not enumerated separately in List I or in List II in which latter case it would come within the legislative competence of the State Legislature.

8.5 From the aforesaid discussion, we would have to deduce and give a finding whether the activity conducted by the assessees herein falls within the nomenclature of entertainments under Entry 62 – List II thereby recognizing legislative competence with the State legislature to impose a tax on the assessees herein.

Meaning and Scope of the expression "Luxuries, Entertainments and Amusements" and Legislative Competence of State Legislatures to impose Entertainment Tax:

Luxuries:

8.6 The expression "entertainments and amusements" finds a place both in Entries 33 as well as 62 – List II. The former is a

regulatory entry while the latter is a taxation entry. Entry 33 – List II, on the one hand, speaks of theatres and dramatic performances, while on the other hand, it deals with sports, entertainments and amusements. Cinemas are also covered within Entry 33 – List II subject to Entry 60 – List I which deals with sanctioning of cinematograph films for exhibition. The taxation entry (Entry 62 – List II) essentially grants or reserves legislative competence to the State Legislature to impose taxes on "luxuries" which expression includes entertainments, amusements, betting and gambling. Thus, the aforesaid four expressions have been brought under the umbrella of the word "luxuries" so as to enable a State Legislature to tax these activities. Therefore, it is necessary to understand the meaning and content of the expression "luxuries, entertainments and amusements".

8.7 In ***Express Hotels,*** this Court observed that luxury connotes extravagance or indulgence as distinguished from the needs and necessities of life. Taxes on luxuries is not limited to things tangible and corporeal but the entry encompasses all the manifestations and emanations which comprehend the elements of extravagance and indulgence that differentiates luxury from necessity. There can

be elements of extravagance or indulgence in the quality of service as well as activities.

8.8 It was observed that luxuries covered both corporeal and incorporeal services and thus refers to goods and services as noted above. Further, there are two aspects of luxury, the first being objects and services which are intrinsically capable of fostering a sense of luxury and second, the recipient of such articles or services who consumes them experiences such gratification. Since "luxuries" can be both goods and services, what is relevant is the common denominator of the luxury element/potential of goods and services.

Reference could be made to Oxford English Dictionary, (Second Edition, Volume IX), wherein it is stated that luxury could among other things be defined as –

(i) abundance, sumptuous enjoyment;

(ii) the habitual use of, or indulgence in, what is choice or costly;

(iii) refined and intense enjoyment; means of luxurious enjoyment;

(iv) in a particularised sense: something which conduces to enjoyment or comfort in addition to what are accounted as the necessaries. Hence, in recent use, something which is desirable but not indispensable; and

(v) as an attribute such as luxury coach, cruise duty, edition, flat, liner, shop, tax, trade.

8.9 In short, the connotation of the word luxury is something which conduces enjoyment over and above the necessities of life to which one takes with a view to enjoy, amuse or entertain oneself.

8.10 In the same vein, in ***A.B. Abdul Kadir vs. State of Kerala, (1976) 3 SCC 219 ("A.B. Abdul Kadir"),*** it was observed that the connotation of the word "luxury" is something which conduces enjoyment over and above the necessities of life. It denotes something which is superfluous and not indispensable and to which one takes with a view to enjoy, amuse or entertain oneself. An expenditure on something which is in excess of what is required for economic and personal well-being would be expenditure on luxury although the expenditure is of a nature which is incurred

by a large number of people, including those not economically well off.

8.11 Further, in ***Godfrey Phillips,*** it was observed that the expression "luxury" must be understood in a sense analogous to that of the less general words such as entertainments, amusements, gambling and betting which are clubbed with it. This is by way of the application of the principle of interpretation known as *noscitur a sociis*. Thus, luxuries is also capable of meaning an activity and has primarily and traditionally been defined as such. It is only derivatively and recently used to connote an article of luxury. If luxuries is understood as meaning something which is purely for enjoyment and beyond the necessities of life, then, entertainments, amusements, betting and gambling would come within its scope and ambit. Further, these are all activities.

8.12 In ***Western India Theatres,*** this Court observed that the ordinary meaning has to be given to the word "luxury". This means that it would refer to goods and services which foster "luxury", a sense of abundance, enjoyment and gratification. Further taxes on luxuries, entertainments or amusements cannot have a restricted

meaning so as to confine the operation of the law only to taxes on persons receiving the luxuries, entertainments or amusements. The entry contemplates luxury, entertainments and amusements as objects on which the tax is to be imposed, if so there can be no reason to differentiate between the giver and the receiver of the luxuries, entertainments and amusements and both may, with equal propriety be made amenable to the tax. Thus luxury tax can be imposed on those who provided it also. It was further observed that the concept of luxuries in the legislative entry takes within it everything that can fairly and reasonably be said to comprehended in it. The actual measure of the levy is a matter of legislative policy and convenience so long as the legislation has a reasonable nexus with the concept of luxuries in the broad and general sense in which the expressions in legislative list are comprehended, the legislative competent extends to all matters "with respect to" that field of topic of legislation.

It was further observed that the taxable event need not necessarily be the actual utilization or the actual consumption, as the case may be, of the luxury. Once the legislative competence and the nexus between the taxing power and the subject of taxation is

established, the other incidence are matter of fiscal policy behind the taxing law. The measure of the tax is not the same thing as and must be kept distinguished from the subject of the tax.

8.13 In ***Federation of Hotel & Restaurant Association of India,*** the concept of luxuries in Entry 62 – List II was also considered and in the said case, the aspect theory was also applied.

Entertainments and Amusements:

8.14 According to P. Ramanatha Aiyar's Advanced Law Lexicon, 6th Edition, Volume II, the word 'entertainment' includes any exhibition, performance, game, sport and any other form of amusement to which persons are ordinarily admitted on payment. It also means "work in connection with, or for the purposes of, any cinema, exhibition or entertainment". The expression 'entertainment' includes hospitality of any kind and also expenditure on business gift with the aim of advertising to the general public. It is an activity that provides amusement and would include public performances including games and sports, exhibition, amusement to which persons are admitted for payments.

8.15 Readers Digest's Family Word Finder defines the word "entertainment" to mean amusement, diversion, distraction, recreation, fun, play, good time, pass time, novelty, pleasure, enjoyment and satisfaction. Entertainment denotes that which serves for amusement and 'amusement' is defined as a pleasurable occupation of the sense or that which furnishes it as sports or music.

8.16 Webster's *Third New International Dictionary* has defined 'entertainment' as an act of diverting, amusing or causing someone's time to pass agreeably.

8.17 According to Concise Oxford English Dictionary, 11th Edition (Revised) as cited in ***Bangalore Turf Club Ltd. vs. Regional Director, ESI Corporation, (2014) 9 SCC 657*** (paragraph 43.1), "entertainment" means 'the action of providing or being provided with amusement or enjoyment. An event or performance designed to entertain'.

8.18 In ***State of Karnataka vs. Drive-in Enterprises, (2001) 4 SCC 60***, it was observed that the word "entertainment" is wide enough to comprehend in it, the luxury or comfort with which a

person entertains himself. It includes viewing a cinema film inside a driving theatre along with a car/motor vehicle.

8.19 In ***Purvi Communication***, the expression "entertainments" under Entry 62 – List II was held to include performance, film or programmes shown to the viewers through the cable television network.

8.20 Thus, the expression "entertainments" is a word of general import and in common parlance, it includes cinema shows, dramatic performances, etc. The expression 'entertainments' used in Entry 62 - List II does not draw a distinction between one who derives amusement and one who caters to it. It covers both categories.

8.21 This Court has interpreted the expression "entertainments" in a broad and wide manner and not restricted to entertainment in a public place. With the advancement of technology, there can be entertainment provided within the private space or the household also by means of television or other electronic gadgets as well as in a motor vehicle. The growth of technology is such that there is now entertainment available even on a mobile phone (cell phone or even

on a smart watch). Thus, the expression "entertainments" cannot be interpreted in a narrow, pedantic or in a myopic way. With the advancement in technology, there can be several modes in which the activity of entertainment can be provided or received. However, what is essential is the object of providing or receiving signals etc. which must be for the purpose of entertainment.

Amusement:

8.22 The expression "amusement" in Entry 62 – List II would mean diversion, pass time or enjoyment or a pleasurable occupation of the senses or that which furnished it *vide* ***M.J. Sivani vs. State of Karnataka, AIR 1995 SC 1770.***

8.23 Entry 62 - List II is a specific taxation entry on luxuries, including taxes on entertainments, amusements, betting and gambling. The expression "entertainments and amusements" would have to be read *ejusdem generis*. The tax is thus on the activity of "entertainments and amusements" as it is on the activity of betting and gambling. Hence under Entry 62 - List II, the specific power to tax an activity which is "entertainments and amusements" is reserved with the State Legislature and cannot be

read within the scope and ambit of Entry 31 - List I which is inherently restricted in its scope to include "broadcasting and other like forms of communication" (Entry 31 – List I). We say so for the following reasons:

8.23.1 *First,* when a specific entry regarding taxation is provided in List II empowering the State Legislature to levy tax on a subject, namely, "entertainments and amusements" amongst other similar activities, the same cannot be read by implication in an entry of List I, namely, Entry 31 - List I which is a regulatory entry. This is because a taxation entry is separate and distinct from an entry dealing on a particular subject. This principle has been adequately explained by this Court in several judgments such as ***MPV Sundararamier*** and was followed in ***Hoechst Pharmaceuticals*** as discussed above.

8.23.2 *Second,* a taxation entry or legislative power to levy a tax on "entertainments and amusements" in the instant case, cannot be split between Parliament and the State Legislature when the said power is expressly enumerated in Entry 62 - List II. This is the constitutional scheme under the three Lists. This is also evident on

a perusal of the entries of List III (Concurrent List) which empowers both the Union as well as State Legislature to enact laws on subjects mentioned therein and the power to levy a tax is conspicuous by its absence.

8.23.3 *Third,* the object and purpose of Entry 62 - List II is to tax the activity of "entertainments and amusements".

8.23.4 *Fourth,* theatres and dramatic performances, cinemas, sports, entertainments and amusements are subjects enumerated in Entry 33 - List II and are State subjects, therefore, regulation of such activities within a State is complemented by the power of the State legislature to also tax the said activity under Entry 62 – List II. This is because what is being taxed is an entertainment and amusement activity which is squarely covered under Entry 62 - List II. Therefore, the State legislature has the competence to tax the activities enumerated in Entry 33 - List II.

8.23.5 *Fifth,* the contention of the assessees that the subject being placed in Entry 31 - List I would also empower only Parliament to impose a tax on the same by way of implication under

the said entry itself is not a correct interpretation of the entries in the Lists.

8.23.6 *Sixth,* Entry 97 - List I can be invoked only when any matter is not enumerated in List II or List III including any tax not mentioned in the said Lists. There is no specific entry for levy of tax on entertainments and amusements in List I. It is only in Entry 62 - List II. Thus, Entry 62 - List II gives legislative competence to a State Legislature to levy a tax on, *inter alia,* "entertainments and amusements". This would also include a tax on organisation and conduct of entertainments and amusements within the State when permission has been given by a State Government to conduct such an activity of entertainments and amusements in whatever form it may be. Thus, Entries 33 and 62 of List – II which, *inter alia,* deal with "entertainments and amusements" have to be interpreted identically and the expressions given an identical meaning.

8.23.7 *Seventh,* when the State Government has the legislative competence to levy a tax on, *inter alia,* entertainments and amusements (as a specific taxation entry is provided to levy tax on the said activity under Entry 62 - List II), the said entry must be

interpreted comprehensively and not in a restricted or narrow manner by excluding from the purview of the said entry, taxation on entertainments and amusements conducted through television by the medium of broadcasting.

8.23.8 *Eighth,* such a power to levy taxes on entertainments and amusements cannot be read into Entry 31 - List I by implication or into Entry 97 - List I as a residuary power. Such interpretation, if endorsed, would do violence to the manner of interpretation of entries in the Lists and prove to be contrary to the Articles of the Constitution and judgments of this Court cited above.

8.23.9 *Ninth,* if the State Government permits any species of entertainments or amusements activity within the State in terms of Entry 33 - List II, then the State also has legislative competence to tax such an activity as per Entry 62 - List II.

8.23.10 *Tenth,* Entry 31 - List I is meant only for the purpose of regulation. The said entry cannot be expanded to cover the power to levy taxes on entertainments and amusements by Parliament when such a power is envisaged in Entry 62 - List II. Parliament,

therefore, cannot tax an entertainment or amusement activity, on the strength of Entry 31 - List I. It may however regulate the said activity to the extent permissible under Entry 31 – List I. Any impost strictly for the purpose of regulation of broadcasting is permissible so long as it is not a tax on entertainment or amusement which is only within the ambit of only Entry 62 - List II.

8.23.11 *Eleventh,* any entertainment or amusement activity conducted by a private entity in a State or authorised by a State Government can be regulated only by the State Legislature. This is because Entry 33 - List II which deals with, *inter alia,* entertainments and amusements, also includes television entertainment. The regulation could be of Cable Television operators in the State.

8.24 The definition of broadcasting in Section 65(13) of the Finance Act, 1994 as amended in 2001 is as per the meaning assigned to it in clause (c) of Section 2 of the Prasar Bharti Act, 1990. The said Act is made pursuant to Entry 31 – List I which deals with posts and telegraphs; telephones, wireless, broadcasting

and other like forms of communications. The quintessence of Entry 31 – List I is communication which could be through various modes as referred to above. However, Entry 62 – List II deals with taxes on luxuries which is a totally distinct entry as opposed to communication which is the subject-matter of Entry 31 – List I and within the nomenclature of the expression "luxury", is included *inter alia* entertainments and amusements.

8.24.1 Therefore, on a plain reading of the said entries, it is very apparent that broadcasting is a form of communication and entertainment is a species of luxuries under Entry 62 – List II. There is no doubt that there are various modes of entertainments. ***Geeta Enterprises*** is a case which is restricted to certain modes of entertainments but with the advancement of technology, we have noted that entertainment could be through television and other digital devices including cell phone or smart phone. The expression "entertainments" in whatever mode it may be, come within the nomenclature or genre of luxuries which totally distinct from the expression "communication". It may be that the activity of entertainment is achieved through communication and in that sense could be through the mode of broadcasting and in that

sense, broadcasting and communication is for the purpose of the entertainment. Hence, in our view, the State Legislature were fully justified in imposing entertainment tax under Entry 62 – List II. That broad casting through T.V. cable network and cable operators is for carrying out the activity of entertainment and in pith and substance falls within the scope and ambit of Entry 62 – List II. However, the means adopted is through broadcasting which is a means of communication under Entry 31 – List I and therefore incidentally touches upon the subject under Entry 31 – List I.

8.24.2 Insofar as the argument that broadcasting falls only within the scope and ambit of Entry 31 – List I is concerned, it has to be viewed only as a form of communication and for the purpose of imposition of service tax, broadcasting is given meaning which is attributed to clause (c) of Section 2 of the Prasar Bharti Act, 1990 which as already noted as a regulatory entry. A regulatory entry cannot be a basis for imposition of a tax as this Court way back in ***MPV Sundararamier*** expressed. That a taxation entry is exclusive and *de hors* a regulatory entry and cannot be read by way of an implication into a regulatory entry. That apart, in ***H.S. Dhillon,*** this Court has specifically stated that if a tax falls within the scope

and ambit of an entry in a particular list then the same cannot be read into the residuary list, namely, Entry 97 – List I. In the circumstances, we find that the borrowing of the definition "broadcasting" from the Prasar Bharti Act, 1990 for the purpose of imposition of service tax on a broadcaster and thereby including a person who is in the entertainment industry to also liable to pay service tax, is not a levy in the nature of entertainment tax. Thus, a levy of service tax on a broadcaster is not a levy on an activity which is in the realm of entertainment. Conversely, a levy of entertainment tax by a State under Enter 62 – List II is not a levy on the activity/service of broadcasting but on the activity of providing and receiving entertainment.

8.25 In conclusion we hold that the tax sought to be imposed by the State Legislatures by way of the impugned Acts, is traceable to the power conferred on the State Legislatures under Entry 62 - List II. The said entry contemplates imposition of taxes, *inter alia*, on the entire genus of "entertainments and amusements". The pith and substance of the provisions of the State Act referred to above are in the realm of taxation of providers/receivers of entertainment/amusement as luxuries within the said Entry

through the medium of television which involves broadcasting service which is regulated under Entry 31 – List I as a form of communication in accordance with Prasar Bharti Act, 1990.

Parameters of Taxation:

8.26 A legislative enactment which provides for the imposition of a tax must specify the following parameters of taxation:

(i) The taxable event which forms the basis of levy, also referred to as "subject" of a tax;
(ii) The measure of the tax;
(iii) The rate(s) of taxation; and
(iv) The incidence of the tax.

8.27 The said parameters are each distinct and must not be conflated with the others. The components of tax, as stated above have been characterised in ***Govind Saran Ganga Saran***. In the said case, it was also laid down that a legislative scheme which seeks to impose a tax, ought to define each of the aforestated components with certainty and precision. The observations of Pathak, C.J. in the aforesaid case can be extracted as under : (SCC pp. 209-10, para 6)

> "6. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity."

8.28 This Court, in ***State of Karnataka,*** applied the aforesaid parameters of taxation in the context of the State enactments for collection of tax on conduct of lotteries that is encompassing the activity of betting and gambling. Paragraphs 111.1 – 111.4 are apposite to the present case and they read as under:

> **"111.1.** In the context of the tax sought to be imposed by the impugned Acts, the basis of levy is the conduct of lotteries within the State of Karnataka or Kerala. In other words, the ***subject of taxation*** is the ***conduct of lottery schemes***, by the Government of India or the Government of other States, within the State of Kerala or Karnataka. While it has rightly been stated by the learned counsel appearing on behalf of the respondents that the conduct of lotteries involves a host of events such as formulation and notification of scheme of lotteries, printing, transportation and sale of lottery tickets, etc. all these events constituting the conduct of the lotteries are ultimately for the participation of persons, within the State of Karnataka or Kerala. Therefore, the subject of tax is the conduct of lottery schemes, within the State of Karnataka

or Kerala, which is enabled by the propensity of persons to participate in the lottery schemes.

111.2. The ***measure of taxation*** in the instant case is the "***draw***". The impugned legislations contemplate two kinds of draws, namely, bumper draw and draw other than a bumper draw.

111.3. The ***rate of tax***, is a dependent variable and is to be determined based on the measure. In the instant case, the rate of tax under the Karnataka Act, 2005 is Rupees one lakh and fifty thousand in respect of a bumper draw and Rupees one lakh in respect of any other draw. Similarly, in the Kerala Act, 2005, the rate of tax is Rupees ten lakhs in respect of a bumper draw and Rupees two lakhs and fifty thousand in respect of any other draw.

111.4. The ***incidence of the tax is on the promoters of the lotteries*** i.e. on the Government of India or a the Government of a State or a Union Territory or any country organising, conducting or promoting a lottery, within the State of Karnataka or Kerala, or any person or entity appointed by the said Government or country in this behalf. The impugned Acts require registration of promoters and all provisions requiring filing of the returns of draws and payment of tax, are to operate in relation to promoters. Therefore, the incidence of the tax, falls on the promoters of the lotteries."

8.29 The above analogy be applied in the context of the legislative enactments of the States under consideration and the following table would bring out the aforesaid parameters of taxation in the context of the activity of providing and receiving entertainment:

S. No.	States	Taxable Event or subject of taxation	Measure of Tax	Rate of Tax	Incidence of Tax
1	Assam Amusements and Betting Tax Act, 1939	Section 3C read with S.2(4)	Section 3C	Section 3C	Section 3C read with S.3C(4)
2	Delhi Entertainments and Betting Tax Act, 1996	Section 7	Section 7	Section 7	Section 7
3	Gujarat Entertainments Tax Act, 1977	Section 6E(1)	Section 6E(1)	Section 6E(1)	Section 6E(1)
4	Jharkhand Entertainment Tax Act, 2012	Section 3	Section 3	Proviso to Section 3	Section 3 & Section 4
5	Orissa Entertainment Tax Act, 2006	Section 7	Section 7	Section 7	Section 7
6	Punjab Entertainment Duty Act, 1955	Section 3C	Section 3C	Section 3C	Section 3C
7	Rajasthan Entertainments and Advertisements Tax Act, 1957	Section 4AAA read with Section 5 and 6	Section 4AAA	Notification S.O.443 dt. 25.02.2008	Section 4AAA
8	Uttar Pradesh Entertainment and Betting Tax Act, 1979 as amended by U.P. Ordinance No. 4 of 2009 w.e.f. 16.06.2009	Section 3 read with S.2(a)	Section 3 read with S.2(l)(vii)	Section 3	Section 3 read with S. 2(v)

S. No.	**States**	**Taxable Event or subject of taxation**	**Measure of Tax**	**Rate of Tax**	**Incidence of Tax**
9	Uttar Pradesh Entertainment and Betting Tax Act, 1979, as amended by Uttarakhand (Amendment) Act, 2009 dt. 16.03.2009	Section 3 read with S. 2(g)	Section 3 read with S. 2(g)	Section 3 read with S. 2(g)	Section read with S. 2(g)

8.30 The parameters of taxation when juxtaposed with the relevant provisions of the State Acts under consideration, it is evident that the parameters of taxation can be clearly discerned from the aforesaid provision of the State Acts all relatable to the subject "entertainment" on which the tax is levied coming within scope and ambit of Entry 62 – List II.

Relevant case law:

Suresh:

9. The judgment of this Court in ***Suresh*** is relevant to the issues herein and deserves deliberation. ***Suresh*** arose from an appeal against the judgment of the High Court of Judicature at Madras in ***Tamil Nadu Cable TV Organisers Association vs. Government of Tamil Nadu, W.P. No.10013/1994 dt. 30.11.1994 ("Tamil***

Nadu Cable TV Organisers Association"). In the aforesaid case, the constitutional validity of sub-sections (2A), (2-B), (11) of section 3 and section 4-E of the Tamil Nadu Entertainments Tax Act, 1939 as amended by Act 37 of 1994 ("1994 Act") with the relevant Rules in G.O.P. No.265 dt. 18.08.1994 was under challenge. The purpose of the 1994 Act was to levy entertainment tax on exhibition of films or moving pictures or series of pictures through cable television.

"Cable television" was defined in clause (2-B) of section 3 as follows:

> ""cable television" means a system organised for television exhibition by using a video cassette or disc or both, recorder or player of similar such apparatus on which pre-recorded video cassettes or discs or both are played or replayed and the films or moving pictures or series of pictures which are viewed and heard on the television receiving set at a residential or non-residential place of a connection holder."

"Television exhibition" was defined in clause (11) of section 3 as follows:

> ""television exhibition" means an exhibition with the aid of any type of antenna with a cable network attached to it or cable television, of a film, or moving picture or series of moving pictures, by means of transmission of television signals by wire where subscribers' television sets at residential or non-residential place are linked by metallic

coaxial cable or optic fibre cable to a central system called the head-end."

Section 4E is the charging section which was introduced for the first time as follows:

> "(1) Notwithstanding anything contained in sections 4 and 7, there shall be levied and paid to the State Government a tax (hereinafter referred to as the entertainments tax) calculated at forty per cent of the amount collected by way of contribution or subscription or installation or connection charges or any other charges collected in any manner whatsoever for television exhibition.
>
> (2) The tax levied under sub-section (1) shall be recoverable from the proprietor.
>
> (3) The provisions of this Act (other than Sections 4, 4B, 4D, 5, 5A, 5B, 5C, 5D, 5E, 5F, 5G, 6(1), 7 and 13) and the rules made thereunder shall, so far as may be, apply in relation to the tax payable under sub-section (1)."

9.1 It is relevant here to list the major issues of the writ petitioners therein. They are as follows:

I. The State Legislature has no competence to pass the impugned Act inasmuch as the subject falls entirely within List I of Schedule VII to the Constitution.

II. The Union of India has passed a legislation viz., Cable Television Network (Regulation) Ordinance 9 of 1994 and also

framed the Cable Television Rules of 1994. Thus, by the doctrine of "occupied field", the State Legislature has no power to pass the impugned Act.

III. The impugned Act violates the provisions of Article 19(1)(a) of the Constitution of India, as it operates as an unreasonable restriction on the freedom of speech and expression of the citizens of this country.

IV. The tax levied by the Amendment Act is not a 'tax on entertainment' even as defined by the Act. It is a colourable legislation and is a fraud on the legislative powers for the following reasons:

a. Installation Charges and connection charges paid by the viewer cannot form part of the charges for entertainment.

b. In effect, it is a tax on trade, profession or calling, falling within the scope of Entry 60 - List II read with Article 276 of the Constitution of India.

c. The transmission through the Cable Television Network is not only of films or moving pictures but also of several educative programmes. In effect, it is partly a tax on

education. The entertainment part of the transmission will be less than 10% of the total transmission. As there is no provision for apportionment of the tax on entertainment and on other non-entertainment programmes, the entire levy is illegal and invalid.

d. There is no nexus between the object of the legislation and the provision contained in the Act, and therefore, it is unconstitutional.

V. The provisions of the Act violates Article 14 of the Constitution of India for the following reasons:

a. It does not impose a tax on Door darshan and those who own a disc antenna including posh hotels and other organisations.

b. The Act treats unequals as equals inasmuch as the levy is the same with reference to rural operators as well as urban operators.

VI. Essentially, the tax levied by the impugned Act is one on private enjoyment by the people in their respective houses and not on public entertainment.

VII. The provisions of the Act are unreasonable due to the following reasons.

a. The rate of tax is unduly exorbitant and wholly unreasonable so as to practically annihilate the business of the Cable TV Operators.

b. The provision for security deposit of Rs. 10,000 under Rule 21C is an unreasonable restriction on the business.

c. The provision for inspection of the place from where such television exhibition is provided, under Section 11 of the Act is unwarranted and an unreasonable restriction on the business.

9.2 As regards Issue I questioning the legislative competence, petitioners therein argued that the subject matter was governed by Entry 31 and Entry 60 - List I or alternatively, it would fall under the residuary Entry 97 - List I as it was a matter not enumerated in List II or List III of the Seventh Schedule. It was also argued that the Act defined "entertainment" to mean "a horse-race or cinematograph exhibition to which persons are admitted on payment" and this definition had been holding the field since 1939

and therefore the expression 'entertainment' was a *nomen juris* for "a horse-race or cinematograph exhibition".

9.3 However, the High Court opined that modern statutes have to be interpreted under new facts and situations and that old meaning cannot be given to the expression used therein by relying on the maxim *contemporanea expositio est optima et fortissima in lege* (contemporaneous exposition is the best and strongest in law). It then opined that the Indian Constitution has always been held to be an organic instrument and the expressions used in the Constitution cannot be restricted to the facts and circumstances which prevailed at the time of the passing of the Constitution. By relying on cases such as ***Geeta Enterprises*** and ***Express Hotels***, the High Court held that the meaning of the word 'entertainments' used in Entry 62 - List II is not confined to the definition of the said word as found in the Madras Entertainments Tax Act, 1939 and that the impugned Act falls within Entry 62 - List II.

9.4 With regard to Issue II dealing with repugnancy and occupied field, the Court rejected the argument of petitioners that the impugned Act is repugnant to the provisions of the Central

Ordinance 9 of 1994 since it had found that the subject-matter fell within Entry 62 - List II.

9.5 On the contention regarding violation of Article 19(1)(a) of the Constitution, the Court also rejected the argument that the taxation curtails the freedom of expression of the various national and international television operators by holding that the Cable TV Operators are not prevented from expressing their views on any particular matter.

9.6 As regards Issue IV(a), petitioners contended that the charges for installation or connection are only for the purpose of laying own connecting wires and cables which will not be a recurring expenditure and they cannot be termed as charges paid for the enjoyment of entertainment. The High Court rejected this contention, noting that whatever amount was paid by the viewer to the Cable TV Operator for installation or connection or for transmission of different programmes, all that was intended as payment for enjoying the entertainment. It also decided Issue IV(b) in favour of the State noting that the incidence of tax was on entertainment as such and not on any individual. As regards Issue IV(c), the Court rejected the contention of the petitioners that the

tax was mostly on non-entertainment programmes which were of high educational value, and since it was not possible to apportion the tax between entertainment programmes and non-entertainment programmes, the entire levy had to be struck down as unconstitutional. It held that if the pith and substance of the Act brought an enactment within the scope of a particular legislative entry, it could neither be dissected into different parts nor could it be held that the major part of it fell outside the scope of the entry. It rejected the contention of the petitioner as regards Issue IV(d) at the very outset.

9.7 Issue V dealt with Article 14 and the Court reiterated the principles of law relating to classification in a fiscal enactment that the legislature has wide latitude in such matters. It noted that the classification was based on intelligible differentia having nexus with the object of the enactment and that there was no hostile discrimination whatsoever against Cable TV operators. As regards the urban/rural classification, the Court noted that merely because the operators in rural areas may not get as many customers as the operators get in urban areas, it cannot be a ground to provide differential rates, as the incidence of tax was on

entertainment and it was the same whether the viewer was in a village or a town or a city.

9.8 Issue VI invoked a right to privacy argument. According to the petitioners, due to the imposition of tax, the charges for getting such connections became out of reach for ordinary people and hence were deprived of watching programmes on the television in the privacy of their respective abodes. The Court dismissed this contention as far-fetched. It also noted that the tax was imposed only on the proprietor, and the law does not mandate that the same be passed on to consumers.

9.9 With regard to Issue VII, the Court reiterated the well-settled principle that it has no concern with the wisdom of the legislature in prescribing the rate of tax. It opined that when there was no prohibition in the Act against the proprietor passing on the tax liability to the customers, there was nothing wrong in the taxing enactment to prescribe the furnishing of security for the proper payment of tax. It also held as regards provisions for inspection that the Legislature was always entitled to make provisions to enable the proper enforcement of the levy. Holding so, it dismissed all the petitions.

9.10 The Supreme Court in ***Suresh*** upheld this decision of the Madras High Court. It felt unnecessary to deal with all its conclusions except the submissions relating to i) freedom of speech and expression; ii) colourable legislation; and iii) the rate of tax. It noted that the activity of the appellants therein was a combination of two rights i.e. business and speech – sub-clause (g) and (a) of clause (1) of Article 19 and that there was no reason why the business part of it could not be taxed. It also noted that the State had duly explained its reasons for imposing tax at the rate of 40% and that since the appellants also carried on business, it was their duty to share the burden of the State by paying taxes like any other business.

Vasant Madhav Patwardhan:

9.11 A similar matter had come up before the Bombay High Court in ***Vasant Madhav Patwardhan vs. State of Maharashtra, 2000 SCC OnLine Bom 244*** wherein operators of Cable Television filed a writ under Article 226 of the Constitution challenging the constitutional validity of an amendment to the Bombay Entertainments Duty Act, 1923. The said Act imposed a tax on the entertainment provided by the Cable TV network.

9.12 The Bombay HC discussed ***Tamil Nadu Cable TV Organisers Association*** and ***Suresh*** in detail. It noted that the judgments above substantially covered the scope and controversy raised before it and that the substance of the legislations both in Maharashtra and Tamil Nadu were markedly similar. It noted that the Constitution is an organic document and that the vision of the founding fathers cannot, by a process of artificial construction, be frozen at the scientific knowledge and technology which was available at the point of time when the Constitution was drafted. Consequently, it upheld the competence of the State to levy the tax. An appeal against this judgment before the Supreme Court in Civil Appeal No. 7167 of 2000 was dismissed on the ground that the "point involved in this appeal is squarely covered by the judgment of this Court in ***Suresh***".

Geeta Enterprises vs. Purvi Communication:

10. During the course of the arguments, learned senior counsel Sri KK Venugopal submitted that the three Judge Bench judgment of this Court in ***Purvi Communication*** is *per incuriam* as it did not follow the reasoning of the coordinate Bench judgment in ***Geeta Enterprises*** and therefore, the correctness of ***Purvi***

Communication must be examined by a larger Bench of five judges.

10.1 While the three judge bench in ***Geeta Enterprises*** held that the levy of entertainment tax necessitates that the entertainment in question have a public colour, the coordinate bench deciding ***Purvi Communication*** did not take note of the same and erred in holding that state legislatures are competent to impose entertainment tax under Entry 62 – List II on the services rendered by Cable TV Operators. In that regard, Sri Venugopal placed reliance on the judgment of the Constitution Bench of this Court in ***State of M.P. vs. Abha Sethi, (1999) 4 SCC 32*** wherein ***Geeta Enterprises*** was cited with approval and its correctness affirmed.

10.2 Learned senior counsel further argued that the 1979 Act was amended in 2009 to introduce entertainment tax on DTH services. Our attention was drawn to the charging section of the 1979 Act i.e. Section 3, which, according to Sri Venugopal, predicates the levy of entertainment tax upon "admission to an entertainment". It was argued that watching television within the boundaries of one's home cannot be considered "admission to an entertainment".

Therefore, it was contended that the charging section does not apply to the activity of the assessees herein. Placing reliance on ***Bharat Sanchar Nigam Limited,*** it was further argued that the dominant nature of the activity of the assessees is that of broadcasting and this Court must be circumspect in holding otherwise.

10.3 The crux of the submission was that in ***Geeta Enterprises***, the word 'entertainment', as used in section 2(3) of the Uttar Pradesh Entertainment and Betting Tax Act, 1937 impugned therein, was interpreted to require a 'public colour'. He submitted that such an interpretation was in line with the meaning of the word 'entertainments' in Entry 62 - List II, which has historically required a 'public colour'. The relevant paragraphs in ***Geeta Enterprises*** are as follows (p.818):

> "Thus, on a consideration of the legal connotation of the word entertainment as defined in various books, and other circumstances of the case as also on a true interpretation of the word as defined in s. 2 (3) of the Act, it follows that the show must pass the following tests to fall within the ambit of the aforesaid section :
>
> 1. that **the show, performance, game or sport, etc. must contain a public colour in that the show should be open to public in a hall, theatre or any**

other place where members of the public are invited or attend the show.

2. …"

(emphasis supplied)

10.4 Sri Venugopal, learned senior counsel submitted that ***Purvi Communication*** ignored this requirement of 'public colour' and proceeded to hold that the performance, film or programme shown to the viewers through the cable television network came within the meaning of 'entertainments' under Entry 62 - List II to make law for the levy and collection of tax on such entertainments.

10.5 Sri Shisodia, learned senior counsel, on the other hand submitted that, as regards the question of whether cable TV operators may be taxed under the impugned Act when it is the subscribers who spend on entertainment, the judgment of this Court in ***Purvi Communication*** squarely covers it. Therein, this Court held that,

> "37. In our view, the respondents as a cable operator, for the purpose of levy and collection of tax under Sub-section (4a) of Section 4A of the Act have direct and close nexus with the entertainments made available to the viewer through their cable television network. The performance, film or programmes shown to the viewers through the cable television network come within the meaning of entertainments and therefore within the legislative competence of the State Legislature under Entry 62 of List

II of Seventh Schedule to the Constitution of India to make law for the levy and collection of tax on such entertainments.

38. ***A tax under Entry 62 of List II of Seventh Schedule to the Constitution of India may be imposed not only on the person spending on entertainment but also on the act of a person entertaining, or the subject of entertainment. It is well settled by this Court that such tax may be levied on the person offering or providing entertainment or the person enjoying it.***

xxx

39**.** In the tax matters, the State Legislature is free to, if it has legislative competence, to choose the persons from whom the tax levied on entertainments is to be collected. In other words, what are taxed are the entertainments, which is very much within the ambit of Entry 62 of List II of Seventy Schedule."

(emphasis supplied)

10.6 We are of the view that ***Purvi Communication*** is not *per incuriam* and need not be referred to a larger Bench. To substantiate our reasons, let us revisit ***Geeta Enterprises*** and ***Purvi Communication*** in light of Entry 62 - List II.

10.7 In ***Geeta Enterprises***, the petitioner therein permitted persons to enter the premises without any charge to view a show on the video which consisted mainly of sports, games etc. played on the screen of the video. Electronic machines were imported from Japan and the mechanism for playing the machine was so designed

that a coin of fifty paise was to be inserted into a strong box built within the machine, the keys of which was with the manufacturer. After the show was over, a representative of the manufacturing company would come, open the box collect the money and pay the share of the hire-petitioner therein out of the collected sale proceeds. The charge of inserting the coin was released only from those who wanted to operate the video machine at the rate of fifty paise for a show lasting up to thirty seconds.

10.8 In ***Geeta Enterprises***, the applicability of entertainment tax on the video game installed by the petitioner therein was under question. The *modus operandi* was that a machine with a video screen was installed in the parlour of the petitioner. There was no admission fee for people to enter the parlour, but a coin of 50 naya paise was to be inserted into a strong box built within the machine to play the video game. The question was, whether this *modus operandi* would fall within the interpretation of the word "Entertainment" as used in section 2(3) of the Uttar Pradesh Entertainment and Betting Tax Act, 1937 (hereinafter referred to as 'the 1937 Act). Section 2(3) of the 1937 Act provided that:

> "entertainment" includes any exhibitional, performance, amusement, game or short to which persons are admitted for payment."

10.8.1 This Court went into the different meanings of 'entertainment' to arrive at a conclusion that it has been used in a very wide sense to include within its ambit, entertainment of any kind including one which may be purely educative. It rejected the contention of the petitioner therein that video games do not fall into the definition as no admission fee was charged from the viewers. It held that (at p.817),

> "…when a number of people without any admission fee enter a hall for entertainment and enjoy the games **it becomes a public show and the hall where the video is played becomes a public hall and· amounts therefore to a public exhibition which is squarely covered by the first limb (exhibitional) of the definition of entertainment** in Sub-section 3 extracted above."
>
> **(emphasis supplied)**

10.8.2 Finally, the Court affirmed the views of the Allahabad High Court in ***Gopal Krishna Agarwal vs. State of Uttar Pradesh, (1982) All. L.J. 607*** which held that entertainment tax was leviable on video games. It approved the High Court's reasoning that,

> "With the advance of civilization ·and scientific developments new forms of entertainment have come into existence. Video Games are probably the latest additions to the means of entertainment. These games require skill and precision as so many other games do. They are a source of amusement and enjoyment to those who participate in the games. Others who stand by and watch also derive some pleasure and amusement though not to the same degree. Admission to the premises where the Video Machines are installed may be free but payment is admittedly made if one wants to play the game. The money charged for use of the Video Machine is an admission to entertainment and the payment made by the person who uses the Machine is the payment for admission. In any case it is a payment for admission."

Section 3 of the 1937 Act, i.e. the charging section imposed tax on all payment for admission to any entertainment (entertainment tax). The question was, whether or not the aforesaid show would fall within the four corners of the expression "entertainment" which was defined to include any exhibitional, performance, amusement, game or sport to which persons are admitted for payment under the said statute. Having regard to the aforesaid definition and bearing in mind the varying definitions of the expression entertainment, it was observed that Section 2(3) of the said Act required certain tests to be applied in order to ascertain whether the activity fell within the aforesaid section. It

was in the context of the definition of the expression entertainment in the Act under consideration therein that this Court laid down the test. Ultimately, this Court observed that the video show in the instant case was exigible to tax under Section 3 of the Act considered therein and the Writ Petitions filed were dismissed. This decision pertains to the period prior to the ushering of television in the country.

10.8.3 On a reading of this judgment, it becomes clear that the interpretation of the word 'entertainments' includes newer forms of entertainment such as video games, while at the same time it viewed entertainment to have a public character.

10.9 Let us now consider ***Purvi Communication***. In this case, the respondent therein was carrying on business as a multi-system operator (MSO) and engaged in receiving and providing TV signals to individual cable operators of various localities. Communication signals known as TV signals broadcasted by various satellite channels were received and distributed to sub-cable operators. The process involved in the business consisted of establishment of the state-of-the-art control rooms and spreading the cable networks. The said network signals were being given to various sub-cable

operators with whom the respondents had franchise agreement. According to the respondents therein, the object of the MSOs was to capture signals from various satellites and to put all of them in proper format/frequencies so that all those signals can travel together in cables without encroaching upon and interfering with other signals for the reception and distribution by the so-called cable operators. The signals are transmitted through the satellites by the various broadcasters from their earth up-linking stations in various parts of the world.

Respondent No.1 therein entered into franchise agreement with the individual cable operator of various localities and on the basis of the said agreement, it transmitted the said signals to the said individual sub-cable operators against a price. The individual sub-cable operators on the basis of the monthly subscription provided the said TV signals to the individual subscribers of the locality.

10.9.1 The State of West Bengal sought to impose a tax on MSOs engaged in receiving and providing television signals to individual cable operators of various localities by amending the

West Bengal Entertainment-cum-Amusement Tax Act, 1982 ("the 1982 Act"). Some of the relevant definitions under the Act were with regard to the expressions "cable operators", "sub-cable operators", "cable service", "cable television network", "subscriber" and "gross receipt". The said Act was amended in 1998 by omitting sub-section (4) of Section 4A and inserting a new sub-section (4a) which provided that,

> "(4a) Where any owner, or any person for the time being in possession, of any electrical, electronic or mechanical device, is a cable operator and receives through such device the signal of any performance, film or any other programme telecast, and thereafter such owner or person, against payment received or receivable,-
>
> i. exhibits such performance, film or programme through cable television network directly to customers, or
>
> ii. transmits such signal to a sub-cable operator, who in turn provides cable service for exhibition of such performance, film or programme to the customers,
>
> such owner or person shall be liable to pay tax from the month in which he exhibits such performance, film or programme or transmits such signal to a sub-cable operator on the basis of his monthly gross receipt at such rate, not exceeding twenty five per centum of the monthly gross receipt, as may be specified by the State Government by notification published in the Official Gazette."

10.9.2 Aggrieved by the imposition of entertainment tax and the demand notices issued, the respondents therein challenged the

vires of the 1998 Amendment made to the 1982 Act as well as the demand notices before the Taxation Tribunal and being aggrieved by its decision approached the High Court under Article 226 of the Constitution.

10.9.3 It was contended on behalf of the sub-cable operators that they were not providing any entertainment within the meaning of Entry 62 – List II as providing the cable link up to the viewers was the only role. That the sub-cable operator was merely transmitting the signals received by the cable operator which were in the form of audio-video signal. *Per contra,* the State of West Bengal in the said case submitted that the cable operators were engaged in receiving and providing TV signals to individual sub-cable operators of various localities and such cable operators on their part transmit the signals to their respective subscribers, who are the actual consumers who get the benefit of the entertainment from the signals. That the signals received by the sub-cable operators are utilized for providing information and entertainment to their customers. That respondent No.1 before this Court was a cable operator and the MSOs like the respondent company were not only providing the input to the localized cable operators in their

business of providing cable TV connections and transmission or programme through cables but the MSOs were also concerned with value added services like internet, telephone and transmission of data. It was argued that the respondent therein did not carry on any activity which constituted entertainment or amusement. That the MSOs were different from sub-cable operators. It was contended that a cable operator in a locality who is actually providing the entertainment to his subscribers may be liable to pay tax but those who function at an intermediary stage cannot be held liable to pay the said tax.

10.9.4 It was further submitted that the taxable event, namely, the act or activity of entertainment must have a direct and proximate connection with the assessee on which it falls and must itself constitute entertainment. That unless an activity in question qualifies as entertainment itself, the taxable event of entertainment cannot arise. If the activity in question is not the taxable event (entertainment), the levy cannot be sustained.

10.9.5 The High Court of Calcutta allowed the writ petition filed by the MSO and declared section 4A(4a) of the 1982 Act as *ultra vires* the Constitution.

10.9.6 On appeal by the State, the MSO submitted that they merely capture signals from various satellites and put all of them in proper format/frequencies for the reception and distribution by the sub-cable operators. However, the Court allowed the appeal by the State. While considering Section 4-A (4-a) of the State Act, it was observed that the purpose of the said provision was to levy and collection of the tax from any person who provides cable service directly to consumers or transmits to a sub-cable operators through a cable television network and otherwise controls or is responsible for the management and operation of a cable television network and such person has been defined as cable operator being a taxable person exclusively for the purpose of levy and collection of entertainment tax. Only when a cable operator so defined receives through any electrical, electronic and mechanical device, the signal of any performance, film or any other programme telecast and provides cable service directly to consumers or transmits signals to a sub-cable operator through a cable television network and otherwise controls or is responsible for the management and operation of cable television network, he would be liable. Therefore, a cable operator is the source of entertainment

to the individual subscribers because, it is he who receives the signal of performance, film, and any programme which is transmitted or given to a large number of sub-cable operators (although they call them as cable operator). The viewers enjoy, or are entertained by such performance, film, or programme because of receiving and transmitting video or audio-visual signals through coaxial cable or any other device by the respondents. No entertainment can be presented to the viewers unless a cable operator transmits the video and audio signals to a sub-cable operator for instantaneous presentation of any performance, film or any programme on their TV screen. The sub-cable operators are mere franchisees who receive signals for transmission to the viewers only on payment of a price promised or paid in terms of agreements entered by and between them. Therefore, the respondents as a cable operator have direct and proximate nexus with the entertainment provided by them through their cable television network and as such, they are the taxable person in respect of their gross receipts in relation to any month for providing entertainments to the individual viewers. This Court observed that the respondents therein as cable operators for the purpose of levy

and collection of tax had direct and close nexus with the entertainments made available to the viewer through their cable television network. The performance, film or programmes shown to the viewers through the cable television network come within the meaning of entertainments and therefore within the legislative competence of the State Legislature under Entry 62 - List II to make law for the levy and collection of tax on such entertainments. This Court further observed in paragraphs 38 and 39 is as under:

> "38. A tax under Entry 62 of List II of the Seventh Schedule to the Constitution may be imposed not only on the person spending on entertainment but also on the act of a person entertaining, or the subject of entertainment. It is well settled by this Court that such tax may be levied on the person offering or providing entertainment or the person enjoying it. The respondents are admittedly engaged in the business of receiving broadcast signals and then instantaneously sending or transmitting such visual or audio-visual signals by coaxial cable, to subscribers' homes through their various franchisees. It has been made possible for the individual subscribers to choose the desired channels on their individual TV sets because of cable television technology of the respondents and of sending the visual or audio-visual signals to sub-cable operators, and instantly retransmitting such signals to individual subscribers for entertaining them through their franchisees. The respondents' act is, no doubt, an act of offering entertainment to the subscribers and/or viewers. The respondent is very much directly and closely involved in the act of offering or providing entertainment to subscribers who are on his record. For the fact of offering

or providing entertainment to the subscribers and/or viewers, the respondents receive charges, which are realised or collected by their franchisee from the ultimate subscribers. Their franchisee, called as sub-cable operator under the said 1982 Act having no independent role to offer or provide entertainments to the subscribers inasmuch as franchisees have to depend entirely on the respondents' communication network and this communication network of the respondents consists of receiving and sending visual images and audio and other information for preparation of the subscribers and/or viewers; without the communication network service of the respondents, no entertainments can be offered or provided to the subscribers and/or viewers.

39. In the tax matters, the State Legislature is free, if it has legislative competence, to choose the persons from whom the tax levied on entertainments is to be collected. In other words, what are taxed are the entertainments, which is very much within the ambit of Entry 62 of List II of the Seventh Schedule. It is the respondents who as cable operator for the purpose of the said 1982 Act are engaged in the business of providing or offering entertainments which include showing of films, various serials, cricket matches and dramatic performances to the subscribers, and the tax is imposed on the act of offering such entertainments in this way to such subscribers and/or viewers. The entire communication network service is built up and controlled by the respondents. Whatever amount is received or receivable by the respondent in respect of providing such entertainments is taxable under sub-section (4-*a*) of Section 4-A of the said 1982 Act which has a direct and sufficient nexus with the entertainments."

10.9.7 It is thus clear that the cable operator, respondent No. 1 is the exhibitor in this case and also the provider of the entertainment to the customer. Hence, he alone can be asked to pay the tax on the entertainment that has resulted from this exhibition. This provision, therefore, does not cross the bounds of Entry 62 - List II and is *intra vires*. Providing a cable link up to the viewers' end is the only role of sub-cable operator. It is, therefore, inconceivable that despite putting forth the ready entertainment in the form of signal on the cable line, the cable operator cannot be said to be providing the entertainment within the meaning of Entry 62 - List II. So long as the State Act remains within the ambit of Entry 62 - List II and is not offending the provisions of Article 286 of the Constitution or the laws made thereunder, the State Act's validity is beyond question.

10.9.8 This Court further observed that in the said case, respondent No.1 therein sends visual images and audio signals for presentation to the individual subscribers in their homes through their feeder line i.e. coaxial cable or any other device used for transmitting audio and visual signals in terms of clause (2) of the said agreement. The franchisee has access to the signals provided

by respondent No.1. Therefore, it cannot be disputed that the price or prices received or receivable by respondent No.1 is the amount received or receivable by him for transmitting the signal for exhibition of any performance, film or any other programme telecast and the aggregate of such prices or amounts is the gross receipt of respondent No.1 in relation to any month or part thereof.

10.9.9 It was observed with reference to ***Western India Theatres*** that existence of means or providing entertainment would be sufficient to support a law imposing tax thereon and that the means of providing entertainment provides the nexus between the taxing power and the subject of tax. It was further observed that if one is looking at the means of providing entertainment, both the cable operator and the sub-cable operator play equally significant role in providing such means of entertainment, namely, transmission of signals received from the satellites. In one sense the cable operator plays a more pivotal role than the sub-cable operator since the signals are received by him through his devices and transmitted while a sub-cable operator makes provision for continued instantaneous transmission of the signals.

10.9.10 It was further observed that the impugned legislation was in pith and substance not relating to broadcasting but one relating to entertainment within the scope and ambit of Entry 62 – List II. Accordingly, the appeals filed by the State of West Bengal were allowed by setting aside the judgment of the Calcutta High Court.

10.9.11 On a perusal of the judgment in ***Purvi Communication***, it can be observed that there was no specific question raised as to, whether, the act of transmission by MSO has a 'public colour' to it. In fact, the Court was never required to go into such a question, for the impugned provision, i.e. section 4A(4a) of the 1982 Act, did not require such a 'public colour' to the activities of MSO.

10.10 There are other substantial differences between ***Geeta Enterprises*** and ***Purvi Communication*** as the table below enumerates due to which ***Geeta Enterprises*** and ***Purvi Communication*** cannot be compared.

Geeta Enterprises	***Purvi Communication***
Impugned Provision	
Definition of 'entertainment' under section 2(3) of the 1937 Act (UP Act)	Amended section 4A(4a) of the 1982 Act (West Bengal Act)

Activity subject to taxation	
Video game operated on payment, in a parlour whose admission is free to public	Transmission of signals by MSOs of any performance, film or any other programme telecast.
Date of Enactment of the provision impugned therein	
1937	1998
Discussion on Entry 62 - List II	
No	Yes

10.11 It was submitted by Sri Venugopal, learned Senior Counsel that the interpretation of the word 'entertainments' in Entry 62 - List II is restricted to 'public entertainments' and this Court was not right in ***Purvi Communication*** to hold that the impugned provision therein was constitutionally valid without determining whether that provision fell within the restricted interpretation of 'entertainments'.

10.12 We do not agree with this limited interpretation of the word 'entertainments'. We hold in line with the principle that words in entries must be given a broad, liberal and expansive interpretation. As discussed above, the impugned activity of transmission in ***Purvi Communication*** would still fall under its ambit.

10.13 It is true that in the earlier times, many people did not have access to personal devices through which they could be entertained. The entertainments, therefore, were mostly restricted to those performed or displayed in public. With developments in technology, it has become possible for such entertainments to be experienced / enjoyed directly at home. In other words, what has changed is the manner in which entertainments are accessed or consumed. Nowadays, entertainment is available on a cell/mobile phone in our hands. The forum or platform for entertainment as well as the manner of perception has changed, namely, from direct/live viewing to digital viewing but the content is essentially the same, of course, with varieties of programmes, having regard to the target viewers/audience of such entertainment, etc. That, however, does not change the fact that such entertainment is curated and transmitted for the benefit of the public at large. Therefore, interpreting the activity taxed in ***Purvi Communication*** in this manner, we hold that television viewing *via* DTH would still fall within the ambit of "public entertainments".

10.14 We also take note that the question of interpretation of 'entertainments' in ***Geeta Enterprises*** pertained to the

interpretation of the 1937 Act and not Entry 62 – List II as it appears in the Constitution. The judgment in ***Geeta Enterprises*** can never be a binding precedent for the question raised before this Court in ***Purvi Communication***. Therefore, whereas the scope of interpretation for ***Geeta Enterprises*** was limited to interpretation of a provision in a statute we would be remiss to hold ***Purvi Communication*** as *per incuriam* for its failure to take note of ***Geeta Enterprises.*** Therefore, we find no reason to doubt the correctness of ***Purvi Communication***.

"Aspect Theory" or Aspect Doctrine: A Discussion

11. In Canada, the distribution of legislative powers is provided in Sections 91 and 92 of its Constitution Act, 1867, dividing entries between the Federal Government (under section 91) and the Provincial Government (under section 92). The 'Aspect' theory, also known as the 'double aspect doctrine', is a tool of constitutional interpretation used in Canada to resolve issues which arise when both the Federal and the Provincial Governments have the right to legislate on a subject matter.

11.1 Lord Haldane, in ***Union Colliery Co. of British Columbia vs. Bryden, 1899 AC 580 at 587***, commented on the 'aspect theory' as follows:

> "It is remarkable the way this Board has reconciled the provisions of section 91 and section 92, by recognizing that the subjects which fall within section 91 in one aspect, may, under another aspect, fall under section 92."

11.2 The Constitution Bench of this Court, in ***Federation of Hotel & Restaurant Association of India***, explained this theory by quoting from the book 'Canada's Federal System' by AHF Lefroy. The Bench noted as under:

> "14. In Lefroy's 'Canada's Federal System' the learned author referring to the "aspects of legislation" under Sections 91 and 92 of the Canadian Constitution i.e., British North America Act 1867 observed that "one of the most interesting and important principles which have been evolved by judicial decisions in connection with the distribution of Legislative Power is that **subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power**. Learned author says: " ..... that by **'aspect' must be understood the aspect or point of view of the legislator in legislating the object, purpose, and scope of the legislation** that the word is used subjectively of the legislator, rather than objectively of the matter legislated upon."
>
> **(emphasis supplied)**

Criticism of its Use in Indian Context:

11.3 Some scholars have criticised the transposition of the Canadian 'aspect theory' to Indian jurisprudence on the ground that the framework of distribution of legislative competence in Canada is different from that in India and hence, that theory which is used in Canada cannot be transposed to Indian contexts.

11.4 To substantiate this proposition, it is relevant to note that, *firstly*, the aspect theory in Canada is used to resolve conflicts in legitimacy to legislate on ***all*** subject matters, rather than restricting its use only to entries concerning taxation. In India, the doctrine of pith and substance is predominantly used to resolve conflicts when two entries in different Lists of the Seventh Schedule to the Constitution conflict with each other. As already noted, the doctrine of pith and substance means that "if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid merely because it incidentally encroaches upon matters assigned to another legislature" ***[Goodyear India Ltd. vs. State of Haryana, (1990) 2 SCC 71, para 71]***.

11.5 *Secondly*, as regards taxation in Canada, it appears that Section 91(3) of the Constitution Act, 1867 therein empowers their Parliament to legislate on "the raising of Money by any Mode or System of Taxation" whereas, under section 92(2), the Provinces therein are empowered to legislate only on "Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes". This means that the Parliament therein has greater legislative competence to impose a wide range of taxes, but the Provinces therein are restricted to impose only direct taxes. Therefore, the scope for the use of 'Aspect theory' in taxation matters is limited in Canada. This distribution of taxation powers in Canada is markedly different from that in India. Under our Constitution, the subject matters of taxation available to Parliament are enumerated in Entries 82 to 97 - List I and those available to the State legislatures are in Entries 45 to 63 - List II. There is no taxation entry in List III or the Concurrent List.

11.6 There are also alternate propositions as regards this theory. For e.g., Sri Karthik Sundaram, in the book 'Tax, Constitution and the Supreme Court' (OakBridge Publishing Pvt. Ltd. 2024, p.112), argues that "the 'aspect theory' can, in some cases, be viewed as

an exception to the doctrine of 'pith and substance'". Contrarily, Sri V Niranjan, K.C. in Chapter 26 titled 'Legislative Competence' in the Oxford Handbook of the Indian Constitution, argues that there is no distinction between the doctrine of pith and substance and the aspect theory in the Indian context.

11.7 Despite the above observations, on a perusal of the cases in India which have referred to this theory, it would be evident that the use of 'aspect theory' in the Indian jurisprudence differs from its usage in Canada and that it is home-grown and innovated to suit the Indian context particularly in matters relating to taxation. In other words, while we may have borrowed the theory from Canada, its application in the Indian context has been within the context of the framework of the Indian Constitution. The theory is applied so as to save a provision of taxation rather than to a situation where a legislature's competence to tax is determined. In other words, the aspect doctrine is applied to ascertain whether a legislature can tax on a particular aspect of a transaction/activity rather than on competence of a legislature *vis-à-vis* the scope of entries in List I or List II.

11.8 To elaborate, it is necessary to revisit some significant judgments which have dealt with the concept of 'Aspect theory' and some judgments that have laid down principles for interpretation of entries governing taxation in the Seventh Schedule to the Constitution.

Usage of Aspect Theory in the Indian Context:

11.9 In ***International Tourist Corporation vs. State of Haryana, (1981) 2 SCR 364***, the *vires* of Section 3(3) of the Haryana Passengers and Goods Taxation Act, 1952 insofar as it permitted the levy of tax on passengers and goods carried by their carriages plying entirely along the National Highways was questioned. The appellants therein argued that the Parliament had the exclusive jurisdiction under Entry 23 read with Entry 97 - List I to legislate in respect of National Highways, including levy of taxes on goods and passengers carried on National Highways. This Court, however, noted that Entry 97-List I itself is specific in that, in case of a tax, a matter can be brought under that entry only if it is not mentioned in either of List I or List II. This Court further opined that a regulatory and compensatory tax should be upheld if there exists a "specific, identifiable object behind the levy and a

nexus between the subject and the object of levy". Having found this nexus, it upheld the imposition of tax under the impugned section.

11.10 Thereafter, in ***Federation of Hotel & Restaurant Association of India,*** the Constitution Bench of this Court had to decide the constitutional validity of the Expenditure Tax Act, 1987 (Central Act 35 of 1987) which envisaged a tax at 10 per cent *ad valorem* on "chargeable expenditure" incurred in the class of hotels wherein "room charges" for any unit of residential accommodation were Rs. 400 per day or more per individual. The Union sought to sustain the legislative competence to enact the impugned law under Article 248 read with Entry 97 - List I.

11.10.1 One argument of the appellants therein relevant to this case was that the law was, in pith and substance, really one imposing a tax on luxuries or on the price paid for the sale of goods. It is relevant to note here that a tax on luxuries is an exclusive subject matter of States under Entry 62 - List II. The other contention was that the particular impost under the impugned law, having regards to its nature and incidence, is really not an "expenditure tax" at all as it does not accord with the economists'

notion of such a tax. The question therefore was whether the economists' concept of such a tax qualifies and conditions the legislative power and whether "expenditure" laid out on what may be assumed to be "luxuries" or on the purchase of goods admits of being isolated and identified as a distinct aspect susceptible of recognition as being distinct field of tax legislation.

11.10.2 This Court referred to the 'Aspect theory' used in Canada by quoting Lefroy's 'Canada's Federal System' who opined that "one of the most interesting and important principles which have been evolved by judicial decisions in connection with the distribution of legislative power is that subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power.

> "… that by 'aspect' must be understood the aspect or point of view of the legislator in legislating the object, purpose and scope of the legislation that the word is used subjectively of the legislator, rather than objectively of the matter legislated upon."
>
> This Court further opined that,
>
> "Indeed, the law 'with respect to' a subject might incidentally 'affect' another subject in some way; but that is not the same thing as the law being on the latter

> subject. There might be overlapping; but the overlapping must be in law. **The same transaction may involve two or more taxable events in its different aspects. But the fact that there is an overlapping does not detract from the distinctiveness of the aspects**."
>
> **(emphasis supplied)**

11.10.3 Reference was made to Lord Simonds in ***Governor General in Council vs. Province of Madras, (1945) FCR 179: AIR 1945 PC 98*** in the context of concepts of Duties of Excise and Tax on Sale of Goods in the following words:

> "... The two taxes, the one levied on manufacturer in respect of his goods, the other on a vendor in respect of his sales, may, as is there pointed out, in one sense overlap. But in law there is no overlapping. The taxes are separate and distinct imposts. If in fact they overlap, that may be because the taxing authority, imposing a duty of excise, finds it convenient to impose that duty at the moment when the excisable article leaves the factory of workshop for the first time on the occasion of its sale. ..."

11.10.4 Referring to the "aspect" doctrine stated in Laskin's "Canadian Constitutional Law", the Constitution Bench further noted that the "aspect" doctrine bears some resemblances to those noted above but, unlike them, deals not with what the "matter" is but with what it "comes within" ... In this regard it was observed as under:

> "It is trite that the true nature and character of the legislation must be determined with reference to a

question of the power of the legislature. **The consequences and effect of the legislation are not the same thing as the legislative subject matter. It is the true nature and character of the legislation and not its ultimate economic results that matters**."

(emphasis supplied)

11.10.5 In other words, this Court held that the subject matter of a tax is different from the measure of its levy and that the measure of a tax does not determine its essential character or of the competence of the legislature. The Court therefore accepted the submission of the learned Attorney General and held that the distinct 'aspect', namely, the 'expenditure' aspect of the transaction fell within the subject-matter of the Union and that it had the legislative competence to impose a tax.

11.11 The Constitution Bench of this Court had to again decide on similar facts in ***Elel Hotels & Investments Ltd. vs. Union of India, (1989) 3 SCC 698 ("Elel Hotels & Investments")***. In this case, the Hotel Receipts Tax Act, 1980 imposed a special tax of 15% on the gross receipts of certain hotels, where the room charges for residential accommodation provided to any person during the previous year was Rs.75 or more per day per individual. The petitioners therein argued that the reliance on Entry 82 – List

I in support of the tax was wholly misconceived and the tax in pith and substance was an impost under Entry 62 – List II reserved to the States. The respondents however submitted that the word 'income' in Entry 82 – List I should not be read in a narrow and pedantic sense, but must be given its widest amplitude. The Court agreed with the respondents therein and opined that,

> "The cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it…**In construing the words in a constitutional document conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude**."
>
> **(emphasis supplied)**

11.11.1 While this Court herein did not explicitly use the 'aspect doctrine', it is implied from its reasoning that by interpreting the word 'income' liberally, the impugned legislation had an aspect of 'income' and hence the Union had the legislative competence to impose tax on the subject-matter.

11.12 In ***State of West Bengal vs. Kesoram Industries Ltd., (2004) 10 SCC 201***, the Constitution Bench of this Court summarised the principles as regards interpretation of taxation

entries in List I and List II. While it did not explicitly refer to the 'aspect theory', it opined on different aspects of a transaction as follows:

> "141. As held in *Goodricke Group Ltd.* [1995 Supp (1) SCC 707] which we have held as correctly decided, this Court has noted the principle of law well established by several decisions that **the measure of tax is not determinative of its essential character. The same transaction may involve two or more taxable events in its different aspects. Merely because the aspects overlap, such overlapping does not detract from the distinctiveness of the aspects.** In our opinion, there is no question of conflict solely on account of two aspects of the same transaction being utilised by two legislatures for two levies both of which may be taxes or fees or one of which may be a tax and the other a fee falling within two fields of legislation respectively available to the two."
>
> **(emphasis supplied)**

11.13 In ***All India Federation of Tax Practitioners***, the Court was concerned with the constitutional validity of the levy of service tax on Chartered Accountants, Cost Accountant and Architects by Finance Act, 1994 and Finance (No. 2) Act, 1998, and the legislative competence of Parliament to impose service tax under Entry 97 - List I, in view of Entry 60 - List II which is also a taxation entry and mentions, "Taxes on professions, trades, callings and employments" and Article 276 of the Constitution.

This Court held that Entry 60 – List II which refers to 'professions' cannot be extended to include services and opined, "this is what is called as an Aspect Theory". But it said no more on the theory. However, from its reasoning that Entry 60 - List II concerns a tax on the status and cannot be read to include every activity undertaken or service rendered by a chartered accountant/cost accountant/ architect, this Court suggested that the activity in question i.e. service rendered by such professionals did not have an aspect that can be covered by Entry 60 - List II which was only regarding being a part of a particular profession. It was further observed that a tax cannot be levied under the Finance Act, 1994 and its amendments without service being provided whereas a professional tax under Entry 60 - List II is a tax on his status. It is the tax on the status as a Cost Accountant or a Chartered Accountant. As long as a person or a firm remains in the profession, he/it has to pay professional tax. That tax has nothing to do with the commercial activities which he undertakes for his client. Even if the chartered accountant has no work throughout the accounting year, still he has to pay professional tax. He has to pay the tax till he remains in the profession. This is the ambit and

scope of Entry 60 - List II which is a taxing entry. Therefore, Entry 60 contemplates tax on professions, as such.

11.13.1 Referring to ***Western India Theatres Ltd.*** it was observed that Entry 50 of the Provincial List of the Government of India Act, 1935 contemplated a tax on entertainment or amusement ***as objects*** on which a tax was to be imposed and therefore it was not possible to differentiate between the entertainment provider and the entertainment receiver.

11.13.2 It was also highlighted that the importance of the judgment in Western India Theatres Ltd. was in the fact that it made a distinction between tax imposed for the privilege of carrying on any trade or calling on one hand and a tax on every show, that is to say on every incidence of the exercise of the particular trade or calling. It was held that if there was no show, there was no tax. It was held that the impugned tax on entertainment levied by the Cantonment Board was a tax on the act of entertainment resulting in a show and, therefore, the impugned law imposing tax on entertainment fell under Entry 50 of the Provincial List in Schedule VII to the Government of India Act, 1935 and not under Entry 46 of the Provincial List (similar to Entry 60 - List II). Therefore, it was

held that Bombay legislature had power to enact the law imposing tax on entertainment which had nothing to do with the law imposing tax on the privilege of carrying on any profession, trade or calling under Entry 46 (similar to Entry 60 - List II in the present case). Therefore, this Court had clarified the dichotomy between tax on privilege of carrying on any trade or calling on one hand and the tax on the activity which an entertainer undertakes on each occasion. The tax on privilege to practise the profession, therefore, falls under Entry 60 - List II. It is quite different from tax on services. Keeping in mind the aforestated dichotomy, it is clear that tax on service does not fall under Entry 60 - List II. Therefore, Parliament has absolute jurisdiction and legislative competence to enact the law imposing tax on services under Entry 97 - List I.

11.14 In ***Union of India vs. Mohit Minerals Pvt. Ltd., (2018) 13 SCR 139 ("Mohit Minerals Pvt. Ltd.")***, this Court explicitly held that, "the principle is well settled that two taxes/imposts which are separate and distinct imposts and on two different aspects of a transaction are permissible as "in law there is no overlapping"." In this case the bone of contention between the parties was whether an Indian importer can be subject to the levy

of Integrated Goods and Service Tax ("IGST") on the component of ocean freight paid by the foreign seller to a foreign shipping line, on a reverse charge basis. The notifications impugned in the said case whether amounted to leading to double taxation was considered.

11.14.1 The contention of the respondents therein was that the transaction between the foreign exporter and the respondents was already subject to IGST under Section 5 of the IGST Act read with Section 3(7) and 3(8) of the Customs Tariffs Act as "supply of goods", and an additional levy of IGST on imported goods, that is on the supply of transportation service, by designating the importer as the recipient could amount to double taxation. The transaction involved three parties, namely the foreign exporter, the Indian importer and the shipping line. The first leg of the transaction involved a CIF contract, wherein the foreign exporter sells the goods to the Indian importer and the cost of insurance and freight are the responsibility of the foreign exporter. In other words, the foreign exporter is liable to ensure that the goods reach their place of destination and the Indian importer pays the transaction value to the exporter. The second leg of the transaction involved an

agreement between the foreign exporter and the shipping line (whether foreign or Indian) for providing services for transport of goods to the destination i.e., in the territory of India. The appellant-Union of India contended that the contract between the foreign exporter and the foreign shipping line – of which the Indian importer is not a party – cannot be deemed to be a part of "composite supply" within the meaning of Section 2(30) of the Central Goods and Service Tax Act ("CGST Act"). It was contended that while the first leg of the transaction, between the foreign exporter and Indian importer, is (according to the submission) a composite supply, the second leg is an independent transaction. In this regard, the Union of India relied on the decision of this Court in ***State of Andhra Pradesh vs. Mc Dowell & Co, (1996) 3 SCR 721 ("Mc Dowell")*** to contend that a single element can constitute a levy and a part of the value for another transaction. Further the Union Government urged that the levy is on different aspects of the transaction.

11.14.2 This contention was not acceded to by this Court. It was ultimately held that the impugned levy imposed on the "service" aspect of the transaction is in violation of the principle of

"composite supply" enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the "composite supply", comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the "supply of service" by the shipping line would be in violation of Section 8 of the CGST Act. Hence the appeal filed by the Union of India was dismissed.

11.15 The judgment of this Court in ***Bharat Sanchar Nigam Limited*** appears to have approached the application of 'aspect theory' differently. The principal issue which arose therein was, whether, the nature of transaction by which mobile phone connections (through SIM cards) are enjoyed is a sale or a service or both. If it is a sale then the States are legislatively competent to levy sales tax on the transaction under Entry 54 – List II but if it is a service, then the Parliament alone can levy service tax under Entry 97 – List I but if the nature of the transaction partakes of the character of both sale and service, then the moot question would be whether both legislative authorities could levy their separate taxes together or only one of them. The contention of the appellants

therein was that the transaction in question was merely a service and therefore only the Union had the competence to levy tax thereon. However, the respondents States argued that the transaction was a deemed sale under Article 366(29A)(d) of the Constitution read with the charging sections in their various sales tax enactments and therefore they were competent to levy sales tax on the transactions.

11.15.1 The impugned judgments therein had held that there was a sale of SIM cards by the service providers to the subscribers and that it is factually and legally distinct from the activity of giving connection or activation of SIM cards. However, this Court held that the expression 'goods' do not include electromagnetic waves or radio frequencies for the purpose of Article 366(29A)(d) and that the goods in telecommunication are limited to the handsets supplied by the service provider.

11.15.2 This Court clarified that what a SIM card represents is ultimately a question of fact. That in determining such an issue, the Assessing Authorities had to keep in mind the principle that if the SIM card was not sold by the assessee to the subscribers but was merely part of the services rendered by the service providers,

then a SIM card could not be charged separately to sales tax. However, if the parties intended that the SIM card would be a separate object of sale, only then it would be open to the Sales Tax Authorities to levy sales tax thereon. Therefore, the Court held that, as far as SIM cards were concerned, the issue was left for determination by the Assessing Authorities.

11.15.3 Further, this Court noted that the State would have had the power to separate the agreement to sell from the agreement to render service and impose tax on the sale, only if the transaction in truth represents two distinct and separate contracts and is discernible as such. It held that the test for composite contracts, other than those mentioned in Article 366(29A), would be the intention of the parties and if there was no intention of sale of goods, then the State cannot impose a sales tax even if the contract could be disintegrated. Furthermore, the Court held that it would be possible for the State to tax the sale element provided there is a discernible sale and only to the extent relatable to such sale.

11.15.4 As regards the 'aspect theory', this Court noted that the High Court in the impugned judgment therein could not have used the theory to "enable the value of the services to be included in the

sale of goods or the price of goods in the value of the service" and that the 'aspect theory' merely deals with legislative competence. It further noted, observing on the judgment of this Court in ***Federation of Hotel & Restaurant Association of India*** that:

> "subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power. They might be overlapping; but the overlapping must be in law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is overlapping does not detract from the distinctiveness of the aspects".

11.15.5 It further held that no one denies the legislative competence of States to levy sales tax on sales provided that the necessary concomitants of a sale are present in the transaction and the sale is distinctly discernible in the transaction. After narrating the Constitutional history which led to the amendment of Article 366 by insertion of clause (29-A) by the Forty Sixth Amendment to the Constitution, it was observed that of all the different kind of composite transactions, the draftsman of the Forty Sixth Amendment chose three specific situations namely, a works contract, a hire-purchase contract and a catering contract to bring them within the fiction of a deemed sale. Of these three, the first

and third involve a kind of service and sale at the same time. Apart from these two cases where splitting of the service and supply has been constitutionally permitted in sub clause (b and f) of Clause (29-A) of Article 366, there is no other service which has been permitted to be so split. It was further observed that if there is an instrument of contract which may be composite in form in any case, other than the exceptions in Article 366 (29-A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sale from the agreement to render service and impose tax on the sale. The test therefore for the composite contract other than those mentioned in Article 366 (29-A) continues to be: did the parties have in mind or intend separate right arising out of the sale of goods? If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or other is to ask what is the substance of the contract. In other words, the court termed it 'the dominant nature test'.

11.15.6 It was further observed that what a SIM Card represents is ultimately a question of fact. It was also observed that the States

have the power to levy sales tax on sales provided the necessary concomitants of a sale are present in the transaction and the sale is distinctly discernible in the transaction. This does not however allow the State to entrench upon the Union List and tax any service by including the cost of such service in the value of the goods. Even in those composite contracts which are by legal fiction deemed to be divisible under Article 366 (29-A), the value of the goods involved in the execution of the whole transaction cannot be assessed to sales tax. For the same reason the Centre cannot include the value of the SIM Card, if they are found ultimately to be goods, in the cost of the service.

11.15.7 Therefore, this Court did not apply the aspect theory in the aforesaid judgment because it did not find an aspect of sale in the activity of mobile phone connections. It was observed that the aspect theory would not apply to enable the value of the services to be included in the sale of goods or the price of goods in the value of the service.

11.15.8 In the aforesaid case, reference was made to ***Gujarat Ambuja Cements Ltd. vs. Union of India, (2005) 4 SCC 214***. In this case, the writ petitions were filed challenging the

constitutional validity of Sections 116 and 117 of the Finance Act, 2000 and Section 158 of the Finance Act, 2003 by which the decision of this Court in ***Laghu Udhyog Bharti vs. Union of India, (1999) 6 SCC 418 ("Laghu Udhyog Bharti")*** striking down Rules 2 (1)(d)(xii) and (xvii) of the Service Tax Rules, 1994 (as amended in 1997) was sought to be overcome. The writ petitioners were the customers or the clients of goods transport operator and of forwarding and clearing agents. One of the contentions raised was that the Parliament was not competent to levy the service tax as it encroached upon the States Government power as defined in Entry 56 – List II which pertains to "taxes on goods and passengers carried by road or an inland waterways". That Parliament could not by resorting to the residuary Entry 97 – List I circumvent Entry 56 – List II and in the guise of levying service tax in fact, levy a tax on transport of goods. The imposition of service tax on the customers was challenged by many of the writ petitioners in ***Laghu Udhyog Bharti*** but in the later case the legislative competency to levy service tax on carriage of goods by transport operators was not considered. It was contended that the subject fell under Entry 56 – List II and therefore could not come within Entry 23 read with

Entry 97 – List I. This contention was not accepted. In paragraph 27 of this judgment, it was observed that there is a distinction between the object of tax, the incidence of tax and the machinery for the collection of the tax. The distinction is important but is apt to be confused. Legislative competence is to be determined with reference to the object of the levy and not with reference to its incidence or machinery. There is a further distinction between the objects of taxation in our constitutional scheme. The object of tax may be an article or substance such as a tax on land and buildings under Entry 49 - List II, or a tax on animals and boats under Entry 58 - List II or on a taxable event such as manufacture of goods under Entry 84 - List I, import or export of goods under Entry 83 - List I, entry of goods under Entry 52 - List II, or sale of goods under Entry 54 - List II to name a few. Dealing with Entry 56 – List II it was held that the subject matter of taxation under that entry are goods and passengers. The phrase "carried by road or natural waterways" carves out the kinds of goods or passenger which or who can be subject to tax under the entry. After making an analysis of the entry with reference to the dictum in ***Rai Ramakrishna vs. State of Bihar, AIR 1963 SC 1667,*** it was observed that entry 66

read with Section 65 (41)(j) and 67 (m-a) in Chapter V of the Finance Act, 1994 did not seek to levy tax on goods or passengers but the service of transportation itself which is a distinct levy from what is envisaged under Entry 56 – List II. It may be that both the levies are to be measured on the same basis but that does not make the levy the same. Placing reference on ***Federation of Hotels and Restaurant Association of India***, it was observed that service tax is not a levy on passengers and goods but on the event of service in connection with the carriage of goods; it is not therefore, possible to hold that the Act in pith and substance is within the States' exclusive power under Entry 56 - List II. It was further observed that the point at which the collection of the tax is to be made is a question of legislative convenience and part of the machinery for realisation and recovery of the tax. The manner of the collection has been described as "an accident of administration; it is not of the essence of the duty". It will not change and does not affect the essential nature of the tax. Subject to the legislative competence of the taxing authority, a duty can be imposed at the stage which the authority finds to be convenient and the most effective, whatever stage it may be. The Central Government is therefore legally

competent to evolve a suitable machinery for collection of the service tax subject to the maintenance of a rational connection between the tax and the person on whom it is imposed. By Sections 116 and 117 of the Finance Act, 2000, the tax is sought to be levied on the recipients of the service. They cannot claim that they are not connected with the service since the service is rendered to them. It was observed that if in substance, the statute is not referrable to a field given to the State, the Court will not by any principle of interpretation allow a statute not covered by it to intrude upon this field.

11.16 It is relevant at this juncture to discuss the judgment of this Court in ***Imagic Creative.*** In that case, the appellant-company was an advertising agency which used to create original concept and design advertising material, brochures, annual reports etc. for its clients. It used to file its returns for service tax under Finance Act, 1994 and also for sales tax under Karnataka Sales Tax Act, 1957. There was no express contract between the appellant and their clients. But their purchase order and invoice showed three categorical divisions; i) the amount of service tax on the specific design and production; ii) the amount of sales tax on

the specified item on the first sale; and iii) when certain items are outsourced, the tax payable on resale of the said goods in terms of section 6(4) of the Karnataka Sales Tax Act, 1957. The assessing authority concerned, however, held that the entire activity undertaken by the appellant therein was a comprehensive contract and hence the entire sale value including the creation of concept and design, formed part of the value of sale and was accordingly liable to tax. The said order was confirmed by Tribunal as well as High Court.

11.16.1 The question before this Court was, whether, the charges collect towards the services for the evaluation of the proto-type conceptual design (that is creation of concept), on which service tax has been paid under the Finance Act, 1994 as amended from time to time are liable to tax under Karnataka Value Added Tax Act, 2003. This Court allowed the appeal filed by the appellant therein. It held that payments of service tax as also Value Added Tax are mutually exclusive and therefore, they should be held to be applicable having regard to their respective parameters. It noted that a distinction must be borne in mind between an indivisible contract and a composite contract and that if in a contract, an

element to provide service is contained, the purport and object for which the Constitution was amended so as to insert Article 366(29A) must be kept in mind.

11.16.2 It was observed that the appellant in the said case ***(Imagic Creative)*** admittedly was a service provider and therefore was assessable to a service tax under the Finance Act, 1994 which is a Parliamentary statute. That while interpreting a taxing statute under Article 246 of the Constitution read with Seventh Schedule thereof, the Court may have to take recourse to various theories including "aspect theory", as was noticed by this Court in ***Federation of Hotels and Restaurant Association of India.*** It was further observed that where a Parliamentary and State Act come up for consideration, an endeavour has to be made to see that provisions of both the Acts are made applicable. That payment of service tax and also VAT are mutually exclusive, they should be held to be applicable having regard to the respective parameters of service tax and the sales tax as envisaged in a composite contract as contradistinguished from an indivisible contract. It may consist of different elements providing for attracting different nature of levy. It is, therefore, difficult to hold that in a case of this nature,

sales tax would be payable on the value of the entire contract, irrespective of the element of service provided.

Aspect Theory: Its Extent and Scope in India:

11.17 On a perusal of the significant judgments of this Court which have used or referred to 'aspect theory', two observations can be made at the outset: *first,* it is discerned that Courts in India have not used 'aspect theory' in the manner that is applicable in Canada; and *second,* there appears to be a lack of clarity as to its conceptual contours. For e.g., there is no clarity on i) the instances when 'aspect theory' needs to be applied; or ii) whether 'aspect theory' has any relevance in determining the legislative competence of the Union or a State in enacting a tax legislation. The judgment in ***Bharat Sanchar Nigam Limited*** opines that aspect theory is 'merely concerned with legislative competence', whereas the judgment in ***Imagic Creative*** expressly suggested that in the matter of interpretation of a taxing statute, in the context of the Seventh Schedule of the Constitution, the Court may have to take recourse to various theories including the "aspect theory" as was noticed by this Court in ***Federation of Hotels and Restaurants Association of India.*** Amidst this uncertain jurisprudence,

several impugned judgments in the present cases have referred to the 'aspect theory' to uphold the validity of several State legislations imposing entertainment tax. It therefore becomes necessary to examine the conceptual contours of this theory.

11.18 To appreciate the extent and the context of the use of 'aspect theory' in India, it would be instructive to reiterate some well-established principles of interpretation of taxation entries. Some of the relevant principles are reiterated as follows:

i. In interpreting expressions in the Legislative Lists of the Seventh Schedule of the Constitution, a wide meaning should be given to the entries.

ii. In the scheme of the Lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation. They are separately enumerated.

iii. As the fields of taxation are to be found clearly enumerated in Lists I and II, there can be no overlapping in law. There may be overlapping *in fact*, but there can be no overlapping *in law*.

iv. In the first instance, the pith and substance or true nature and character of the legislation must be determined with reference to the legislative subject matter and the charging section;

v. The measure of tax is not a true test of the nature of tax;

vi. The same transaction may involve two or more taxable events in its different aspects. Merely because the aspects overlap, such overlapping does not detract from the distinctiveness of the aspects.

11.19 Having noted few established principles of interpretation of taxation entries, there are three specifics that must be kept in mind while discussing this theory. The *first* is the taxation entries provided for in List I and List II; the *second* is the legislation which seeks to impose a tax on a subject-matter; and the *third* is the activity on which tax is sought to be imposed by the legislative enactment.

11.20 We observe that based on a reading of the cases discussed earlier and the provisions of the Constitution, especially Chapter I of Part XI of the Constitution which deals with legislative

relations between the Union and the States and distribution of legislative powers, that the legislative competence is determined by applying the doctrine of pith and substance which governs the relation between the entries provided in the three Lists of the Seventh Schedule while considering the *vires* of a legislation impugned on the basis of the principle of legislative competence. The aspect theory has no relevance in determining the constitutionality of any provision on the ground of legislative competence. Rather, aspect theory concerns the relation between the legislation which seeks to impose a tax on a subject-matter and the activity sought to be taxed. In other words, the constitutional validity of a taxing statute on the grounds of legislative competence has to be examined in the context of the doctrine of pith and substance as envisaged under Article 246 of the Constitution of India to ascertain whether a particular legislature i.e., Parliament or a State Legislature, as the case may be, has the competence to legislate in relation to the particular field of legislation while interpreting the field of legislation as epitomised in the respective entries in the three Lists. A broad perspective of the entries must be envisaged. Once the contours of the entry under which a

legislation is made is ascertained, the next step is to study the legislation in question in order to ascertain whether it is covered or falls within the contours of an entry. If it does fall within the contours of a particular entry in a particular List, then that particular legislature which has enacted it would have the legislative competence to enact such a legislation. If it incidentally touches upon an entry in another List, it does not render it invalid. That means that so long as a piece of legislation is in pith and substance coming within an entry in a particular List, it would be valid as the legislature which has enacted, has the legislative competence to do so.

11.21 The aspect theory has really no role to play as regards determining legislative competence of a particular legislation, since the Constitution does not envisage such a test. However, in the Indian context, the 'aspect theory' is relevant to determine the *applicability* of a taxing statute on the activity sought to be taxed i.e., whether the statute covers a transaction/activity which falls within a specific taxation entry either in List I or in List II. An activity may have multiple aspects on which different legislatures can impose a tax falling within its legislative competence. In such

a situation, the courts would save the tax from a challenge on the basis of the aspect theory by discerning which aspect of the activity falls within the subject matter of tax under a legislation relatable to a particular entry of a List in the Seventh Schedule. Such a determination of the aspects which are present in an activity is a factual inquiry. Thus, an activity could be taxed by two different legislatures on the basis of the entries in the respective Lists without there being a clash and within their legislative competence. However, the aspect of the activity which is being taxed must be relatable to the legislation under a specific entry of a particular List so as to be within legislative competence of a particular legislature.

11.22 This is in contrast to the applicability of this theory in Canada, where this theory is used therein to determine legislative competence of a federal or provincial legislature to enact a particular law. The reason why we observe that the aspect theory has no relevance in determining the constitutional validity of a legislation is that such a ground is not prescribed anywhere in the Constitution. This Court in ***Mc Dowell*** held that the power of the Parliament or, for that matter, the State legislature, to legislate can be struck down by Courts on two grounds and two grounds alone,

viz., (i) lack of legislative competence; and (ii) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or any other constitutional provision. This Court was categorical in noting that there was no third ground. Similarly, in ***Anjum Kadari vs. Union of India, 2024 INSC 831***, this Court had to decide whether a statute can be struck down for violation of basic structure of the Constitution, and based on a survey of prior judgments, held as follows:

> "55. From the above discussion, it can be concluded that **a statute can be struck down only for the violation of Part III or any other provision of the Constitution or for being without legislative competence**. The constitutional validity of a statute cannot be challenged for the violation of the basic structure of the Constitution. The reason is that concepts such as democracy, federalism, and secularism are undefined concepts. Allowing courts to strike down legislation for violation of such concepts will introduce an element of uncertainty in our constitutional adjudication. Recently, this Court has accepted that a challenge to the constitutional validity of a statute for violation of the basic structure is a technical aspect because the infraction has to be traced to the express provisions of the Constitution. Hence, in a challenge to the validity of a statute for violation of the principle of secularism, it must be shown that the statute violates provisions of the Constitution pertaining to secularism."
>
> **(emphasis supplied)**

11.23 We have already discussed earlier in this judgment that in case of an apparent overlapping between two entries, the doctrine of pith and substance is applied to find out the true character of the enactment and the entry within which it would fall. This doctrine is not a judicial innovation, but is derived from the phrase 'subject to' and 'with respect to' in Article 246 of the Constitution of India. However, such a derivation cannot be made vis-à-vis 'aspect theory' from any provision of the Constitution of India. Therefore, as far as determining the constitutional validity of a taxing statute is concerned, when it is challenged on the ground of legislative competence, it is the doctrine of pith and substance that would be applicable, rather than the aspect theory.

11.24 Thus, in our view, the aspect theory, in the Indian context, comes into play at the level of determining the *applicability* of a taxing statute on the activity sought to be taxed. Invariably, an activity conducted by an assessee which is sought to be taxed by a legislation, may have different aspects. The aspect theory is used to determine if, in fact, there are different aspects within the activity sought to be taxed and whether, the taxable event which

forms the basis of the levy in a legislative enactment corresponds to any aspect in the activity sought to be taxed.

11.25 It would be illustrative to consider the facts of the case in ***Bharat Sanchar Nigam Limited*** to explain the application of this theory. In that case, the principal question to be decided was the nature of the transaction by which mobile phone connections were enjoyed. On the one hand, the petitioners therein contented that they were merely licensees under Section 4 of the Telegraph Act, 1885 and that they provided 'telecommunication services' as provided under section 2(k) of the Telecom Regulatory Authority of India Act, 1997. That service tax was imposed on them under the Finance Act, 1994 on the basis of the tariff realised from the subscribers. They further contended that in providing such service there were in fact no 'sales' effected by the service providers and that the SIM card was merely an identification device for granting access and was a means to access services. On the other hand, the States contented that the transaction was a deemed sale under Article 366 (29A)(d) of the Constitution read with the charging sections in their various sales tax enactments and therefore they were competent to levy sales tax on the transactions.

11.26 This Court, *inter alia,* clarified that electromagnetic waves or radio frequencies are not goods, and therefore, there cannot be a 'sale' of such waves or frequencies. It held that a telephone service is nothing but a service. That there was no sale element apart from the obvious one relating to the handset, if any. However, as regards SIM card, it observed that "what a SIM card represents is ultimately ***a question of fact*** as has been correctly submitted by the States". It held that if the parties intended that the SIM card would be a separate object of sale, only then it would be open to the Sales Tax Authorities to levy sales tax thereon. Therefore, as far as SIM cards were concerned, the Court left the issue for determination by the Assessing Authorities.

11.27 If we proceed to understand the above facts from the perspective of aspect theory enunciated above, it would be clear that the question in essence in ***Bharat Sanchar Nigam Limited*** was whether there was an aspect of sale in the activity of the petitioners therein and consequently, whether the States could validly impose sales tax thereon. This is nothing but a question of the *applicability* of the various state enactments on the activity in question, rather than a question of the *validity* of the enactment.

The Court ultimately held that electromagnetic waves were not 'goods'. However, it left the issue of SIM cards to the determination of Assessing Authorities. This meant that, on a case-to-case basis, the Assessing Authorities had to determine whether there was an aspect of sale in the activity they sought to bring to tax, by examining whether the parties intended that the SIM card was a separate object of sale. In other words, the Assessing Authorities had to make a factual enquiry as to whether there was an aspect of sale in the activity they sought to tax under the relevant sales tax legislation. If there was an aspect of sale, then sales tax was leviable but if it was purely service then sales tax could not be levied. But what would be the position if an activity has an aspect of sale as well as service? Applying the said analogy to the instant case, the question is, what is the consequence if an activity has an entertainment aspect as well as a service aspect/element.

Application of Aspect Theory to the Case at hand:

11.28 To determine whether there are different aspects to the activity conducted by the assessees herein which is sought to be taxed by the Union under the Finance Act, 1994 (as amended in different years) as a service tax and by the States under different

State legislations as entertainment tax, it is first necessary to examine the taxable events which form the basis of levy of the legislative enactments impugned herein. Thereafter, the *modus operandi* of the activity undertaken by the assessees herein needs to be understood. Thereafter, a factual determination as to, whether, the taxable event which forms the basis of the levy under the Central and the State enactments corresponds to different aspects of the activity under consideration must be undertaken.

12. Under the Finance Act, 1994 as amended from time to time, the expression "broadcasting" is defined in Section 65(15) in terms of clause (c) of Section 2 of the Prasar Bharti Act, 1990 which defines it to mean the dissemination of any form of communication through space or through cables intended to be received by the general public either directly or indirectly through medium of relay stations and all its grammatical expressions and cognate expressions are to be construed accordingly. Under Section 65 (72) (zk) "broadcasting agency" is a service provider and the service rendered by a such an entity is a taxable service. The expression 'taxable service' is defined in Section 65(105)(zk) to mean any

service provided to a client, by a broadcasting agency or an organization in relation to broadcasting, in any manner.

12.1 Section 66 (5) of the Finance Act, 1994 as amended from time to time is the charging section and service tax at the rate of 5% of the value of the taxable service (broadcasting service in the instant case) as defined above is chargeable to tax. Thus, the tax is 5% of the value of taxable services levied on the service provider rendering broadcasting services.

12.2 The expression "broadcasting" has been expanded from time to time to include not only dissemination of any form of communication but also programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be, irrespective of where the location of the broadcasting agency is. In the year 2002, Section 65 (90) (zk) was amended whereby the "broadcasting agency" could provide service by its representative in India or any agent appointed in India or by any person appointed to act on his behalf in any manner. This is

irrespective of whether encryption of the signals of beaming thereof through satellite might have taken place outside India or not.

12.3 The definition of "broadcasting" read with "broadcasting agency or organization" was amended in the year 2003, wherein it said that a "broadcasting agency" or organization means any agency or organization engaged in providing service in relation to broadcasting in any manner irrespective of its location and includes *inter alia* a representative in India or any agent appointed in India engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges on behalf of the said agency or organisation.

12.4 In the year 2005, the Finance Act, 1994 was again amended to define "broadcasting" to include a broadcasting agency or an organization collecting the broadcasting charges for transmission of electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator including multisystem operator or any other person on behalf of the said agency or an organization through any representative or agent

appointed in India. Thus, service tax was levied on direct to home (DTH) broadcasting services.

Modus Operandi of the Assessees and their aspects:

13. As regards the business of the assessees herein, they are DTH broadcasting service providers licensed by the Central Government in terms of the provisions of Section 4 of the Indian Telegraph Act, 1885 and Section 5 of the Indian Wireless Telegraphy Act, 1933. Their *modus operandi* is that they set up a hub which enables them to downlink signals from the satellites of various broadcasters of TV channels (Star, BBC, etc.), then they uplink those signals to their own Ku Band (such as INSAT 4CR satellite) designated transponders for transmission of the signals in Ku band. These signals are received by the dish antennae which are installed at the subscribers' premises. Since these signals are in encrypted form they are decrypted by the Set-Top Boxes and the viewing cards inside these boxes enable subscribers to view the various TV channels on their TV sets. Invariably, the set-top boxes are installed without any consideration and remain the property of the assessees.

13.1 If we closely examine the *modus operandi* of the activity undertaken by the assessees, it would be evident that their activity involves at least two aspects: the first, is the act of relaying the signals from the satellites of various broadcasters of TV channels, and the second, is the object of such relaying of the signals, which is the effect of the content delivered to the subscriber. This effect is nothing but the entertainment of the subscribers. In other words, the activity of the assessees involves at least two aspects which correspond to the subject-matter of the levy under the Central Finance Act, 1994, namely, broadcasting service and the respective State enactments as providing entertainment to the subscribers.

13.2 It is the contention of the assessees that their activity merely involves the relaying of the signals and they are in no way related to the content that these signals carry and are not concerned with providing entertainment. However, as held in ***Purvi Communication***, no entertainment can be presented to the viewers unless the broadcaster transmits the signals for instantaneous presentation of any performance, film or any programme on their T.V. screen. The second aspect here concerns not the *kind of content* of the signals, rather it is the *effect* of the

decryption of the signals by the Set-Top Boxes and the viewing cards inside these boxes provided by the assessees. Without the apparatus provided for by the assessees to decrypt the signals, the subscriber would not be able to watch the content that is transmitted, the content being for the purpose of entertainment. In other words, the State enactments are concerned about broadcasting for the purpose of entertainment. It makes an assumption that whatever be the content, the very act of presentation of any performance, film or any programme on the T.V. screen leads to entertainment which is reckoned to be a luxury. Therefore, the assessees as DTH operators have direct and proximate nexus with Entry 62 – List II. The entertainment provided by them through their *modus operandi* is a luxury within the meaning of that entry.

13.3 Although, the case at hand is different from ***Purvi Communication*** in two respects; however, in our view, these differences are immaterial and only support the view that the observations in ***Purvi Communication*** are squarely applicable to the *modus operandi* of the assessees and the second aspect herein. *Firstly*, in the present case, the mode of transmission is through

DTH broadcasting services and not transmission *via* cable. *Secondly*, the present is a case of direct transmission by the assessees to the customers and not through a hierarchical network of cable operators. In our view, both these differences do not detract from the view of this Court in ***Purvi Communication*** that the activity of providing and receiving broadcast signals and then relaying them ahead is *'no doubt, an act of offering entertainment to the subscribers and/or viewers'* and, consequently, the State legislatures are competent to enact laws under Entry 62 – List II imposing taxes on entertainment. The first difference noted above merely speaks to the difference in medium of transmission and does not deviate from the essential nature of the activity, as discussed in ***Purvi Communication***. The second differentiation, again, only makes clearer the proximity of the assessees herein with the act of entertainment. In some manner, it is fair to suggest that the defence of lack of remoteness to the act of entertainment taken by the cable-operators in ***Purvi Communication*** is, in fact, not available to the assessees herein and therefore they are not on a better footing, at least on this limited question.

13.4 Furthermore, with reference to our semantical survey of '*entertainments*' above, the assessees are clearly engaged in 'work in connection with, or for the purposes of, any cinema, exhibition or entertainment.' Juxtaposing our view with the observations of this Court in ***Purvi Communication,*** we also find that the activity of the assessees is an 'action of providing or being provided with amusement or enjoyment'.

13.5 The first aspect discussed above correlates with the imposing of service tax by the Parliament, and the second aspect correlates with the imposition of entertainment tax by the States, through their respective enactments. Thus, the activity of entertainment falls within the scope and ambit of Entry 62 – List II as being a specie of luxury. The service of broadcasting rendered falls under Entry 97-List I. Therefore, both the taxes, one, by the State Legislature and the other, by the Parliament are leviable on the activity of the assessees herein. This is because by rendering the service of broadcasting, the assesses are entertaining the subscribers within the meaning of Entry 62-List II. There may be an overlapping, in fact, inasmuch as different aspects of the same activity is being taxed under two different legislations by two

different legislatures. But, there is no overlapping in law. This is because the activity of broadcasting is a service and liable to service tax imposed by the Parliament (Entry 97 – List I) and the activity of entertainment is a subject falling under Entry 62-List II and therefore, the assessees herein are liable to pay entertainment tax as well. Hence, the State Legislatures as well as the Parliament, both have the legislative competence to levy entertainment tax as well as service tax respectively on the activity carried out by the assessees herein.

Allahabad High Court's Ruling on retrospective operation of the Amendment:

14. Another question which arises in relation to the Impugned Judgment dated 27.07.2012 of the Allahabad High Court is whether notices issued before the Amendments of 2009 came in force could demand entertainment tax for the period before express provisions in respect of DTH services were inserted in the U.P. Entertainment and Betting Tax Act, 1979 ('the 1979 Act'). In other words, whether the amendments were merely clarificatory in nature and entertainment tax on DTH services could be levied

retrospectively? A brief legislative history of the 1979 Act is relevant for our consideration:

i. The Act was promulgated in 1979. Sub-clause (a) to Section 2 defined 'admission to entertainment' to include admission to any place in which entertainment is held. Sub-clause (g) to Section 2 defined 'entertainment'. Section 2(l) defined 'payment for admission'. On a conjoint reading, Section 2(g) read with Section 2(a) defined the scope of entertainment chargeable to tax under Section 3 of the Act.

ii. In 1995, to bring cable services within the scope of the Act, the State Legislature *vide* U.P. Act No. 28 of 1995 amended the 1979 Act by defining 'cable services' and 'cable television network' and inserting Section 4C, a separate charging section for levying entertainment tax on cable services. Sub-section (2) of Section 4C provided that the tax payable under this section shall be paid, collected and realized in such manner as may be prescribed. Therefore, the collection machinery was prescribed within the section itself.

iii. In 2001, the State Legislature by way of U.P. Act No. 15 of 2001 amended the 1979 Act again by inserting the definition of 'cable operator'.

iv. Pertinently, the U.P. Ordinance No. 4. Of 2009 dated 16.06.2009 amended several provisions of the 1979 Act to provide for imposition of entertainment tax on DTH services. Sub-clause (a) was amended to broaden 'admission to entertainment' to include entertainment provided by means of cable television network or DTH. After sub-clause (f) to Section 2, sub-clause (f-1) was inserted defining 'Direct-to-Home service' to effectively expand the scope of the charging section to include direct to home services. The definition of 'payment for admission' in Section 2(l) was expanded by inserting sub-clause (vi) and sub-clause (vii) which included 'contribution or subscription or installation and connection charges or any other charges' collected for television exhibition though cable television network or for the purpose of DTH service. The State Legislature passed the bill by which the Ordinance was promulgated into the Act which was

notified on 27th August 2009 and came into force w.e.f. on 16th June 2009.

v. On September 4th, 2009, a Notification No. 1672/XI-Ka.Ni.-6-2009-M.(92)-2009 was issued under the Act notifying the rates of entertainment tax. For DTH Services, Item No. 5 provided a levy of 25 per cent out of each aggregate payment.

14.1 We may note that we are concerned only with the period prior to 16.06.2009 i.e. the day prior to coming into force of the express provisions for DTH services inserted in the 1979 Act.

14.2 The impugned judgment took note of the view of Patna High Court in ***Sky Vision T.V vs. State of Bihar, 1995 (2) BJLR 845*** which had held that the imposition of entertainment tax on cable operators was liable to be set aside in the absence of specific charging section and relevant specific entry for cable services. Impugned Judgment also noted the judgment of the Uttarakhand High Court in ***Dish TV India Ltd. vs. State of Uttarakhand, W.P. (M/S) No. 2562/2007*** wherein the learned Single Judge allowed a batch of writ petitions preferred by service providers by holding that in absence of any specific provision in the 1979 Act – the State

of Uttarakhand had adopted the 1979 Act - no entertainment tax can be levied on DTH services. The Uttarakhand High Court also negatived the argument that merely because express provisions to tax cable services were present on the statute book they could be broadly read to tax DTH Services. The learned Single Judge had, despite holding in favour of the service providers, observed that it was open to the legislature to introduce appropriate amendments. Aggrieved, an appeal was preferred by the State of Uttarakhand before the Division Bench in, *inter alia*, Special Appeal No. 21/2009 which was also dismissed on the ground that DTH services were not covered under the Act. Aggrieved by the decision of the Division Bench, the State had preferred SLP(C) No. 14605/2009 which was dismissed *in limine* by this Court *vide* order dated 16.07.2009.

14.3 On the other hand, the Impugned Judgment cited with approval the judgment of Madhya Pradesh High Court at Jabalpur in ***Tata Sky Ltd. vs. State of M.P., W.P. No.10148/2009*** which had upheld the levy of entertainment tax on DTH services even for the period when no specific provision was present in the Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 ('M.P. 1936 Act') for levy of entertainment tax on DTH

services. Some sections of the M.P. 1936 Act are relevant to extract herein. Section 2(b) defined "entertainment" as:

> "'Entertainment' includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment."

14.4 Section 2(d) defined "payment for admission". At the time of consideration by the Madhya Pradesh High Court, Section 2(d) read as under :

> "2(d). 'Payment for admission' includes—
>
> (i) any payment for seats or other accommodation in any form in a place of entertainment ;
>
> (ii) any payment for a programme or synopsis of an entertainment ;
>
> (iii) any payment made for the loan or use of any instrument or contrivance which enables a person to get a normal or better view or hearing or enjoyment of the entertainment, which without the aid of such instrument or contrivance, such person would not get;
>
> (iv) any payment made by a person by way of contribution or subscription or installation and connection charges or any other charges, by whatever name called, for providing access to any entertainment, whether for a specific period or on a continuous basis;
>
> (v) any payment, by whatever name called for any purpose whatever, connected with an entertainment, which a person is required to make in any form as a condition of attending, or continuing to attend the entertainment, either in addition to the payment, if any, for admission to the entertainment or without any such payment for admission;

(vi) any payment, made by a person, who having been admitted to one part of the place of entertainment is subsequently admitted to another part thereof, for admission to which a payment involving tax or more tax is required;

Explanation I.—Any subscription raised or donation collected in connection with an entertainment in any form shall be deemed to be payment for admission.

Explanation II.—Where entertainment is provided as part of any service by any person, whether forming an integral part of such service or otherwise the charges received by such person for providing the service shall be deemed to include charges for providing entertainment or access to entertainment also."

14.5 Section 4 provided the machinery for effectuating the charge. Pertinent for our interest is that Section 3-B, which was inserted in the M.P. 1936 Act with effect from 01.04.2000, dealt with cable operators. Sub-section (1) of Section 3-B dealt with entertainment duty payable by cable operator and it made a cable operator, providing access to entertainments through cable service to subscribers of such service, not being owner or occupants of rooms of hotel or lodging house, liable to pay duty at the rate of twenty rupees per month per subscriber in urban and cantonment areas.

14.6 The High Court, after surveying observations of this Court on the scope of 'entertainment', held that even in the absence of a specific section the inclusive definition of "entertainment" under section 2(b) would subsume the "entertainments" provided by DTH services and tax on DTH services can, therefore, be realised from the service provider the said expression in any case used in a plural sense under the Constitution.

14.7 Significantly, the aforesaid judgment of the Madhya Pradesh High Court was overruled by this Court in ***Tata Sky Ltd. vs. State of M.P., (2013) 4 SCC 656 ("Tata Sky v. M.P.")*** holding that DTH services are not covered by the provisions of Section 3 read with Sections 2(a), 2(b) and 2(d) of the M.P. 1936 Act. It was noted that the history of legislative amendments showed that the M.P. Act of 1936 was inadequate to bring shows by video cassette recorder or video cassette and player and cable T.V. operations within the tax net, and hence specific sections were brought in. It was also noted by this Court that the collection machinery for levy of entertainment tax on cable TV operations was in-built and provided within the respective provisions of Section 3-B and lay not within Section 4, which provided the general collection machinery.

Holding that as the M.P. Act of 1936 was concerned only with place-related entertainment, DTH services could not be brought within the tax net.

14.8 Coming back to the impugned judgment, it was argued before the Allahabad High Court that DTH services were not covered under the U.P. Entertainment and Betting Tax Act, 1979 prior to the 2009 amendments, and this was apparent from the fact that the State had to bring in specific amendments to levy entertainment tax on DTH services as well as to prescribe a charging machinery for such a levy, which was earlier absent. Additionally, it was argued that there is no taxation by implication and therefore the express provisions for levy of entertainment tax on cable operators in the 1979 Act cannot be given a reading so broad to also include DTH services. Summarily, it was argued that substantial amendments were brought in the Act which cannot be given retrospective effect. However, this argument was negatived by the High Court by observing that inclusion of the words 'Direct-to-Home service' in Section 2(f-1) and Section 2(l)(vi) and (vii) was only by way of clarification to include DTH services.

14.9 According to the High Court, Section 3 i.e. the charging section made it clear that the tax is on entertainment and when viewed broadly, the emphasis of the Act was on entertainment and not the means through which such entertainment was being provided to the subscriber. Furthermore, the High Court did not accept the contention of the writ petitioners therein that there is a difference between cable services and DTH services. Reliance was placed on the judgment of this Court in ***Purvi Communication*** to observe that the tax is not on the vehicle for transporting the contents and the method, but is on the entertainment itself. Noting that as modern technologies develop '*it will not be necessary for the Act to be amended again to impose entertainment tax on such entertainments*' as the principal activity will continue to remain entertainment and not the method by which the entertainment is provided, the High Court held that entertainment tax on DTH service is liable to be paid both for pre-amended period as well as after the amendments discussed above.

14.10 Useful to note is that both the learned Single Judge and the Division Bench of the Uttarakhand High Court had concluded that the State could not treat DTH service providers on par with

cable operators for levy of entertainment tax due to the stark technological differences between the two. It stands to reason that these technological differences also manifest into the specificity and operations of these services. Similar provision for taxing cable operations was also present in the M.P. Act of 1936.

14.11 As the Impugned Judgment was pronounced on 27.07.2012 and the judgment of this Court was pronounced on 16.04.2013, the High Court did not have the benefit of this Court's opinion in ***Tata Sky v. M.P.*** Even otherwise, in our view, there needs to be a specific inclusion of DTH services within the ambit of entertainment in the charging provision of the relevant taxing statute. In the absence of specificity, the lacuna of a missing taxable event persists insofar as bringing DTH services within the taxing net is concerned. It is trite law that no vagueness can be permitted in taxing statutes neither can a tax be levied by implication. Precisely this lacuna was sought to be filled by way of substantial amendments brought in by Amending Act of 2009. Furthermore, when the charging Section 4C levied entertainment tax on a 'cable television network' providing cable service, the statutory definitions of 'cable service; and 'cable television network'

could not be so broadly read to include DTH services. Inserted in 1995, Section 2(ee), in essence, defined cable service to mean the 'transmission by cables of programmes' and Section 2(eee), in essence, defined 'cable television network' to mean a system designed to provide 'cable service for reception by multiple subscribers;'. In our view, to countenance reading in DTH service in the aforesaid carefully incised definitions would be to militate against the literal meaning of words. We need not reiterate that the activity of the DTH service does not involve transmission by cables of programmes. For these reasons, we are of the view that the State of U.P. cannot take strength from the unamended 1979 Act to levy entertainment tax for any period before the amendments came in force. Consequently, the conclusion of the Allahabad High Court that the entertainment tax on DTH service is thus liable to be paid both for pre-amended period as well as after the amendment is not correct. The amendments made cannot be construed to be a clarification to include the DTH service as a new technology and method within the purview of the Act. Hence, in the above context and to the limited extent, the appeal filed against the judgment of the Allahabad High Court is allowed.

State of Kerala vs. Asianet:

15. By the impugned order dated 28.06.2012 passed in W.P.(C) No. 33966/2006 (R), the Kerala High Court, while hearing the matter after it being remanded by this Court, held that the impugned provisions of The Kerala Tax on Luxuries Act, 1976(for short, 'the Kerala Act of 1976') which authorized the levy and collection of luxury tax on cable TV operators only with connections of 7500 or above was discriminatory and hence the impugned provision was struck down for being unconstitutional and invalid.

15.1 The proceedings in the first round of the same writ petition are germane to the impugned judgment. By judgment dated 27.08.2009 the High Court had initially dismissed the writ petition filed by Cable TV Operators challenging the constitutional validity of levy of luxury tax with effect from 01.04.2006. However, this Court by order dated 03.02.2011 in C.A. 1433-34/2011 had remanded the matter back to the Kerala High Court to consider the additional grounds under Article 14 raised by the Cable TV Operators.

15.2 While hearing the matter upon remand, the impugned judgment dated 28.06.2012 was passed. Pertinent to note is that by way of amendment dated 11.11.2011 all cable operators were deleted from the purview of the Kerala Act of 1976 w.e.f. 01.04.2011. Hence, the impugned judgment was only concerned with recovery of arrears of luxury tax for the period 2006-2010.

15.3 By way of the Kerala Finance Act, 2006, the State legislature amended the Kerala Act of 1976 and introduced luxury tax on cable TV operators @ Rs.5/- per connection to be collected and remitted from every subscriber of cable TV. Initially, the amendment made with effect from 01.04.2006 was challenged on several grounds: f*irstly*, the service provided by the cable TV operators did not amount to "luxury" within the meaning of Entry 62 - List II as well as the definition of "luxury" contained in the Act. *Secondly*, the impugned provisions were discriminatory and violative of Article 14 of the Constitution in as much Direct to-Home operators providing the same service to consumers were not subjected to luxury tax. As the Kerala High Court dismissed the writ petition, the cable TV operators challenged the decision before this Court. During the pendency of the appeals in this Court, the Government of Kerala

retrospectively amended the Kerala Act of 1976 by exempting cable TV operators who had less than 7500 connections w.e.f. 01.07.2006. As the writ petitioner therein came within the taxing net, this retrospective amendment was used as a new ground before this Court along with the argument that the Kerala High Court had not considered the challenge on the anvil of Article 14 of the Constitution with reference to Direct-to-Home operators who were also providing the same service.

15.4 In the second round of litigation before the High Court, the first contention raised by the cable TV operators was that Section 2(ee) of the Kerala Act of 1976 defines "luxury", however, cable TV connection cannot be considered a "luxury" as it is subscribed by a large number of people in the State and monthly contribution is only around Rs.200/-. This argument was rejected by the High Court relying on the decision of this Court in ***Purvi Communication***. It noted that even though "entertainment" as such is not specifically defined under the Kerala Act of 1976 and only the expression "luxury" is, the High Court noticed that Entry 62 - List II specifically covers *"entertainments"* separately and

therefore the State can levy tax on *"entertainments"* as tax on "luxury" under the said entry of the Constitution.

15.5 Furthermore, relying on ***Bharat Sanchar Nigam Limited***, the High Court held that the same transaction may attract liability as service tax as well as liability for tax under any other permissible in law. Therefore, the High Court held that the service rendered by cable TV operators involved "entertainment" to subscribers and attracted luxury tax as well as service tax.

15.6 However, the third contention raising an Article 14 challenge by the cable TV operators was accepted by the High Court. The High Court held that by way of the 2010 Amendment retrospectively exempting all cable TV operators who have less than 7500 connections from tax liability was an unreasonable classification made as the cable TV operators who have above 7500 connections are discriminated by making them solely liable to pay luxury tax. After noting that the amendment puts more than 90% of the operators outside the taxing limit, it was observed that the classification defeats the intent of the legislation as the incidence of tax is intended to be on the subscribers for the entertainment

they enjoy, and the cable TV operator is only a collecting agency by virtue of the charge on them under the Act. That the subscriber is agnostic to whether the facility enjoyed by him is provided by a cable TV operator serving above or below 7500 connections and that such a distinction enables the subscriber to avoid tax liability by joining an operator with less than 7500 connections. Finally, the High Court noted that the Amendment of 2011 had completely deleted cable TV operators from the purview of the Kerala Act of 1976 and that the matter only served the purpose of collecting arrears from the cable TV operators with connections above 7500 for the period from 2006 to 2010.

15.7 Although the High Court had already accepted the Article 14 argument, the Cable TV Operators requested the High Court to consider the additional ground of discrimination and violation of Article 14 with reference to the DTH operators, who provide the same service as cable TV operators to the subscribers. The High Court while rejecting this contention held the argument is academic in nature because during 2006 when luxury tax was introduced on cable TV operators, Direct-to-Home connections (DTH) were not in vogue and as and when the DTH operations

became extensive, the Government introduced luxury tax on DTH operators. It was observed that the ground of discrimination cannot be considered hypothetically or theoretically and it has application only when the parties in relation to whose operations discrimination is alleged also are in actual and effective business.

15.8 Therefore, in sum and substance, the provisions of the state Act authorizing levy and collection on Cable TV Operators with connections of 7500 or above was declared as unconstitutional for being discriminatory and violative of Article 14 of the Constitution.

Submissions:

15.9 On behalf of the State of Kerala, Sri Shishodia, learned senior counsel, has argued that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others, *vide* ***East India Tobacco Company vs. State of Andhra Pradesh, (1963) 1 SCR 404 ("East India Tobacco Company")***.

Judgments relied upon by State of Kerala:

15.10 A few of the judgments relied upon by Sri Shishodia, learned Senior Counsel appearing for the State of Kerala, in support of his contentions, are discussed as follows:

15.10.1 As regards the applicability of tests of discrimination in a taxing law, this Court in ***East India Tobacco Company*** held that while taxation laws must also pass the test of Article 14, in deciding whether a taxation law is discriminatory or not, it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. This Court noted that it is only when the law operates unequally within a range of its selection and such inequality cannot be justified on the basis of any valid classification, that the law would be violative of Article 14 of the Constitution.

15.10.2 Further, this Court in ***P.M. Ashwathanarayana Setty vs. State of Karnataka, (1989) Supp. (1) SCC 696 ("P.M. Ashwathanarayana")*** and in ***R.K. Garg vs. Union of India,***

(1981) 4 SCC 675 noted that the State enjoys the widest latitude where measures of economic regulation are concerned, and that courts give a larger discretion to the Legislature when it comes to matters of the latter's preferences of economic and social policies. As further held in ***Federation of Hotel & Restaurant Association of India,*** the test of the vice of discrimination in a taxing law are, therefore, less rigorous.

15.11 On the question of the constitutionality of classification on the basis of criterion such as scale of operations, profits of businesses, etc., the following judgments were cited:

(i) In ***Kodar vs. State of Kerala, (1974) 4 SCC 422,*** this Court rejected a contention that the impugned provision therein imposing different rates of tax upon different dealers depending upon their turnover which in effect meant that the rate of tax on the sale of goods would vary with the volume of the turnover of a dealer was violative of Article 14 of the Constitution. This Court held that a legislative classification making the burden of the tax heavier in proportion to the increase in turnover would be reasonable. As regards the reasoning for the same, this Court noted,

> "A classification, depending upon the quantum of the turnover for the purpose of exemption from tax has been upheld in several decided cases. ***By parity of reasoning, it can be said that a legislative classification making the burden of the tax heavier in proportion to the increase in turnover would be reasonable***. The basis is that just as in taxes upon income or upon transfers at death, so also in imposts upon business, the little man, by reason of inferior capacity to pay, should bear a lighter load of taxes, relatively as well as absolutely, than is borne by the big one. The flat rate is thought to be less efficient than the graded one as an instrument of social justice. ***The large dealer occupies a position of economic superiority by reason of his greater volume of his business***."
>
> **(emphasis supplied)**

(ii) Similarly, in ***Kerala Hotel and Restaurant Association vs. State of Kerala, (1990) 2 SCC 502,*** the question before this Court was, whether, the taxing of only the sale of costlier cooked food in posh eating houses (determined on the basis of their annual turnover or as determined by Tourism Department of Government of India) while exempting cooked food sold in modest eating houses at lesser prices violates Article 14 of the Constitution. This Court held that the classification so made cannot be termed as arbitrary, as it was within the limits up to which the legislature is given a free hand for making classification in a taxing statute.

(iii) Further, the question in ***Ganga Sugar Corporation Ltd. vs. State of Uttar Pradesh, (1980) 1 SCC 223*** was, *inter alia*, whether the differential purchase tax imposed by weight, and not price, of sugarcane bought by factories and units, at one rupee 25 paise per quintal and 50 paise per quintal respectively, was discriminatory. This Court held that:

> "A classification based on scale of operations, product manufactured and other substantial differences bearing on production capacity, profits of business and ability to pay tax, is constitutionally valid and the feeble contention counsel put forward that there is discrimination between owners of factories and units must fail without much argument."

15.12 That, this Court has held that it is for the State to decide what economic and social policy it should pursue and what factors advance those social and economic policies, *vide* ***P.M. Ashwathanarayana***.

15.13 Reliance was also placed on the decision of this Court in ***Federation of Hotel & Restaurant Association of India*** wherein this Court, in the facts therein, held that the basis of classification in enactment cannot be said to be arbitrary or unintelligible, nor as being without a rational nexus with the object of law. In that

case, a hotel where a unit of residential accommodation was priced at over Rs 400 per day per individual was classified as luxury in the legislative wisdom by virtue of the economic superiority of those who might enjoy its custom, comforts and services.

15.14 It was also contended that the High Court erred in relying on statistics regarding the cable TV operators and their subscribers to hold that more than 90% of the operators being outside the scope of taxation detracts from the intent of the legislation. It was contended that such an exercise is one only within the executive domain. In the same vein, it was also argued that economic legislation is empirical in nature as well as based on experimentation and therefore, ordinarily must allow for greater latitude to be given to the legislature. Reliance was also placed on ***TwyFord Tea Co. vs. State of Kerala, 1970 (1) SCC 189*** to contend that in matters of classification for taxation the burden of proof is on the person alleging discrimination and such burden is heavier when a taxing statute is challenged.

15.15 In our view, the facts of this case, C.A. No 9301/2013, and the issues raised herein stand on a different footing from other

cases in this batch of appeals, which is concerned with the imposition of levy on DTH operators. After the 2010 amendments, the structure of charging section i.e. Section 4 *qua* cable operators stood as such:

(i) Sub-clause(ii) to sub-Section (1) to Section 4 provided for levy of luxury tax in respect of any luxury provided by cable operators;

(ii) Sub-clause(iv) to the first proviso to sub-Section (1) to Section 4 provided that sub-Section(1) would not apply to cable operators with seven thousand and five hundred or connections or less; and

(iii) Second Proviso to sub-Section (1) to Section 4 provided that cable operators with seven thousand and five hundred or less connections shall not be liable to tax from 1st July, 2006.

15.16 Pertinently, the Finance Act, 2011(Act No. 16 of 2011) deleted all cable operators from the purview of the Kerala Act of 1976. Therefore, the impugned judgment dated 28.06.2012 is only concerned with the levy of luxury tax on only on cable TV operators from 2006-2010.

15.17 In our view, the High Court erred in holding that the classification was unreasonable and lacked any rational nexus with the objects of the Kerala Act of 1976. Indeed, the intent of a taxing statute is to broaden the tax base and raise revenue for the State, however it is also settled law that the judiciary will ordinarily allow for greater latitude to be given to the legislature and defer to its economic wisdom in taxing statutes. In ***Income Tax Officer, Shillong vs. R. Takin Roy Rymbai, (1976) SC 670***, this Court had usefully held that:

> "… Given legislative competence, the legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects which it would tax, and which it would not tax. So long as the classification made within this wide and flexible range by a taxing statute does not transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others. Nor the mere fact that tax falls more heavily on some in the same category is by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14."

15.18 Further in ***M/s Hoechst Pharmaceuticals Ltd. vs. State of Bihar, AIR 1983 SC 1019***, it was observed that:-

> "....On questions of economic regulations and related matters, the Court must defer to the legislative-judgment. When the power to tax exists, the extent of the burden is a matter for discretion of the law-makers. It is not the function of the Court to consider the propriety or justness of the tax or enter upon the reality of Legislative policy. If the evident intent and general operations of the tax legislation is to adjust the burden with a fair and reasonable degree of equality, the constitutional requirement is satisfied. ..."

15.19 We find that the aforesaid observations of this Court squarely exposit the fallacy in the reasoning of the High Court. Even if the statistics presented before the High Court regarding the cable TV operators and their subscribers evinced that the exemption given by the amendment and retrospective exemption granted by the proviso pushed 90% of the operators outside the scope of taxation, the High Court ought to have taken note of the apparent intent of the legislature to tax only those with more than 7500 connections. The High Court was obligated to glean the intent of the legislation by accounting for the exemption provided and not by masking it. The exemption and the proviso, inserted by way of an amendment, was clearly a statutory tool employed by the legislature to give effect to its conscious decision to levy tax only on the cable operators with more than seven thousand and five

hundred connections. Furthermore, there is no reason for striking down a law as unconstitutional merely on the premise that the subscriber could evade or avoid tax liability simply by taking services of an operator with less than seven thousand and five hundred connections. Where the legislation is passed in accordance with constitutional prescriptions, a good faith presumption is accorded to the legislature. Similarly, it is presumed that the legislature acted with due and elaborate understanding of the societal context for which it legislates. Herein, the legislature perhaps factored that operators with more than 7500 connections ordinarily give add-on features that closely relate to the character of luxury. Be that as it may. Unless a violation of fundamental rights or lack of legislative competence is proved, Courts must be circumspect in interfering with the validity of legislations. It is trite law that this threshold is even stricter in economic legislations.

15.20 In any event, if the High Court was of the view that the exemption created was unconstitutional then the correct course would have been to strike down the exemption and direct recovery of tax payable from all assessees for the relevant time period in

accordance with sub-section (1) of Section 4. Instead, the High Court has done the opposite. It declared as unconstitutional the provisions of the Kerala Act of 1976 authorizing levy and collection on Cable TV Operators with connections of seven thousand and five hundred and above. As a result, the revenue payable by a category of assessees who do not fall within the exemption clause is stalled. This not only affects the State's exchequer but also does not further the plea of equality pressed into service by the assessees. The High Court could have struck down the exemption and directed all cable TV Operators to pay the tax. Instead, while holding that there was a discrimination and violation of Article 14 of the Constitution the High Court has granted an exemption to even the assessee who was liable to pay the entertainment tax under the Kerala Act. By placing the assessee on par with those exempted from payment of entertainment tax, the principle of equality is not applied in its true spirit to the facts of the case. Rather, the High Court has treated unequals as equals, which is in fact a detriment to the plea of equality raised by the petitioner assessee. Rather than striking down the proviso, if the High Court was of the opinion there was a violation of the equality clause under

the Constitution, the High Court has extended the exemption clause to the assessee also, which is impressible. As a result, no cable TV operator would have to pay any entertainment tax. This lacuna in the judgment requires a course connection and hence that portion and particularly paragraph No.6 of the judgment of Kerala High Court dated 28.06.2012 is set aside. The writ petition filed by the assessee is dismissed and the civil appeal filed by the State of Kerala is liable to be allowed and is allowed.

15.21 For the aforesaid reasons, the judgment of the Kerala High Court is liable to be set aside only on the question of holding that the levy of luxury tax on cable TV operators above 7500 connections being discriminatory and violative of Article 14 of the Constitution of India and thereby declaring it to be unconstitutional.

Jharkhand High Court's Ruling:

16. The Jharkhand Entertainment Tax Act, 2012 was published in the Gazette on 27.04.2012. It was however, under Section 1(3), to come into force on such date as the State Government might, by notification, direct. The Act was notified by the State Government only on 14.05.2012 with effect from 27.04.2012 i.e. the date of

publication. We do not find any merit in the argument of the appellants that the State Government could not have directed the Act, a taxing statute, to come into force with effect from a date anterior to the date of the notification.

16.1 It was contended before the High Court that the Notification dated 14.05.2012 issued by the State Government under Section 1(3) of the Jharkhand Entertainment Tax Act, 2012 appointing 27.04.2012 as the date of implementation of the Act suffers from the vice of imposing retrospective taxation in the absence of any express legislative provision providing for it. This argument was rejected by the High Court *vide* the impugned judgment. The High Court speaking through Bhanumati, C.J. (as Her Ladyship then was), *vide* the impugned judgment, has relied on the decision of this Court in ***A. Thangal Kunju Musaliar vs. M. Venkatachalam Potti, (1956) 29 ITR 349 ("A. Thangal Kunju Musaliar"),*** wherein the controversy concerned The Travancore Taxation on Income (Investigation Commission) Act, 1949 ("Travancore Act") passed by the Travancore legislature on 07.03.1949. The Act was, under Section 1(3), to come into force on such date as the Travancore Government might have by notification in the

Government Gazette appointed. No notification was issued by the Travancore Government up to 01.07.1949 when the Travancore State and the Cochin State integrated into the United State of Travancore and Cochin. On 01.07.1949, the United State of Travancore and Cochin promulgated an ordinance whereby all existing laws of Travancore were continued in force till altered, amended or repealed by competent authority and the "existing law of Travancore" was therein defined to mean any law in force in the State of Travancore immediately prior to 01.07.1949. On 26.07.1949, a notification was issued under Section 1(3) bringing the Travancore Act into force retrospectively from 22.07.1949. It was contended before the Constitution Bench of this Court that the notification dated 26.07.1949 could not be given retrospective effect from 22.07.1949, in absence of any express provision.

16.2 We are conscious the enactment concerned therein did not impose a tax. However, the question herein simply is, whether, the Notification dated 14.05.2012 was bad in law for bringing the Act into operation with effect from the date of publication. In ***A. Thangal Kunju Musaliar,*** this Court had repelled a similar argument observing that in exercise of the power conferred by

Section 1(3), the Government had the power to issue the notification bringing the Act into force on any date subsequent to the passing of the Act. To give retrospective operation would be to commence the Act from a date prior to the date of its passing which was not the case in either ***A. Thangal Kunju Musaliar*** or is before us. For these reasons, we find that the High Court was correct in observing that even though the date of commencement as fixed in the notification might be anterior to the date of notification, the State Government had the power to bring into force the Act from the date of Gazette publication.

Summary of Discussion and Conclusions:

17. We summarise our discussion and conclusions as under:

17.1 The Civil Appeals filed by the appellants/assessees arising from the judgments of the High Courts of Delhi, Gauhati, Gujarat, Jharkhand, Madras, Orissa, Punjab & Haryana, Rajasthan and Uttarakhand are dismissed. The appeal filed by the State of Kerala is allowed. The appeals arising out of the judgments of Allahabad High Court are allowed in part.

17.2 The provisions relevant to this case under the Kerala Tax on Luxuries Act, 1976; Uttar Pradesh Entertainment and Betting Tax Act, 1979; Rajasthan Entertainments & Advertisements Tax Act, 1957 and the Rules thereunder; Gujarat Entertainment Tax Act, 1977 and Gujarat Entertainment Tax (Exhibition by means of Direct-to-Home Broadcasting Services) Rules, 2010; Jharkhand Entertainment Tax Act, 2012 and Jharkhand Entertainment Tax Rules, 2013; Punjab Entertainment Duty Act, 1955 (Amendment in 2010); Delhi Entertainment and Betting Tax Rules, 1997; Assam Amusements and Betting Tax Act, 1939; Orissa Entertainment Tax Rules, 2006, along with the Orissa Entertainment Tax (Amendment) Tax Rules, 2010 are upheld. The correctness of the findings of the High Court of Madras with regard to the charging section in the State enactment being defective is assailed by the State of Tamil Nadu in separate appeals which are not part of this batch of appeals,

and accordingly have not been taken up for our consideration herein.

Insofar as the Andhra Pradesh Entertainment Tax Act, 1939 (as adopted by State of Telangana) is concerned, we do not express any opinion as the challenge and applicability of the same is pending before the High Court of Andhra Pradesh. All contentions regarding the assessment orders arising under the Andhra Pradesh State enactment are kept open to be advanced before the appropriate forum.

17.3 The Writ Petitions filed before this Court under Article 32 of the Constitution of India are accordingly disposed of.

Constitutional Scheme regarding distribution of Legislative Powers:

17.4 Article 246 of the Constitution of India emphasises on Parliamentary supremacy. Also, the residuary powers of making laws or imposing a tax on any matter not mentioned under the Concurrent List or State List vest

with the Parliament (*vide* Article 248 read with Entry 97 - List I).

17.5 Entry 31 – List I deals with various forms of communications including broadcasting. The said Entry does not deal with entertainments or amusements as luxuries. Entry 97 – List I deals with any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists. Entry 31 - List I is a regulatory entry while Entry 97 - List I, *inter alia,* can be the basis for imposition of any tax such as service tax as per the provisions of the Finance Act, 1994 and its subsequent amendments.

17.6 Entry 33 - List II, *inter alia*, deals with entertainments and amusements which is a regulatory entry. Taxes on luxuries including taxes on entertainments and amusements can be levied by the State under Entry 62 - List II. While Entry 33 - List II is a regulatory entry, Entry 62 – List II is a taxation entry, both dealing, *inter alia,* with entertainments and amusements.

17.7 Having regard to the judgments of this Court in ***MPV Sundararamier*** and ***H.S. Dhillon***, we observe that under the Constitution of India, the power to tax is not an incidental or ancillary power. The power to tax cannot be implied within a regulatory entry under our Constitution. There is also a distinction between the power to regulate and control and the power to tax. However, occasionally a levy may be imposed as a regulatory measure. Thus, the taxation entries under List I and List II (there being no taxation entry in the Concurrent List) are clearly demarcated within the scope of the entries in the aforesaid respective Lists. The effect of this principle is that the subject of taxation is considered to be a distinct matter for the purposes of legislative competence and the power to tax cannot be deduced from the general legislative entry as an ancillary power.

17.8 Also, a power to legislate as to the principal matters specifically mentioned in the entries shall also include within its expanse, a legislation touching upon

incidental and ancillary matters. This principle is derived from the use of the expression "with respect to" in Article 246 of the Constitution.

17.9 As a sequitur, reliance can be placed on the dictum of this Court (majority opinion) in ***H.S. Dhillon*** to observe that Entry 97 - List I which is a residuary entry relatable to Article 248 of the Constitution cannot be invoked or pressed into service when a particular entry empowering the Parliament or the Legislature of a State to pass laws regarding the taxation on any subject is specifically enumerated either in List I or List II.

17.10 Consequently, as there is no taxation entry in List III, both the Parliament as well as the Legislature of the State cannot have competence to levy tax on any one subject of a List.

17.11 Fee in respect of any of the matters in the three Lists does not include the power to levy tax. The distinction between the levy of fee and levy of tax is clear and it is

not necessary to go into that aspect in these cases, except to reiterate that there is no entry for taxation in the Concurrent List - List III.

17.12 While interpreting taxation entries in List I or List II, i.e., while determining the legislative competence to levy a tax, all efforts must be made to interpret them in such a way as to give expansive content and meaning to the same having regard to the constitutional scheme under which the distribution of legislative powers has been envisaged in the Seventh Schedule and bearing in mind the object and intent behind them and also the advances made in human thought and technology.

17.13 The expression “subject to” and “with respect to” in Article 246 of the Constitution aids the applicability of the doctrine of pith and substance to find out the true character of the enactment and the entry within which it would fall. The said doctrine is applied to resolve an issue regarding legislative competence of a legislature

to enact a particular law in relation to a subject relatable to an Entry in a List under the Seventh Schedule of the Constitution. Any apparent conflict with respect to an entry in another List is resolved on the basis of the pith and substance doctrine.

Service Tax:

17.14 The expression "broadcasting" has been assigned the meaning as per clause (c) of Section 2 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 in terms of definition clause in Section 65(13) of the Finance Act, 1994 as amended by the Finance Act, 2001. Under the Prasar Bharti (Broadcasting Corporation of India) Act, 1990, the expression "broadcasting" includes dissemination of any form of communication by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations.

17.15 The expression "broadcasting" and "broadcasting agency or organization" has been re-defined with the

object of expanding the same. A television program broadcast in India for the general public is a taxable service in relation to broadcasting, even if the encryption of the signals and beaming thereof through the satellite might have taken place outside India.

17.16 With the passage of time, the expression "broadcasting" has included transmission of electro-magnetic waves through space or through cables, Direct to Home signals or by any means to cable operator, including multi-system operator or any other person acting on behalf of the said agency or organisation through its branch office, agent, representative appointed in India or by any person who acts on its behalf.

17.17 Section 65(72) (zk) defines "taxable service" to include broadcasting agency as a service provider. Thus, if any service is provided to a client by a broadcasting agency or organization in relation to broadcasting in any manner, it would be a taxable service.

17.18 The expression "broadcasting agency or organization" means any agency or organization engaged in providing service in relation to broadcasting in any manner either having its place of business in India or outside India, through its branch office, subsidiary or representative in India or any agent appointed in India or any person acting on their behalf.

17.19 Section 66 provides for the charge of service tax which is a charging section. The service tax on a broadcasting agency is at the rate of five per cent of the value of taxable services i.e., five per cent of the gross amount charged by the service provider. Broadcasting service is a taxable service and the broadcasting service provider is required to pay service tax under the provisions of the Finance Act, 1994 as amended from time to time.

Tax on Luxuries: Entertainments & Amusements

17.20 Bearing in mind the meaning of "entertainments" and "amusements" and since they come within the scope

of “luxuries”, therefore, the State legislature has legislative competence to impose entertainment tax under Entry 62 - List II as a tax on luxuries.

17.21 The expression “tax on luxuries” has been discussed, *inter alia,* in ***Express Hotels, A.B. Abdul Kadir, Godfrey Phillips, Western India Theatres, Federation of Hotels and Restaurant Associations of India.***

17.22 The expression “entertainments/ entertainment” has been discussed in the cases of ***Geeta Enterprises, Drive-in Enterprises*** and ***Purvi Communications.*** The expression “entertainments/entertainment” includes within its scope and ambit not only the provider of entertainment but also the receiver, *inter alia,* through the medium of television. Thus, entertainment through television network either through cable television or DTH through set-top box with the object of providing entertainment to the viewer can be taxed in terms of Entry 62 - List II.

Parameters of Taxation under State Enactments:

17.23 The four parameters of taxation as enumerated by this Court in ***Govind Saran Ganga Saran*** with respect to various provisions of the State enactments under consideration have been dissected in the form of a tabulation in para 8.29 of this judgement which is extracted as under:

S. No.	**States**	**Taxable Event or subject of taxation**	**Measure of Tax**	**Rate of Tax**	**Incidence of Tax**
1	Assam Amusements and Betting Tax Act, 1939	Section 3C read with S.2(4)	Section 3C	Section 3C	Section 3C read with S.3C(4)
2	Delhi Entertainments and Betting Tax Act, 1996	Section 7	Section 7	Section 7	Section 7
3	Gujarat Entertainments Tax Act, 1977	Section 6E(1)	Section 6E(1)	Section 6E(1)	Section 6E(1)
4	Jharkhand Entertainment Tax Act, 2012	Section 3	Section 3	Proviso to Section 3	Section 3 & Section 4
5	Orissa Entertainment Tax Act, 2006	Section 7	Section 7	Section 7	Section 7
6	Punjab Entertainment Duty Act, 1955	Section 3C	Section 3C	Section 3C	Section 3C

S. No.	States	Taxable Event or subject of taxation	Measure of Tax	Rate of Tax	Incidence of Tax
7	Rajasthan Entertainments and Advertisements Tax Act, 1957	Section 4AAA read with Section 5 and 6	Section 4AAA	Notification S.O.443 dt. 25.02.2008	Section 4AAA
8	Uttar Pradesh Entertainment and Betting Tax Act, 1979 as amended by U.P. Ordinance No. 4 of 2009 w.e.f. 16.06.2009	Section 3 read with S.2(a)	Section 3 read with S.2(l)(vii)	Section 3	Section 3 read with S. 2(v)
9	Uttar Pradesh Entertainment and Betting Tax Act, 1979, as amended by Uttarakhand (Amendment) Act, 2009 dt. 16.03.2009	Section 3 read with S. 2(g)	Section 3 read with S. 2(g)	Section 3 read with S. 2(g)	Section read with S. 2(g)

Geeta Enterprises and Purvi Communications:

17.24 We do not find any contradiction in the judgments of this Court in ***Geeta Enterprises*** and ***Purvi Communications*** as the judgement in ***Geeta Enterprises*** has to be restricted to payment of tax on video games under the provisions of the 1937 Act of Uttar Pradesh in which there has been no discussion

under Entry 62 - List II. For ease of reference, paragraph 10.10 of this judgment is extracted as under:

> 10.10 There are other substantial differences between ***Geeta Enterprises*** and ***Purvi Communication*** as the table below enumerates due to which ***Geeta Enterprises*** and ***Purvi Communication*** cannot be compared.

Geeta Enterprises	***Purvi Communication***
Impugned Provision	
Definition of 'entertainment' under section 2(3) of the 1937 Act (UP Act)	Amended section 4A(4a) of the 1982 Act (West Bengal Act)
Activity subject to taxation	
Video game operated on payment, in a parlour whose admission is free to public	Transmission of signals by MSOs of any performance, film or any other programme telecast.
Date of Enactment of the provision impugned therein	
1937	1998
Discussion on Entry 62 - List II	
No	Yes

17.25 The discussion on the content and meaning, scope and ambit of the expression 'entertainments' in ***Geeta Enterprises*** is not comprehensive. This is because, having regard to the advances in technology resulting in varied forms of entertainments through various

media and in a variety of ways, not only in a public place but also in the confines of private space such as a home, through mobile or a cell phone or smart watch and other personal devices etc., the expression 'entertainments' must be given a broad, liberal and expansive meaning than what has been discussed in ***Geeta Enterprises*** by this Court.

Aspect Theory:

17.26 Aspect theory or double aspect doctrine is a tool of constitutional interpretation used in Canada to resolve issues which arise when both the federal and provincial government have the right to legislate on a subject. This Court has applied the aspect theory in ***Federation of Hotel and Restaurants Associations of India, Elel Hotels & Investments, All India Federation of Tax Practitioners*** and cases such as ***Mohit Minerals Pvt. Ltd.*** and in ***Bharat Sanchar Nigam Limited.*** (in a different way).

17.27 In India, there appears to be no clarity on the application of the aspect theory in the Canadian sense. One of the reasons being that in India, both the Parliament as well as the State Legislature do not have powers to levy tax on the same subject. The aspect theory has been applied in India essentially to ascertain whether an activity would fall within the scope and ambit of an enactment and whether the said enactment in pith and substance would fall within an Entry of a particular List of the Seventh Schedule so as to confer legislative competence to tax that aspect of the activity. As a result it can be said that one aspect of an activity, say broadcasting service, can be amenable to service tax, while the other aspect of the same activity, namely, providing (of) entertainment to television viewers (as that is the object of broadcasting) can be amenable to "luxury tax" under Entry 62 List – II of the Constitution which could be levied on the recipients of such entertainment or on the service providers who are essentially broadcasters.

Broadcasting service being a taxable service under the provisions of the Finance Act, 1994, read along with the amendments made from time to time would enable both the Parliament to impose service tax on broadcasting service and the State Legislatures having the legislative competence to levy entertainment tax on those who provide entertainment to the recipients (television viewers) to impose a luxury tax.

17.28 We follow the judgment of this Court in ***Western India Theatres Ltd.*** in observing that Entry 62 - List II contemplates a tax on entertainments or amusements as objects on which a tax can be imposed and therefore it is not possible to differentiate between an entertainment provider and an entertainment receiver.

17.29 If the above reasoning is applied, then both entertainment tax as well as service tax can be imposed on the activity of broadcasting through television for the purpose of entertainment of the subscriber or the receiver thereof. The two taxes are

different aspects of the same activity which enable two different legislatures to impose tax under distinct taxation entries in two different Lists.

17.30 The principle is well settled that two taxes which are separate and distinct imposed on two aspects of an activity are permissible, as in law, there is no overlapping. This is because the taxes are relatable to distinct taxation entries in separate legislative Lists.

17.31 In the instant case, the Parliament under the Finance Act, 1994 and its amendments is not imposing a tax on entertainment. Such a tax is being imposed by the State Legislatures as entertainment is a luxury within the meaning of Entry 62 - List II. In the same way, the Finance Act along with its amendments seeks to impose a tax on the service rendered by the broadcasting agency which is imposed under Entry 97 List – I. In the same vein, under Entry 62 List – II, the State Governments are not imposing any service tax on the assessees.

17.32 While applying the aspect theory on any activity from the point of view of two legislatures (Parliament and State Legislature), in the instant case, imposing tax on an activity, the following well established principles of interpretation of tax may as stated in paragraph 11.18 be borne in mind:

> "11.18 To appreciate the extent and the context of the use of 'aspect theory' in India, it would be instructive to reiterate some well-established principles of interpretation of taxation entries. Some of the relevant principles are reiterated as follows:
>
> i. In interpreting expressions in the Legislative Lists of the Seventh Schedule of the Constitution, a wide meaning should be given to the entries.
>
> ii. In the scheme of the Lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation. They are separately enumerated.
>
> iii. As the fields of taxation are to be found clearly enumerated in Lists I and II, there can be no overlapping in law. There may be overlapping *in fact,* but there can be no overlapping *in law*.
>
> iv. In the first instance, the pith and substance or true nature and character of the legislation must be determined with reference to the legislative subject matter and the charging section;

v. The measure of tax is not a true test of the nature of tax;

vi. The same transaction may involve two or more taxable events in its different aspects. Merely because the aspects overlap, such overlapping does not detract from the distinctiveness of the aspects."

17.33 The doctrine of pith and substance is applied to consider the vires of a legislation impugned on the basis of the principle of legislative competence in the context of legislative relationship between the Centre and the State. We observe that the aspect theory has no relevance, as such, in determining the constitutionality of any provision on the ground of legislative competence in India. Thus, the constitutional validity of a taxing statute on the ground of legislative competence has to be examined in the context of the doctrine of pith and substance as envisaged under Article 246 of the Constitution of India read with the respective entries in the List. Once the contours of an entry under which a legislation is sought to be made is ascertained, the next step is to

study the legislation in question in order to ascertain whether it falls within the contours of that Entry. If it does fall within the contours of a particular entry in a particular List, then that particular legislature which has enacted it would have the legislative competence to enact such a legislation. But a legislation incidentally touching upon an entry in another List does not render it invalid, it means that so long as a piece of legislation is in pith and substance falling within an entry in a particular List, it would be valid as the legislature which has enacted it, has the legislative competence to do so.

17.34 On the other hand, the aspect theory is relevant to determine the applicability of a taxing statute on the activity or transaction sought to be taxed i.e., whether the statute covers an activity which falls within a specific taxation entry, either in List I or in List II. Thus, an activity could be taxed by two different legislatures on the basis of the entries in the respective Lists without there being a clash and within their

legislative competence. However, the aspect of the activity which is being taxed must be relatable to the legislation under a specific entry of a particular List so as to be within the legislative competence of a particular legislature.

17.35 Thus, the aspect theory is used to determine if, in fact, there are different aspects within the activity sought to be taxed and whether the taxable event which forms the basis of the levy in a legislative enactment corresponds to any aspect in the activity sought to be taxed.

17.36 This is in contrast to the applicability of this theory in Canada, where this theory is used therein to determine legislative competence of a federal or provincial legislature to enact a particular law.

17.37 While applying the aspect theory to the present case, it is noted that the activity of broadcasting is for the purpose of entertainment of the subscriber as held in ***Purvi Communications.*** No entertainment can be

presented to the viewers unless the broadcaster transmits the signals for instantaneous presentation of any performance, film or any programme on their television. Thus, there are two aspects in this activity; the first is the act of ***transmission of signals*** of the content to the subscribers. The second aspect here concerns not only the *content* of the signals, but the *effect* of the decryption of the signals by the Set-Top Boxes and the viewing cards inside these boxes provided by the assessees to the subscribers, which is providing and receiving of entertainment through the television. Without the apparatus provided for by the assessees to decrypt the signals, the subscriber would not be able to watch the content that is transmitted, the content being for the purpose of entertainment. The television entertainment provided by them through their modus operandi i.e., by broadcasting, is a luxury within the meaning of Entry 62 - List II. The assessees who are engaged in the activity of providing entertainment are liable to pay service tax on the

activity of broadcasting under the provisions of the Finance Act, 1994 read with relevant amendments and are also liable to pay entertainment tax in terms of Entry 62 - List II as being a specie of luxuries. Therefore, both the taxes, one by the State Legislature and the other, by the Parliament are leviable on the activity of the assessees herein. This is because by rendering the service of broadcasting, the assesses are entertaining the subscribers within the meaning of Entry 62 - List II.

There is no overlapping in fact or in law, inasmuch as different aspects of the same activity are being taxed under two different legislations by two different legislatures. This is because the activity of broadcasting is a service and liable to service tax imposed by the Parliament (Entry 97 – List I) and the activity of entertainment is a subject falling under Entry 62 - List II and therefore, the assessees herein are liable to pay entertainment tax as well. Hence, the State Legislatures as well as the Parliament, both have

the legislative competence to levy entertainment tax as well as service tax respectively on the activity carried out by the assessees herein.

17.38 As far as the judgment of the Allahabad High Court dated 20.07.2012 is concerned, we observe that the High Court could not have construed the amendments made to the UP Act of 1979 as a clarification to include the DTH service which is a new technology, within the purview of the original Act. Hence, to that limited extent, the appeal filed against the judgment of the Allahabad High Court is allowed in part.

17.39 The judgment dated 28.06.2012 passed by the Kerala High Court which declared the levy and collection of luxury tax on cable TV operators with connections of 7500 or above as unconstitutional for being discriminatory is incorrect.

17.40 The Kerala High Court could have struck down the exemption granted and directed all cable TV operators to pay the tax instead of holding that there is

discrimination and violation of Article 14 of the Constitution against the assessees herein. As a result, the High Court has granted an exemption to the assessee who is liable to pay entertainment tax under the Kerala Act. As a result, unequals have been treated as equals which is detrimental to the plea of equality sought to be raised by the assessee.

17.41 In the circumstances, paragraph 6 of the judgment of the Kerala High Court dated 28.06.2012 is set aside. The Writ Petition filed by the assessee before the High Court is dismissed and the Civil Appeal filed by the State of Kerala is allowed.

Parties to bear their respective costs.

.....J.
(B.V. NAGARATHNA)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
MAY 22, 2025.