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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON: 24.11.2017
% PRONOUNCED ON: 22.12.2017

\+ **W.P.(C) 2563/2013**
W.P.(C) 6728/2013, C.M. APPL.14592/2013
W.P.(C) 4792/2014, C.M. APPL.9548/2014
W.P.(C) 6767/2014, C.M. APPL.16010/2014
W.P.(C) 2825/2015, C.M. APPL.5077/2015
W.P.(C) 2886/2015, C.M. APPL.5179/2015
W.P.(C) 3247/2015, C.M. APPL.5819/2015 & 5820/2015
W.P.(C) 3308/2015, C.M. APPL.5928/2015
W.P.(C) 3626/2015, C.M. APPL.6472/2015
W.P.(C) 6839/2015, C.M. APPL.12508/2015
W.P.(C) 9166/2015, C.M. APPL.20893 & 20894/2015
W.P.(C) 1927/2016, C.M. APPL.8262/2016
W.P.(C) 5994/2016, C.M. APPL.24660/2016 & 24661/2016
W.P.(C) 9153/2016, C.M. APPL.37062-37063/2016

FASHION DESIGN COUNCIL OF INDIA ..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ANR. ..... Respondents

W.P.(C) 4966/2013, C.M. APPL.11216/2013, 6704/2016, 6706/2014 & 44758/2016,
W.P.(C) 10729/2016,
W.P.(C) 10731/2016

BCCI ..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ORS. ..... Respondents

W.P.(C) 7465/2013, C.M. APPL.15967/2013, 4926/2014, 13750/2014, 5494/2015 & 12856/2016
W.P.(C) 2586/2017, C.M. APPL.11182/2017 & 11183/2017

GMR SPORTS PVT. LTD. ..... Petitioner

versus

COMMISSIONER OF EXCISE, ENTT AND LUXURY TAX AND ANR. ..... Respondents

W.P.(C) 7495/2014, C.M. APPL.17744/2014 & 22352/2015
W.P.(C) 9661/2016

DEN SOCCER PRIVATE LIMITED ..... Petitioner

versus

GNCTD AND ORS. ..... Respondents

W.P. (C) 12287/2015, C.M. APPL.32549/2015

PRO SPORTIFY PVT. LTD. ..... Petitioner

versus

THE COMMISSIONER OF ENTERTAINMENT TAX, GNCTD ..... Respondents

Present: Mr. Arshad Hidaytullah, Sr. Advocate with Mr. Jitendra Singh and Mr. Saurabh S. Sinha, Advocates for petitioner/FDCI.

Mr. Amit Sibal, Sr. Advocate along with Ms. Isha Jha and Ms. Ishita Srivastava, Advocates for petitioners in W.P.(C)7465/2013 & 2586/2017.

Mr. Kamal Sawhney with Mr. Shikhar Garg, Advocates for petitioner in W.P.(C)4966/2013.

Mr. Abhinav Agnihotri, Advocate for petitioner-Den Soccer Pvt. Ltd. in W.P.(C) 2886/2015 & 5994/2016.

Mr. Siddharth Bambha, Advocate along with Mr. Rachit Shrivastava, Advocate for the petitioners in W.P.(C) 12287/2015.

Mr. Atul Sharma with Mr. Abhinav Agnihotri and Ms. Satakshi Som, Advocates for petitioners in W.P.(C)7495/2014 & 9661/2016.

Mr. Parag P. Tripathi, Sr. Advocate with Mr. Kunal Bahari, Advocates for respondent in W.P.(C)2563/2013.

Mr. Naushad Ahmed Khan, ASC (Civil)/GNCTD with Ms. Aastha Nigam, Advocate for respondents in W.P.(C)4966/2013 & 7465/2013.

Mr. Sanjoy Ghose, Addl. Standing Counsel for GNCTD with Mr. Rishabh Jetely in W.P.(C)3626/2015.

Mr. Satyakam, Addl. Standing Counsel, GNCTD for the respondent with Mr. P.K. Goel, Assistant Commissioner in W.P.(C)9153/2016 & 1927/2016.

Mr. Anuj Aggarwal, Addl. Standing Counsel/GNCTD with Mr. Deboshree Mukherjee, Advocate for respondents in W.P.(C) 2563/2013, 6728/2013, 4792/2014, 6767/2014, 2825/2015, 2886/2015, 3247/2015, 3308/2015, 6839/2015 & 9166/2015.

Mr. Gautam Narayan, ASC along with Mr. R.A. Iyer, Advocate for respondent in W.P.(C)12287/2015.

Mr. Peeyoosh Kalra, ASC with Mr. Shiva Sharma and Ms. Sona Babbar, Advocates for respondents in W.P.(C)7495/2014, 5994/2016 & 9661/2016.

Ms. Meera Bhatia, Advocate for UOI in all matters.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J.

1. This batch of writ petitions challenge the *vires* of the second explanation to Section 2(m) of the Delhi Entertainment and Betting Tax Act ("DEBT Act" or "the Act"), introduced with retrospective effect from 01.04.1998 by amendment (Notification No. F.14(9)/LA-2012 /CONS 2 LAWW/148 hereafter "impugned notification" or "impugned amendment") dated 01.10.2012. Section 2(m) defines "payment for admission" and through the impugned provision payments made *in lieu* of advertisements commensurate to (i) sponsorship (ii) value of goods supplied and (iii) value of services rendered were included. All the petitioners seek directions that the exaction of these amounts as tax is unenforceable and in some cases, seek refund of amounts paid under protest. They also impeach the retrospective operation of the amendment, through the impugned notification.

Brief Facts

2. The petitioner in WP 2563/2013, Fashion Design Council of India (hereafter "FDCI") is a registered society created for the purpose

of promoting and developing the Indian fashion industry especially in the areas of manufacturing, design, marketing and distribution. For these underlying purposes, FDCI, a non-profit organization, also receives support through grants from the Union Ministry of Textiles as well as other government bodies. Such grants *inter alia* are used to fund travel and accommodation related expenses of foreign buyers and is also utilized towards FDCI's Market Access Initiative. Besides this, it organizes several events (such as seminars, workshops, marketing events, setting up academic scholarships, liaison with other international fashion councils and government bodies, forecasting and development of new trends and setting industry standards and norms). By providing a platform to up and coming fashion designers, FDCI assists the promotion of Indian fashion worldwide and promotes fashion trade in the domestic and international markets.

3. Further to its objectives, FDCI, as a trade promotion council organises fashion weeks or fashion shows. These fashion shows are styled as market business promotion events and are the *India Fashion Week* (organised bi-annually), *India Men's Week and Couture Week*. None of these events are ticketed and entry is strictly by invitation; in other words the only invitees are potential domestic and international buyers and the media who are given invitations solely for promoting and marketing Indian fashion who do not buy tickets for admission. However, as organizing such events require funds, the petitioner enters into sponsorship/ partnership agreements with various parties. The amounts received are then disbursed for organizing the events and

in return the sponsor/ partner gets certain rights. These rights could encompass any or all of the following:

1. Right to associate their name as title sponsor, or presenting partner etc.;
2. Right to get their logo inserted in composite event logo (CEL), in official communications and promotion etc.;
3. Right to get such designation, logo, marks in advertising and promotions etc.;
4. Right to hold official party or get the party named on joint names;
5. Right to manage, name VIP lounge with joint names;
6. Right to name the main show area;
7. Right to name a pavilion on agreed title;
8. Right to get display area at the event;
9. Right to get the opening or closing events with their names;
10. Right to chair press conferences with CEL at conference backdrops; Logo placement in all invites, accreditation passes, official brochure, official website or, other media coverage etc.;
11. Right to use pictures of designers;
12. Right for television interviews etc.

All such rights are towards organizing the event and do not guarantee the sponsor/ partner any assured invites to the event in exchange for their contribution to the event. In other words, the sponsor may or may not be given an invite to view the event and their role may be limited to advertising their products/ services.

4. FDCI's events styled as fashion shows, were sought to be classified as entertainment events by the respondents to attract tax liability under the Delhi Entertainment and Betting Tax Act ("the Act").The Act came into force on 01.04.1998 brought to tax, payments

made for admission to a place of entertainment. Believing that its fashion shows were entertainment events, FDCI had applied for exemption under the provisions of Section 14 of the Act; the then Joint Secretary (Finance) acting at the behest of the Government of National Capital Territory of Delhi (GNCTD) granted 100% entertainment tax exemption for events held from 2002-04 and 50% exemption for events held from 2008-09.Later, no tax exemptions were given and FDCI was asked to deposit the requisite entertainment tax in respect of payments received from sponsors. Aggrieved, FDCI approached this Court through several writ petitions which challenged the order dated 10.09.2009 of the GNCTD granting only 50% tax exemption in respect of events conducted between 18.03.2009- 23.03.2009 and 15.10.2008-19.10.2008 and further challenged the assessment order dated 11.06.2009 passed by the AETO in respect of the latter two events. FDCI *inter alia* also contended that tax was not payable on sponsorship amounts and that the order passed by the AETO had ignored the fact that sponsorship amounts were beyond the purview of the Act and also that the relationship between a sponsor and organizer was governed by sponsorship agreements. This Court by its order dated 30.04.2012 was of the opinion that the true nature of sponsorship agreements would have to be discerned to ascertain the nature of payments for the purpose of deciding if entertainment tax was payable. The court observed that:

> "*16. We are of the view that unless the terms and conditions of the sponsorship agreement are examined it may not be possible*

to ascertain the true nature of the payment and decide about the applicability of the relevant provisions of the Act. The AETO, as noted above, has not carried out this exercise and has rested his conclusion merely on the statutory provisions without ascertaining the basic facts or examining the terms and conditions of the sponsorship agreement. The entire exercise seems to us to be meaningless, if the factual background and the agreement between the parties have not been examined. The provisions of the Act have to be applied only to the facts gathered and governing the case and not in vacuo. We are therefore of the opinion that the impugned orders passed by the AETO have to be quashed. We accordingly issue a writ of certiorari quashing them. It is open to the AETO to examine the relevant facts including the terms and conditions of the sponsorship agreements and thereafter consider the applicability of the provisions of the Act and decide whether the petitioner is liable to pay entertainment tax or not, by passing fresh orders of assessment after hearing the petitioner."

The GNCT of Delhi, in the meanwhile, amended Section 2 (m) of the Entertainment Tax Act by adding two explanations and took the position that these provisions were clarificatory; the amendments were inserted on 1 October 2012 but brought into force with effect from 01 April 1998. These amendments are the subject matter of challenge in the present writ proceedings.

Petitioners' arguments

5. FDCI argues that the sponsorship amounts received by it are for the purpose of organizing its events and in no manner can they be classified as "payment for admission". It is urged that the impugned explanation is contrary to the Constitution of India as well as *ultra*

vires the Act. It is argued that the impugned explanation, through a deeming fiction seeks to include sponsorship amounts paid for organizing an event into the same bracket as payment for admission. According to FDCI, the power of a State legislature under Entry 62 of List II of the Seventh Schedule of the Constitution is to levy taxes on "*luxuries including entertainment….*". This does not extend to amounts paid for sponsorship, which by its nature is towards organizing the event. FDCI argues that the taxing incidence under the Entertainment Tax Act in the present case is *"payment for admission to a place of entertainment"* and for being entertained. When a sponsor, through an agreement, funds the petitioner's event it is only for the purpose of organizing the event; *it cannot be that the sponsor is being entertained*. In any event, the amount funded- through sponsorship is not certainly for admission to entertainment. It is argued that sponsorship is of different types- while on the one hand it may relate to sponsoring an event where the trade of the sponsor is completely different from the event- like a corporate house sponsoring a music festival, it is the second kind which the petitioner is concerned with i.e. the one where the sponsor funds an event which is integral to its trade/ business. FDCI argues that in fashion events, brand owners sponsor the show and do so purely for the purpose of furthering their business interests and are not in it for amusement. Furthermore, but for such sponsorship, talented designers and those in the fashion industry, would be unable to show case them. The sponsorship enables the event, by providing patronage, which in turn, results in exposure of designers' capabilities. No single individual or fashion house has the

ability, in the country to organize an event, to showcase budding designers, whose offerings can be known to the public. The sponsors, by enabling the event, provide a platform for the future growth of such designs and products of designers and eventual growth of the industry. By participating in the events in the way they are, sponsors advertise/ promote their brands not only by showcasing it to the audience spectating the event at the venue but also to the public at large because of coverage by both the print as well digital media. FDCI cites the instance of the Wills Lifestyle India Fashion Week wherein Wills Lifestyle, the brand name of ITC's apparel division, is the title sponsor of the event of the petitioner i.e. the India Fashion Week

6. Mr. Arshad Hidayatullah, Senior Advocate for FDCI, argues that by organizing the events in question, FDCI provides a platform for various owners by paying it necessary amounts with a view to promote their brands/ products and ultimately fall under the class of organizers. Payment is received from such concerns not only as sponsors but also as event organizer/ proprietor, who are covered under Section 2(o) of the Entertainment Tax Act. The Counsel submits that though the products promoted fall under the class of luxury goods and these brands may relate to different products, yet they may all be co-advertised and promoted in the same event. In such situations, promoters are not "entertainers" but build their brands and create awareness of their designs in the country. By introducing a tax liability on sponsorship what the legislature is taxing advertisement, which is beyond the legislative ambit of the state legislature under Entry 62,

List II of the Seventh Schedule of the Constitution. The learned counsel refers to Entry 92 of List I to seventh schedule (*"92. Taxes on the sale or purchase of newspapers and on advertisements published therein"*). It is submitted that advertisement of the kind visualized in the events, would be also within the Union List, because of Entry 97 of List I to the Seventh Schedule. What cannot be directly cannot be done indirectly, i.e. taxation on advertisement by a state. It is submitted that since the sponsorship is by way of advertisement, that cannot be taxed, its inclusion through the amendment, which is impugned in the present proceedings, is beyond legislative competence. The pith and substance of the impugned provisions, says FDCI, is advertisement and not entry to an entertainment event.

7. Mr. Hidayatullah argues that there is an intelligible differentia between sponsors on the one hand who by contributing funds assist in the organizing of the event and the audience or the beneficiaries of entertainment on the other hand. It is argued that the impugned explanation seeks to equally place two classes and proceeds to tax them in the same manner ignoring that organizers who fund events cannot be taxed for payments made to access a place of entertainment. It is argued that fashion shows are not entertainment as the event participants are not entertainers, in any sense of the term, nor are the organizers or event facilitators creating an event for which there is "admission to entertainment". The core feature - that of receiving entertainment or being entertained is absent in these cases. Unlike typical entertainment events, meant to gratify, amuse or entertain

viewers or participants, fashion shows, which are the subject matter of these cases, are *"closed door"* events the access to which is granted to only the organizers' invitees. The purpose of the event is not to entertain, but to sponsorship payments are not towards obtaining admission to a place of entertainment but are made by way of contracts which stipulate reciprocal rights from the primary organizer for purposes of advertising, organising conferences, parties, setting up stalls, banners etc. These do not constitute access to the event, nor can be equated with the price or consideration paid for "admission to entertainment event" which is the only incident of taxation under the Entertainment Tax Act. It is thus submitted that by equating the two, i.e. the organizers and those who are invited, for the purpose of imposing the tax burden, the legislature has violated Article 14 of the Constitution.

8. Learned senior counsel argued that an event of this size and scale is a composite package with several different types of contributors; what is common to all the contributors is that none of them are pay to be "entertained". Urging that sponsors are a different class of people- akin to organizers and distinct from the people being entertained, the petitioner relies upon the decision of the Supreme Court in *State of Karnataka Vs. Drive-in Enterprises* (2001) 4 SCC 60, where it was held that incidence of tax is *on entertainment* and consequently on the person availing such entertainment. In the absence of a rational nexus between the payment made for admission by a recipient of the entertainment vis-à-vis a sponsor's contribution

and also by treating similarly two distinct classes of persons i.e. sponsors organizing an event and persons availing the entertainment, the petitioner argues that the impugned amendment falls a foul Article 14 of the Constitution. Sponsorship agreements are a separate class of payments entered into between private parties for organizing an event. By applying Section 6 to such payments by virtue of the impugned explanation, the Entertainment Tax Act clearly violates Article 14 of the Constitution. To this extent, the petitioner relies on the decision of the apex court *in Kunnathat Thatunni Mupil Nair v State of Kerala* AIR 1961 SC 552 wherein two propositions were laid down in respect of taxing statutes: firstly that the legislature must be competent to levy the tax and authorise its collection and secondly it should fulfill the obligations spelt out in Article 13 and 14 of the Constitution which guarantee equal protection of law. The petitioner argues that by combining together all classes of payments into a large and composite unit without any rational classification the legislature is in contravention of the guarantees spelt out under Articles 13 and 14 of the Constitution. Relying on *Federation of Hotel and Restaurants Vs. Union of India and Ors* AIR 1990 SC 1637, the petitioner argues that the impugned amendment must fulfill the test of Article 14 in the sense that the differentia must have a rational nexus with the object of the Act.

9. FDCI challenges the impugned amendment to the Explanation on the ground that the power of a state is to impose taxes under Entry 62 of list II on *"luxuries including entertainment"* and consequently

the impugned explanation is *ultra vires* the Constitution and is beyond the scope of Entertainment Tax Act. The petitioners argue that entertainment is an activity by which one person provides entertainment to another; organizers such as the petitioner, through sponsorship funding organize or create events. Whether an event is an entertainment or not would depend on the facts and as such entertainment could not be defined in a straitjacket formula. The petitioner argues that Entry 62 permits the imposition of tax only in cases where entertainment is provided and not merely for an event. As a corollary, what Entry 62 allows for the state is to legislate in respect of taxes which would be payable for a person to have access to a place of entertainment and to be the beneficiary of an entertainment event. Further, the Act does not contemplate a situation where the organizer or creator of the event needs to pay tax for access to the place of entertainment. The petitioner argues that the impugned provision is vires the Act as well as the Rules and being a taxing statute has to be construed strictly keeping in mind its object and purpose as also keeping in mind the proposition laid down by the Supreme Court in *Drive-in Enterprises (supra).*

10. FDCI submits that under the Constitution, the GNCTD does not have the authority to impose tax the way it seeks to, through the impugned amendment, under the Entertainment Tax Act. Analysing Section 6 (which is the charging section), in the backdrop of the decision of the Supreme Court in *Indian Aluminium Co. Vs State of Kerala & Ors,* AIR 1996 SC 1431, it is argued, that the legislature is

incompetent to add the impugned Explanation and increase the scope of tax. Reliance has also been placed on *Sri Prithvi Cotton Mills Ltd. Vs. Broach Borough Municipality &Ors*, AIR 1970 SC 192. It urges that for there to be a taxing incidence there needs to be an identifiable payment, which secures the right to admission into a place of entertainment. It is further argued on this ground that both the charging section as well as the pre-amendment Section 2(m) taxes any payment by a potential recipient of the entertainment for securing admission to an entertainment. For any event, which can be classified as entertainment under Section 2(i) the recipient forms a separate class of people in comparison to the organizers; sponsors are nothing but "proprietors" covered under Section 2(o)(i) of the Entertainment Tax Act. FDCI argues that by inserting the second Explanation to Section 2(m), the state, seeks to change the object of the Act by enlarging the scope of the charging section by including even sponsors who are but organizers. Relying on the scheme of the Act with respect to Section 6(1), it is argued that no tax can be levied when there is no payment for admission into a place of entertainment.

11. It is argued, by learned senior counsel, that without amending the charging section, (i.e. Section 6), the legislature could not have sought to impose a tax burden merely by adding an explanation. In this regard, learned senior counsel for the petitioners, Mr. Hidayatullah relied on the judgment of the Supreme Court reported as *M/s Tata Sky Ltd v State of Madhya Pradesh* 2013 (4) SCC 656. Counsel also relied on Section 7, which was amended in 2010, to say

that when the normal or traditional forms of entertainment were not covered by the provisions, not only did the legislature amend the definition in Section 2 (ha) and the definition of "admission to entertainment" by providing separately for clause (vi), to Section 2 (m), but created a separate charge. Relying on *Union of India v M/s Martin Lottery Agencies Ltd*2009 (12) SCC 209, learned senior counsel urged that levy through explanation, in a retrospective manner, falls foul of the Constitution of India.

12. Reliance upon the 1997 Rules (especially Rule 11, Form 6) is placed to reinforce this argument. They deal with the form, and manner in which information is to be given to the Commissioner before an event can be held. The petitioner submits that Form 6, which is to be submitted in compliance to Rule 11 in case of non-ticketed events (and which recognizes both sponsorship and advertisement amounts), nowhere discloses the tax component associated with the latter amounts and consequently it is a logical conclusion that when there is no payment for admission there is no taxing incidence. It was submitted that in the absence of a clear and cogent mechanism for tax collection, the levy, if it is assumed to exist, has to fail. Learned senior counsel relied on the judgment in *Moopil Nair* (supra) for that purpose. He also relied on *Rai Ramkrishna & Others Vs. State of Bihar* AIR 1963 SC 1667, where it was held that where *"it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of tax, or that it is*

confiscatory the Courts would be justified in striking down the impugned statute as unconstitutional".

13. To further explain the differences in the nature of payments FDCI argues that representatives from the sponsor's organization are issued with identity cards to enable their entry into the premises to conduct and manage the event. As identity cards ("ID Cards") allow their holders to enter the premises and are neither tickets nor entry to the entertainment event, the criteria prescribed under Sections 9 and 10 would be fulfilled. Sections 9 and 10 mandate that no person can enter the premise where the entertainment event is to be conducted without a valid entry ticket with duly paid tax on it whereas persons entrusted with ID cards to the event are cleared for access to the premise at any time and are charged with specific duties in connection with the event including overseeing the organizing of the event. Since sponsors have specific duties like manning stalls and displaying goods it cannot be said that they are receiving entertainment; they are only giving effect to the sponsorship agreement. In terms of Sections 9 and 10 of the Entertainment Tax Act, sponsors are neither spectators nor audience.

14. It is also argued by the learned senior counsel that the impugned amendment seeks to enlarge the taxing incidence has legislated beyond its competence. While admittedly legislative entries under Schedule VII to the Constitution are to be given wide interpretation, the subject matter of the concerned legislation should fall within the scope of the relevant entry. The petitioner argues that Entry 62, the

scheme of the Entertainment Tax Act as well as various Supreme Court judgments make it abundantly clear that the legislature was not competent to introduce the impugned explanation. Furthermore, by giving retrospective effect to the amendment and by retrospectively enlarging the tax liability, the state has contravened established legal principles of giving taxing statutes retrospective effect only in exceptional and rare cases. The device used by introducing, an explanation cannot widen the scope of the original provision and certainly not in a way that interferes, or conflict with the main provisions of the Act. In this regard, learned senior counsel relied on the judgment reported as *Sundaram Pillai Vs Pattabiraman* (1985) 1 SCC 591 which through a detailed analysis of case law relating to statutory interpretation and the scope of an explanation had enunciated that such a device has limitations and cannot widen the scope of something which was never intended to be covered. In other words, said counsel, the explanation, which are impugned in these batches of cases, are not clarificatory, notwithstanding the state's interpretation to the contrary, but seek to expropriate the petitioners through an illegal levy, in a retrospective manner. The petitioner argues that retrospective effect should be given only for clarificatory purposes or to remove technical defects or in cases of economic importance- an instance being the protection of a tax base from unscrupulous schemes created with the motive of avoiding tax liability. Now by seeking tax from the petitioner, what the revenue is actually intending is charging a direct tax whereas the Entertainment Tax Act imposes indirect taxes. Reliance is placed on *Rai Ramkrishna* (supra) and *R.C. Tobacco Pvt.*

Ltd. and Anr Vs Union of India & Anr AIR 2005 SC 4203. The petitioner finally argues that there is an impossibility of performance because it seeks to unjustly recover tax from the proprietor who under the intended scheme of the Act only collects tax from the persons being entertained. It was emphasized that entertainment tax, under the provision is only for admission to entertainment, not a tax on entertainer, or on the proprietor or event creator/organizers. By seeking to re-write the entire levy through amendment of the definition clause, without any corresponding levy, and furthermore, in the absence of a coherent machinery for assessment, collection and recovery, the legislature has acted contrary to Article 265 and Article 14 of the Constitution of India.

Contentions of BCCI

15. In WP(C) of 10729/ 2016, the petitioner, Board of Control for Cricket in India (BCCI) created the Indian Premiere League tournament (IPL), a cricket tournament played yearly in the "T-20" format since 2007. IPL matches in the tournament take place in different *locales* in stadiums across the country during the season. BCCI grants franchisee rights to various entities to form their teams and compete against other teams. The franchisees also negotiate with the owner of the stadiums for the purpose of securing their home stadium. Once permission to use a stadium as home stadium is granted, the franchisee *inter alia* is entitled to host its team's home matches and retain proceeds from sale of tickets for those matches. BCCI entered into franchisee agreements with GMR Sports, which

owns the "Delhi Daredevils" team and is proprietor of the matches conducted in Delhi. GMR enters into the necessary agreements including with the Delhi District Cricket Association for the purpose of using the Ferozeshah Kotla Stadium; the franchisee organizes the IPL matches in Delhi. GMR is the proprietor under Section 2(o) of the Entertainment Tax Act, which collects proceeds from tickets as well as sponsorships and deposits the requisite entertainment tax with the respondents. BCCI urges that it is merely the overall administrator of the IPL (the tournament as a whole), the responsibility of organizing each match is on the franchise that is playing at their home stadium. BCCI refers to its Franchise Agreement with GMR Sports Private Limited, whose team (Delhi Daredevils) has played most of its home matches (except those played in South Africa in 2009 and some matches played at Raipur) at the Ferozshah Kotla Ground in Delhi. Accordingly, while the DDCA may have provided certain assistance to the Franchisee in organizing the said matches at the Ferozshah Kotla (by virtue of being the owner of the Stadium), the responsibility of organizing the IPL T20 matches played at the
Stadium is solely on the Franchisee (GMR).

16. It is argued by Mr. Kamal Sawhney for BCCI that all the tickets for PL T20 matches played at the said Stadium are printed by GMR and the proceeds from the sale of the said tickets are also retained solely by the Franchisee. In fact GMR is treated by GNCTD as the proprietor for all matches held in Delhi in the past. Furthermore, GMR has in the past, filed entertainment tax returns and paid them. It is urged that the agreement between GMR and DDCA clearly shows that

it is the Franchisee who is fully and solely responsible for organizing (in its capacity as sole proprietor) the matches of Delhi. Even the tax due on sponsorship amounts in respect of matches held at Delhi has been regularly deposited by GMR with the Respondents. The impugned notice to BCCI is without jurisdiction as the Petitioner is not the proprietor of the matches held at Delhi curing the Indian Premier 'League (IPL). It is urged that BCCI is merely the overall administrator of the IPL (the tournament as a whole), and the responsibility of organizing each match is on the respective franchises. It is highlighted that in fact the Franchisee (GMR) prints all the tickets for IPL T20 matches played at the Stadium and the proceeds from the sale of those tickets are also retained solely by GMR. The Franchisee has been treated as the proprietor for all matches held in Delhi. It is the Franchisee/GMR who has been filing the entertainment tax returns.

17. It is argued by Mr. Sawhney that GNCT of Delhi has throughout treated only the Franchisee as the proprietor of the sporting event. It is submitted that the nature of the entertainment in question i.e. cricket matches held, at Delhi has not changed. It is argued that someone else cannot become the proprietor merely because an additional head in the form of sponsorship is sought to be taxed. The proprietor always was and remains the franchisee i.e. GMR. It is urged that the notices by the GNCTD proceed on the erroneous basis that the BCCI is "deemed to, be proprietor' in terms of the Act merely because the BCCI is connected with the organization of the IPL T20 matches held at the Stadium since 2008. It is submitted in this context that

various provisions of the Act apply when there is access to those wishing to be entertained, for an event, that may be called "entertainment". Whereas access to those seeking entertainment is granted through tickets, for which the event proprietor is GMR (whose collections are subject to entertainment tax), the BCCI has no role, but as regulator of the sport in India and facilitator of matches, through its affiliating association, the Delhi District Cricket Association (DDCA). That BCCI receives advertising revenues of a share thereof, from the sponsors of the event, would not in any way render it liable for payment. It is stated that BCCI cannot be said to have provided access to entertainment, i.e., the cricket match or matches concerned, by allowing advertisements in the stadium of the sponsors, merely because some access to sponsors' representatives is provided for the event.

18. It is submitted that what the Act empowers the respondents to do is to collect tax on the occurrence of the specified event, i.e. admission to entertainment. In the present case, the admission to the entertainment is through sale of tickets; the tax on that incident is collected by GMR and paid to the respondents. Such being the case, the impugned notification and amendment, to the extent it purports to create a species of "entry" for the entertainment by deeming sponsorships as also another form, is beyond the mandate permitted to the legislature. In saying so, counsel urges that the taxing event or incident, i.e. is one whole, and gets completed, with the physical access and entry to the spectator; by seeking to add another layer by an artificial fiction of a deemed "entry" through sponsorship, the

legislature is seeking to conjure an event that does not occur; moreover it is layering up one transaction with several artificial ones, merely to collect tax from transactions that fall outside the pale of the Act.

19. In the case of BCCI/ GMR the events are cricket matches, which qualify as entertainment events. These are ticketed and open to the general public unlike events in the case of FDCI, (which are by special invite only and for a reserved audience who are members of the same industry). In case of IPL, the sponsors' advertisements, logos etc. are visible to not just the audience present at the venue but have a pan-India presence due to the broadcasting of the match. The petitioner's grievance is that, under protest, it had to deposit ₹ 1,07,97,000 towards entertainment tax on sponsorship, in order to obtain no objection certificate (NOC) from the GNCTD to organize two play-off matches titled the VIVO IPL 2016 play-off Matches at the Ferozshah Kotla Stadium on 25.05.2016 and 27.05.2016. It states that it had to deposit the entire entertainment tax payable on the sale of 36,008 seat tickets as well as on the sponsorship amounts despite the Entertainment Tax Act under Sections 8 and 13 requiring only a security deposit to be made for the purpose of receiving an NOC. BCCI has sought directions for quashing of the impugned amendment and consequently refund of the tax paid under protest by it on the sponsorship amounts.

20. In another Writ Petition - 4966/ 2013, BCCI has challenged the notice dated 14.01.2013 issued by the respondent which seeks to tax

BCCI for sponsorship amounts received by it. That notice was in relation to IPL matches held in 2012 at Ferozeshah Kotla stadium. The notice observed that certain sponsors including DLF, City Bank, Hero, Vodafone, Volkswagen and Karbonn had entered into sponsorship agreements with BCCI and not GMR and therefore required BCCI to pay the entertainment tax due. This notice was challenged before this Court and consequently stay was granted in respect of the demand on 05.08.2013.

21. It is urged by Mr. Sawhney, for BCCI, that on site advertisements through hoardings, do not constitute "entry" the entertainment event. He submitted that what is meant by entry for admission is entry to those who are to be entertained, i.e. human beings. Inanimate objects like hoardings and other publicity materials do not get entertained. Furthermore, it was argued, the sponsorship amounts are not given to the sporting event organizer (or the proprietor) with the object of gaining a seat; the purpose of such sponsorship is to give visibility to the donor/sponsor's products or services. They cannot constitute "entertainment".

22. DEN Soccer (P) Ltd, (hereafter "DEN", the petitioner in WP 7495/2014) is, like BCCI, aggrieved by the respondent's position that entertainment tax is payable for sponsorship amounts received by it. DEN was granted franchise rights by Football Sports Development Private Limited for forming a football team to represent Delhi in a football tournament called "Indian Super League" (ISL) organized by Football Sports Development Private Limited. The team formed by

DEN is called "De Dynamos Football Club". As franchisee of the tournament, DEN is obligated to organize certain matches in Delhi and print, sell and distribute tickets for the matches to be held at Delhi. It is alleged that DEN approached various organizations and companies for providing sponsorships for sponsoring the event. Ordinarily the benefits provided to the sponsors for the consideration paid for the sponsorship relates to displaying the sponsors company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition as well as other benefits associated with sponsorship. Pertinently DEN mentions that the sponsorship is not dependent on the matches or the venue where the matches are played but is to apply through the term of the agreement/ arrangement irrespective of where the matches are played whether in Delhi or any other place. As required by the provisions of the Act, DEN, by its letter dated 29.09.2014 applied to the respondent tax authority seeking approval for holding 3 matches to be held in Delhi on 14- 25 and 29thOctober, 2014 as part of the ISL tournament involving its team Delhi Dynamos. On 01.10.2014, by a letter, the respondents issued a "No Prohibitory Order" to DEN to organize the three matches at Jawahar Lal Nehru Stadium, New Delhi on the relevant dates, on ticketed basis. The per rate ticket including the number of tickets was specified in the said order. That order was subject to certain terms and conditions and one of the conditions was that DEN had to submit the details of new sponsors added along with Entertainment Tax payable on sponsorship amounts. DEN had by letters dated 27.08.2014 and 4.09.2014 applied for exemption under

Section 14, from application of the Entertainment Tax Act; however the respondents did not reply. DEN, in these circumstances, challenges the notification and the amendments on the same grounds urged by BCCI.

Respondent's Arguments

23. The respondent states and its senior counsel, Mr. Parag Tripathi, firstly urges that all the events organized by FDCI are in the nature of entertainment events and payments received by them, including sponsorships, for such entertainment have always been taxable under the Act. The fact that FDCI accepted its liability to pay entertainment tax for payments received for earlier shows is further strengthened by the conduct of the petitioner, which had previously sought exemption from payment of entertainment tax under Section 14 of the Entertainment Tax Act. FDCI had previously claimed that its events were not ticketed events where entry was strictly by invite for select class of people. On the basis of this representation, the petitioner was granted 100% exemption from its liability to pay entertainment tax in respect of events conducted between the years 2002-07; this exemption was reduced to 50% for the year 2008-09 and thereafter, the government of NCT of Delhi refused to grant any further exemption. The revenue argues that dispute with respect to entertainment tax on sponsorship arose for the first time only in 2008 when the government refused to grant exemption in respect of events to be conducted in that year and required the petitioner to deposit the entire taxable amount with respect to sponsorship payments. Against this, the petitioner approached this Court for issue of NOC. Since the

petitioner did not protest nor did it raise any objection with respect to the previous years, where exemption was sought and granted, the petitioner is estopped by conduct from raising the issue now at this belated stage and after having claimed and received several exemptions.

24. Mr. Tripathi contends that the amendment is well within the defined limits of Entry 62 of List II of the Seventh Schedule of the Constitution. He contends that the second Explanation cannot be *ultra vires* the Constitution or the Entertainment Tax Act because it does not extend or enlarge the scope of the taxing incidence and has been added only for clarificatory purposes. Learned senior counsel relies on the phraseology in Section 2(m)(i) and 2(m)(iv) and explains that the term "person" includes any person including a company or body of individuals or an association. When section 2(m) is read with Section 6(6), it covers a broad class of payments made in relation to payment. Since Section 6(6) already includes payment for admission to an entertainment and includes a lump sum paid in the form of a subscription, contribution, and donation or otherwise, such lump sum then becomes chargeable to tax. Contributions made such as in the case of the petitioner are squarely covered under Section 6(6) and therefore when this provision is read with Section 2(m), which defines payment for admission, it clear as crystal that the impugned amendment only seeks to clarify a taxing feature which is already in the statute.

25. Learned counsel relies upon *State of West Bengal Vs. Purvi Communications* (2005) 3 SCC 711 to contend that the legislature can choose the person it seeks to collect the tax levied on entertainment. Even in the current case, counsel highlights that the tax is on the entertainment and is well within the ambit of Entry 62 of list II. It is urged that sponsorship amounts have always been taxable under the Entertainment Tax Act as well as the Rules; Rule 11 at Serial no. 10 requires an organizer of the event to give the names of all the sponsors along with the amount sponsored. This declaration too, according to senior counsel, suggests that sponsorship amounts were always subject to entertainment tax. In essence, it is argued that any person, for any payment whatsoever made in connection with an entertainment place shall be deemed to make a payment for admission and accordingly the provisions of the DEBT Act would apply.

26. The revenue urges that the petitioner is mistaken in bracketing advertisement and sponsorship together and that such grouping flies in the face of logic. Counsel urges that while sponsorship and advertisement both may give the end result of brand publicity, unlike advertisement, in case of sponsorship certain rights get vested in the sponsoring party in lieu of the payment. For this reason, FDCI is the only proprietor in connection to the event, which collects the funds and is covered under Section 2(o) whereas sponsors are a different class who make the payment for admission into the place of entertainment. The revenue argues that these sponsors get their clients/ potential buyers as well as employees to the place of entertainment;

such entry though by invite is possible only because of the contributions made by the sponsors. The sponsors may not directly watch the program but in an indirect way get their clients to watch the shows being hosted by the petitioner. The revenue contends that the scheme of the DEBT Act does not make distinctions between direct and indirect beneficiaries of an entertainment. Similarly nowhere is the definition of "payment for admission" restricted to merely payment through ticket. As long as a contribution has been made for the admission to an entertainment place the same would be liable to tax irrespective of who watches the show. The revenue urges that no distinction exists between a person who buys a ticket and a sponsor because either way both ultimately fund/ finance the producer/ proprietor of the event; while in the latter case the contributor is an indirect beneficiary the former is a case of direct beneficiary. If the logic of the petitioner had to be followed, that no tax liability accrues on a sponsor's contribution because it is used for the purpose of funding an event, then for the same reason no entertainment tax should be charged from a ticket holder too.

27. The revenue argues that the petitioner's reliance on Form 6, specifically the lack of any taxing component, is misplaced. This is because Form 6 makes separate provisions for amounts received *in lieu* of advertisement and amounts received as sponsorship. This reasserts the revenue's position that what a sponsor indeed does is funds the event in order to guarantee seats/ accommodation for its clients/ potential buyers and employees and is indirectly making

payment for admission, chargeable to tax. The revenue also urges that the fashion shows organized by the petitioner are entertainment shows, unlike seminars and conferences and so any payment made for admission will be liable to tax. The respondent argues that when a proprietor/ producer organizes an event, the costs are borne by it. This is then made up for in generally the following ways: (i) Income from sale of tickets (ii) Amount received from sponsors/ advertisers. (iii) Amount received from sale of tickets as well as sponsors (iv) income from own sources. The revenue urges that in the first three categories any payments made are taxable whereas only in the fourth kind i.e. where the proprietor funds the event out of his/ her own sources would it be beyond the scope of taxability. It is urged that the proprietor collects payments from other sources including the persons attending the event, sponsors/ advertisers etc. all of whom, *in lieu* of the payment are given the permission to either watch the event or place banners/ logos or in certain cases (like sponsors) given the permission to bring their clients/ employees to enjoy the entertainment event. In respect to such payments if the petitioner's contention is accepted then it would create ample opportunity for organizers like the petitioner to evade tax. Similarly in case of IPL and the T-20 matches, which are mega events in terms of both outreach and costs, the mainstay of the organizer's fund is from sponsors/ advertisements. In such cases also, entertainment tax accrues on both the sponsors' payments as well as the tickets.

28. It is also argued that no new provisions have been added as the

impugned Explanation only clarifies an already existing taxing provision and as such giving it retrospective effect would not in any way hamper or cause hardship to the person being subjected to such tax. It relies upon *CIT Vs. Gold Coin Health Food Private Ltd* (2008) 9 SCC 622 and *ETO Vs. Ambae Picture Palace* (1994) 1 SCC 209 and contends that the amendment is only clarificatory and in the circumstances there is no bar to giving it retrospective effect. Mr. Tripathi relies on *Raman Lal Bhai Lal Patel v State of Gujarat* reported as (2008) 5 SCC 449 which held that where the definition is an inclusive definition, the use of the word 'includes' indicates an intention to enlarge the meaning of the word used in the statute. Counsel also relied on *ND.P. Namboodripad v. Union of India* (2007) 4 SCC 502, where the Supreme Court observed that:

> *" ..... The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include". Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain". Illustrated Oxford Dictionary defines the word "include" as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word "includes" as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive ....."*

To a similar effect, the decision in *Hamdard (Wakf) Laboratories v. Dy. Labour Commissioner* reported as (2007) 5 SCC 281 was cited.

29. It is submitted that as a consequence, the term must be construed as comprehending not only such things, which they signify according to their natural import, but also those things, which the interpretation clause declares that they shall include. It is therefore, argued that inclusion of sponsorship as a mode facilitating entry to an entertainment event is within the legislature's powers. It is submitted that the expression 'admission to entertainment' is not confined to right to seats only but also includes other accommodation at an entertainment event. Because of the inclusive nature of the definition in the Act, the term 'admission to entertainment' is wide enough to cover participation in the event of the type done by the sponsors, associate partners etc. Learned senior counsel submitted that there is nothing abhorrent or inherently repugnant in the idea of expanding the natural meaning of the word for taxation purposes and courts, in several decisions, have accepted the introduction of such legislative devices.

30. The revenue argues that it has been collecting entertainment tax from sponsors right from the inception of the Entertainment Tax Act including the One Day Cricket matches organized by Delhi District Cricket Association (DDCA), T-20 IPL Match organized by M/s. GMR Ltd. and various other live concerts being conducted in the city. Furthermore, the revenue contends that no new tax has been demanded and the petitioner has only been asked to deposit security amount equivalent to 100% tax at the time of applying for NOC which subsequently got rejected.

31. By way of persuasive legislative practice and precedents, amendments made to the entertainment tax enactments of Maharashtra, Goa, Punjab, Tamil Nadu and Kerala have been relied upon. It is stressed that in these enactments too, sponsorships and lump sum amounts received by proprietors are treated as taxing incidents in relation to the entertainment concerned. Learned senior counsel submitted that as a result, the amendments made to the Entertainment Tax Act cannot be termed as *ultra vires* or in any manner unenforceable.

Analysis and Conclusions

32. The *vires* of the impugned amendment to Section 2(m) which, by the Second Explanation brings to tax sponsorship amounts paid, *in lieu* of advertisements by deeming it to be payment for admission is premised upon the deemed fiction and inclusive definition. It is contended that sponsorship amounts received by proprietors for the purpose of organizing and putting together an event do not fall within the purview of the Entertainment Tax Act. Through a deeming fiction, sponsorship amounts, value of the goods supplied or services rendered in lieu of advertisement/promotion are now bracketed as payment for admission to an entertainment; the petitioners argue that the legislature has gone beyond its competence and instead of levying tax on payment for admission to an entertainment, is now levying taxes on advertisements and is going beyond the pale of Entry 62 of List II of the Seventh Schedule of the Constitution which is nothing but colourable exercise of power. The Petitioners argue that by virtue of

Entry 31 and Entry 92 of List I taxes on advertisements are covered therein and consequently the State legislatures are barred from legislating on those subjects. They also argue that the impugned amendment vitiates their fundamental right to equality before law, guaranteed under Articles 13 and 14 as the impugned amendment seeks to treat two distinct and unequal classes similarly by bracketing sponsors and persons paying for entertainment together. There is an intelligible differentia between the two classes and in the absence of any rational nexus of treating the two classes alike, the impugned amendment violates the Constitution as well as the Entertainment Tax Act.

33. The Entertainment Tax Act was enacted with the purpose of subjecting to tax any entertainment organized or provided for in the National Capital Territory of Delhi. An entertainment is any performance or show, which gives pleasure, or a show, organized for the purpose of providing enjoyment to some or to a group of people. The scheme of the Act defines "entertainment" in the widest manner. It is not restricted to merely cinema shows, dramatic or musical performances or other conventional forms of entertainment. While no standard definition exists to describe the constituent elements of entertainment, some Acts which are *pari materia*, such as the Uttar Pradesh Entertainments and Betting Tax Act define entertainment under Section 2(g) to include any *"exhibition, performance, amusement, game, sport or race (including horse race) to which persons are admitted for payment and in the case of cinematograph*

exhibitions, includes exhibition of news-reels, documentaries, advertisement shorts or slides, whether before or during the exhibition of a feature films or separately;". The Bombay enactment is phrased similarly. The Entertainment Tax Act defines entertainment under Section 2(i) as:

> "*entertainment" means any exhibition, performance, amusement, game, sport or race (including horse race) or in the case of cinematograph exhibitions, cover exhibitions 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.*"

34. As can be seen from the definition, the state legislature sought to give widest power for taxing on entertainment. In the case of the petitioner FDCI, the first issue, which needs to be addressed, is whether as a fashion development and promotion society, which conducts fashion shows provides entertainment by hosting such shows. In *Geeta Enterprise Vs State of U.P. & Ors*, (1983) 4 SCC 202, a three Judge bench of the Supreme Court in the context of the U.P. Entertainment and Betting Tax Act, 1937, laid down certain tests to decipher if a given event is an entertainment for the purpose of levying tax. These were:

> *"(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) That the show may provide any kind of amusement whether sport, game or even a performance which requires some*

amount of skill; in some of the cases, it has been held that even holding of a tambola in a club hall amounts to entertainment although the playing of tambola does, to some extent, involves a little skill;

(3) That even if admission to the hall may be free but if the exhibitor derives some benefit in terms of money it would be deemed to be an entertainment;

(4) That the duration of the show or the identity of the persons who operates the machine and derives pleasure or entertainment or that the operator who pays himself feels entertained is wholly irrelevant in judging the actual meaning of the word "entertainment" as used in Section 2(3) of the Act. SO also the fact that the income derived from the show is shared by one or more persons who run the show."

35. *Geeta Enterprise* (supra), as is apparent, was rendered in the context of entry to a video parlour where the customer operated a video machine enabling viewership of movies, participating in video games, sports etc. While no admission fee to view the show was collected, however in order to operate the machine for 30 seconds, the user would have to insert a 50 paisa coin into the machine which was later collected from by the manufacturer of the machine and a certain portion of the collection went to the petitioner. The court held that the levy of entertainment tax applied in the facts of the case. The respondents have also relied on the decision of the Bombay High Court in *The Gem and Jewellery Export Promotion Council Vs State of Maharashtra* [2013] 59 VST 129 (Bom) which involved an event organized by a jewellery promoting company which scheduled annual exhibitions for promoting export and trade of jewellery and gems and

prospective buyers allowed entry through invitations. The High Court refused to grant relief and deemed the exhibitions to be entertainment events within the ambit of Bombay Entertainment Duty Act on an application of the tests prescribed in *Geeta Enterprise* (supra). A significant feature - which persuaded the High Court in that instance, to hold that the event constituted "entertainment" was that considerable and substantial registration fees was collected from participants.

36. This Court is unable to agree with the Bombay view. First, that was in the context of a different set of facts - here no entry fees are collected from any viewer or participant. Secondly, in *Gems and Jewellery* (supra) the Bombay High Court overlooked the distinction between a business promotion event and an entertainment event. Not all of the former, which involve elements of amusement or entertainment, are entertainment events. To elucidate, for instance, a private dinner for which entry is through invitation alone, involving private performance by some musicians, or playing of recorded music, is not "entry to entertainment" event, within the meaning of the Act. Likewise, free entry to a speech or performance, by a popular public figure, or motivational speaker, or a *gratis* performance by a popular entertainer which involves considerable expense, borne by a few sponsors (without which the event cannot take place) would not be an admission to an entertainment, unless those seeking the entertainment event are made to pay. Similarly, the judgment in *Poorvi (supra)* in the opinion of this court is of no assistance. That case did not concern

entry to an entertainment event; it sought to tax a cable operator- much the same way the present Act does, through a separate definition as well as a charging mechanism. The relevant provisions of the state Act, in that case read as follows:

> *"(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."*

In *Amit Kumar*(supra) the Supreme Court upheld the view of the High Court that the show put up was a device and "subterfuge" with the intention of evading provisions of the Entertainment Tax Act in that state. The court upheld the finding that there was no evidence to show and therefore it was difficult to believe that the fashion show was held merely to attract students. An affirming judgment, the decision did not

cite any authority. Nor did it advert to *Geeta Enterprises (supra)* and the various tests indicated by courts.

37. At this stage, it would be essential to extract the relevant provisions of the Entertainment Tax Act applicable in this case. Section 2(i) defines the term "entertainment" it reads as follows:-

> *"(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;"*

Section 2(m) of the Act, after amendment with effect from 1st October, 2012 reads as under:-

> *(m) "payment for admission" includes-*
>
> *(i) any payment made by a person for seats or other accommodation in any form in a place of entertainment;*
>
> *(ii) any payment for cable service;*
>
> *(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, by whatever name called for any purpose whatsoever, 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;*

(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 1: Any subscription raised, contribution received or donation collected in connection with an entertainment, where admission is partly or entirely by tickets/ invitation specifying the amount of admission or reduced rate of ticket shall be deemed to be payment for admission;

Explanation 2: Any sponsorship amount paid or value of goods supplied or services rendered or benefits provided to the organizer of an entertainment programme in lieu of advertisement of sponsor's produce/brand name or otherwise shall be deemed to be payment for admission."

Explanations 1 and 2 were inserted on 1st October, 2012, with retrospective effect from 1st April, 1998."Proprietor" is defined by Section 2(o); it reads as under:-

"2(o) "proprietor" in relation to any entertainment includes any person-

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

(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;"

38. Thus, the terms relevant for purposes of the enactment are entertainment, payment and *"payment for admission"*; equally *"proprietor"* too is relevant in relation to any entertainment for the purposes of the Act. Section 6 is the charging provision; it provides as follows:-

"Section 6 - Tax on payment for admission to entertainment (1) Subject to the provisions of this Act, there shall be levied and paid on all payments for admission to any entertainment, other than an entertainment to which section 7 applies, an entertainment tax at such rate not exceeding one hundred per cent of each such payment as the government may from time to time notify in this behalf, and the tax shall be collected by proprietor from the person making the payment for admission and paid to the government in the manner prescribed.

(2) Nothing in sub-section (1) shall preclude the government from notifying different rates of entertainment tax for different classes of entertainment or for different payments for admission to entertainment

(3) Where the payment for admission to an entertainment together with the tax is not a multiple of fifty paise, then notwithstanding anything contained in sub-section (1) or sub-section (2) or any notification issued thereunder, the tax shall be increased to such extend and be so computed that the aggregate of such payment for admission to entertainment and the tax is round off to the next higher multiple of fifty paise, and such increased tax shall also be collected by the proprietor and paid to the government in the manner 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 if such person was admitted on full payment.

(5) Where the admission to a place of entertainment is generally on payment, and if any entertainment is held in lieu of the regular entertainment programme without payment of admission or with payment of admission less than what would have been paid in the normal course, the proprietor shall be liable to pay tax which would have been payable in a normal course at full house capacity or the tax for the programme held in lieu of the regular entertainment programme whichever is higher.

(6) Where the payment for admission to an entertainment, referred to in sub-section (1), is made wholly or partly, the 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 of the amount of the payment for admission, if any, made otherwise

(7) Where in a hotel or a restaurant, or a club, entertainment is provided by way of cabarets, floor shows, or entertainment is organised on special occasion along with any meal or refreshment with a view to attract customers, the same shall be taxed at a rate to be notified under sub-section (1)."

Section 8 prescribes relates to information, which has to be provided by a person, who holds entertainment. The said section reads:-

"Section 8 - Information 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 video cinema shall provide entertainment unless he obtains permission from the Commissioner in the manner prescribed.

(3) Notwithstanding anything contained in this Act or any other law for the time being in force, the Commissioner, or any other officer authorised by the government in this behalf, may after giving reasonable opportunity of hearing to the proprietor, prohibit the holding of such entertainment and may also take all reasonable steps to ensure that order of prohibition is complied with, if he is satisfied that-

(a) the proprietor has given any false information which is likely to result in the evasion of tax;

(b) the proprietor has failed to deposit the security due;

(c) the proprietor has committed breach of any of the provisions of this Act or the rules made thereunder."

39. Sub-section (1) to Section 8 of the Act stipulates that no entertainment on which tax is leviable shall be held without prior information to the Commissioner in the prescribed form. It mandates furnishing of prior information by a person who wants to hold "entertainment" on which tax is leviable.

40. The exemption provision is in Section 14 of the Act, which reads:-

> *"Section 14 - Exemption (1) The government may, for promotion of arts, culture or sports, by general or special order, exempt any individual entertainment programme or class or entertainments from liability to pay tax under this Act.*
>
> *(2) The government may, by general or special order, exempt in public interest any class of audience or spectators from liability to pay tax under this Act, (3) Without prejudice to the generality of the provisions of sub-section (l) where the government is satisfied that any entertainment,-*
>
> *(a) is wholly of an educational character; or*
>
> *(b) is provided partly for educational or partly for scientific purposes by a society not conducted or established for profit; or*
>
> *(c) is provided by a society not conducted for profit and established solely for the purpose of promoting public health or the interests of agriculture, or a manufacturing industry, and consists solely of an exhibition of articles which are of material interest in connection with questions relating to public health or agriculture or are the products of the industry for promoting the interest whereof the society exists, or the materials, machinery appliances or foodstuff used in the production of such products;*
>
> *it may, subject to such terms and conditions as it may deem fit to impose, grant exemption to such entertainment from payment of tax under this Act: PROVIDED that the government may cancel such exemption if it is satisfied that the exemption was obtained through fraud or misrepresentation, or that the proprietor of such entertainment has failed to comply with any*

of the terms or conditions imposed or directions issued in this behalf and thereafter the proprietor shall be liable to pay the tax which would have been payable had not the entertainment been so exempted.

(4) Where the government is satisfied that the entertainment programme is not conducted for profit and the entire gross proceeds from payment for admission as defined in clause (1) of section 2 of an entertainment are to be devoted to philanthropic, religious or charitable purposes, without any deductions whatsoever on account of the expenses of the entertainment, it may, subject to the rules made under this Act, grant exemption to such entertainment from payment of tax under this Act on such terms and conditions as it may deem fit to impose.

(5) Where any exemption from payment of tax is granted under sub-section (4), the proprietor of such entertainment shall furnish to the Commissioner such documents and records and in such in manner as may be prescribed.

(6) If the proprietor of an entertainment exempted under sub-section (4) fails to furnish the documents and records required under sub-section (5), or fails to comply with any conditions imposed or directions issued in this behalf, or if the government is not satisfied with the correctness of such documents or records, the government may cancel he exemption so granted and thereupon the proprietor shall be liable to pay the tax Which would have been payable had not the entertainment been so exempted.

(7) The government may for reasons to be recorded in writing grant export facto exemption from payment of entertainment tax is respect of any programme."

41. The above provision authorises the GNCTD to exempt certain classes of programmes from part or full payment of entertainment tax. The conditions *inter alia,* include those for submission of documents and records can be imposed. Rules 35 and 36 prescribe the procedure,

which should be followed for availing exemption under Section 14 of the Act. Rules 35 and 36 are as under:

> *"35. Exemption by Government under section 14(3) of the Act (1) An application for exemption under sub-section (3) of section 14 of the Act shall be presented to the Commissioner at least fifteen days before the proposed date of entertainment stating the full description and nature of entertainment and any other details which may be required by the Commissioner with necessary proof as also the particular clause of sub-section (3) of section 14 of the Act under which exemption is sought: PROVIDED that an application may be admitted after the expiry of the period thereof, if the applicant satisfies the Commissioner or any other office authorised by him that he had sufficient cause for not preferring the application within that period. (2) The Government may grant exemption on such terms and conditions as it may deem fit to impose in the particular case.*
>
> *(3) Where exemption is granted a certificate shall be issued to the applicant by the Commissioner or any other officer authorised by him and the same shall, on demand be produced before an inspecting officer. The proprietor shall comply with the condition stated in the certificate.*
>
> *(4) Where the Government is satisfied, it may grant the exemption after taking such security as it may consider necessary to secure payment of the tax due in case the exemption is cancelled under the proviso to sub-section (3) of section 14 of the Act. (5) The proprietor of the exempted entertainment shall submit to the Commissioner all tickets for admission for attestation in the manner required by the Commissioner before bringing them into use. He shall also prepare and submit to the Commissioner or any other officer authorised by him, within fifteen days from the date of entertainment a full and true account of the tickets issued at different rates and the gross amount collected from the sale thereof along with the counterfoils of used tickets and all the unused ticket books. He shall also furnish a full and true*

account of the expenditure incurred along with the vouchers, if so required by the Commissioner or any other office authorised by him, within fifteen days from the date of entertainment.

36. Exemption by Government under section 14(4) of the Act.

(1) The application for exemption under sub- section (4) of section 14 of the Act shall be presented to the Commissioner, at least, fifteen days before the date of the entertainment stating clearly the full description, the nature of entertainment and the purposes of entertainment with necessary proof: PROVIDED that the application may be admitted after the expiry of the period thereof, if the applicant satisfies the Commissioner or any other office authorised by him that he had sufficient cause for not preferring it within that period. (2) The application for exemption shall be made in the manner required by the Commissioner. (3) Where the Government is satisfied it may grant the exemption after taking such security as it may consider necessary to secure payment of the due tax in case the exemption is cancelled under sub-section (6) of section 14 of the Act. (4) Where exemption is granted a certificate shall be issued to the applicant by the Commissioner or the officer authorised by him and the same shall, on demand, be produced before an inspection officer. (5) The proprietor of the exempted entertainment shall submit to the Commissioner all tickets for admission for attestation in the manner required by the Commissioner before bringing them into use. He shall also prepare and submit to the Commissioner within fifteen days from he date of entertainment full and true account of the ticket issued at different rates and the gross amounts collected from the sale thereof along with the counterfoils of used tickets and all the unused ticket books. He shall also furnish a full and true account of the expenditure incurred along with the vouchers, if so required by the Commissioner, within fifteen days from the date of the entertainment. (6) The proof of utilisation of the entire gross proceeds for philanthropic, religious or charitable purposes shall be furnished by the proprietor of the entertainment within thirty days from the date of entertainment in such manner as may be required by the Commissioner:

PROVIDED that if the proprietor satisfies the Commissioner that he had sufficient reasons for not submitting the proof of utilisation within the period prescribed, the Commissioner may extend the period of time to extent as he may deem fit."

42. In the case of FDCI, the events are non-ticketed events where entry is by special invite of the organizers and are handed out to those who might have potential interest in the products being showcased at the shows. These shows do not have a public colour in the sense that these events are for a select audience. There is no provision for the public to buy tickets to watch the show. In fact, no tickets are sold publicly. FDCI as well as its various organizing partners, who have business interest in these shows, to further their business select the audience for the shows. At fashion shows the nature of the goods showcased are generally luxury goods or brands and these shows are generally styled glamorously with after parties, special appearances by models etc. FDCI's position is that the shows are not held entertaining or providing amusement but for the purpose of furthering business; the dominant purpose here is promoting business; if incidentally the audience is entertained it would not imply that the primary purpose for organizing the event is entertainment. These events are held for a fixed audience picked by the organizers themselves; the "public" element is absent in the case of FDCI. It is true that the events in question showcase luxury goods in luxury locations like five star hotels and convention centres. However, by that reason alone the events cannot be labeled as entertainment shows.

43. The Govt. of NCT of Delhi relied on *Amit Kumar v State of Uttar Pradesh* (2008) 1 SCC 528, where the Supreme Court held that the fashion show in question which was organized for promoting an arts and culture college was actually an entertainment program. The Court expressed skepticism about the event being organized for the purpose of educating prospective students interested in joining the arts, fashion designing and modeling institute as the show was being promoted with the object of inviting people to watch glamour and modeling and to the see the world of exotic fashion in Gorakhpur. The issue at hand is different- FDCI sends out the invites to potential buyers and does not advertise its invite. Unlike in the case of *Amit Kumar* (supra) wherein a competitive pageant was held to decide Mr. and Mrs. Gorakhpur, FDCI's events are organized by a group of industry experts with the aim of furthering their business. FDCI's events are business and trade promotion events, entry to which cannot be categorized as entry to entertainment for the simple reason that those attending the shows are not deriving any pleasure or amusement. They are witnessing the show simply to further their business interests. If FDCI's events were to be classified as entertainment shows, the reasons for classification would have to then be applied to various trade shows like the automobile exhibitions or defence shows where products are showcased at high end venues to a niche clientele for the prospect of furthering the respective industries. When prospective buyers from the industry attend these events, for free based on a special invite, it would be fallacious to assume that they are being entertained.

Whether payment for admission includes sponsorship

44. FDCI, to organize its events requires funding. These funds are given by sponsors through agreements, which *in lieu* of sponsorship give certain rights to the sponsors with respect to the events. The amendment of 01.10.2012, which introduced the second Explanation, through deeming fiction seeks to tax sponsorship amounts as payment for admission under Section 2(m). The petitioners contend that payment for admission to a seat or other accommodation is limited to those cases, where people pay for the purpose of securing a seat or any other accommodation for the purpose of being entertained. On the other hand it is contended by the revenue that "seats or other accommodation" appearing in Section 2(m)(i) means accommodation in any form in the widest sense and will not attract the principle of *ejusdem generis* to mean "accommodation for those persons who are being entertained". The revenue relies upon *Union of India v Alok Kumar* (2010) 5 SCC 349 to contend that in this case there are not several different expressions representative of one genus.

45. In the present case, "accommodation" necessarily means all kinds of accommodation. Once any payment for admission to entertainment is made, Section 6, the charging provision that subjects to tax all such payments is attracted. Section 6(6) taxes any payment for admission to entertainment under Section 6(1) made by way of subscription, contribution and donation or otherwise. The revenue contends that the phrase "or otherwise" in Section 6(6) is to be construed widely to include sponsorship amounts. It relies on the decision of the Supreme Court in *Lila Vati Bai v State of Bombay* AIR

1957 SC 521 where it was held that when the legislature uses the term "otherwise" in a statute it does so to cover all possible cases occurring due to any reason. On the other hand the petitioners argue that Section 6(6) is towards any payment made in lieu of being entertained and sponsorship amounts are outside the purview of the section. The petitioner argues that sponsors are not the ones being entertained and are actually part of the organizers and fit within the definition of proprietor under Section 2(o).

46. Section 2(m) which defines "payment for admission" includes-

> **"***(i) any payment made by a person for seats or other accommodation in any form in a place of entertainment;*
>
> *…….*
>
> *Explanation 1: Any subscription raised, contribution received or donation collected in connection with an entertainment, where admission is partly or entirely by tickets/ invitation specifying the amount of admission or reduced rate of ticket shall be deemed to be payment for admission;*
>
> *Explanation 2: Any sponsorship amount paid or value of goods supplied or services rendered or benefits provided to the organizer of an entertainment programme in lieu of advertisement of sponsor's product/ brand name or otherwise shall be deemed to be payment for admission;***"**

47. The explanation to Section 2(m) was added on 21.09.2012 and given retrospective effect from 01.04.1998. Prior to the amendment a single explanation to Section 2(m) covered *"Any subscription raised, contribution received, or donation collected in connection with an entertainment, where admission is partly or entirely by tickets/*

invitation specifying the amount of admission or reduced rate of ticket shall be deemed to be payment for admission;".

48. A plain reading of the provisions would show that the new amendment seeks to tax sponsorship amounts. To test the *vires* of the amendment it is important to ascertain the nature of sponsorship. Sponsorship is typically given by an entity in return for a reciprocal business gain. The Merriman-Webster dictionary as defines the term "sponsor" as follows:

> *"a person or an organization that pays for or plans and carries out a project or activity;* **especially**: *one that pays the cost of a radio or television program usually in return for advertising time during its course.."*

[*https://www.merriam - webster.com/dictionary/sponsor* (accessed on 14 August, 2017 at 15:32 hours]. The Concise Oxford English dictionary [*10th Ed*] defines "sponsor" as a person or organisation that pays for or contributes to the costs of a sporting or artistic event or a radio or television programme in return for advertising. Thus, sponsors are those individuals or concerns who provide monetary contribution and in return for some rights or privileges, which may include advertisement rights. Through the Second Explanation, read with Section 6, the legislature includes sponsorship into the taxing ambit.

49. Two questions arise in the circumstance - *firstly* can the legislature increase the scope of taxability by inserting an Explanation and *secondly* is such inclusion of sponsorship amounts within the

scope and object of the Entertainment Tax Act read as a whole. An Explanation is added to clear any ambiguities that may arise while interpreting or applying a provision of the statute; it is not meant to enlarge the scope of the original provision. It only *explains* what has already been given and cannot through the process of explaining or clarifying seek to add that which is not there in the original provision. When there is some challenge to the scope of the explanation, it is useful to discern any ambiguity by testing its true effect in the context of the whole Act. In this context the decision of the Supreme Court in *Sundaram Pillai Vs Pattabiraman* (1985) 1 SCC 591 where a detailed analysis of statutory interpretation and the scope of "*explanation*" was done is of relevance. The Court held that:

> "*53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an explanation to a statutory provision is-*
>
> *(a) To explain the meaning and intendment of the Act itself,*
> *(b) Where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,*
> *(c) To provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,*
> *(d) An Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to supress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and*
> (e) *It cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.*"

50. An explanation, therefore, cannot widen the scope of the original provision and definitely not as a tactic, which would be at conflict or odds with the main enactment or the existing provision. It may be used to advance the scope of the Act or to suppress a mischief. In this background, it is necessary to put to test the scope of the Explanation in the context of the object and effect of the Entertainment Tax Act. The Entertainment Tax Act was enacted to tax any payment for entertainment and specifically for admission in a place of entertainment. It was enacted by the legislature in pursuance to Entry 62, List II of the Seventh schedule. Entry 62 is:

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

The scope of this entry is to subject to tax any person spending on luxuries, entertainments and amusements as well as the subject of entertainment. Thus, this entry allows a State to legislate on luxuries and pursuant to which the Entertainment Tax Act was enacted. The Entertainment Tax Act seeks to tax any payment for admission to a place of entertainment. The question is whether sponsorship is payment to admission. To determine this, the pith and substance of the Act will have to be examined. In *E.V. Chinnaiah Vs State of Andhra Pradesh &Ors*(2005) 1 SCC 394, a five judge bench of the Supreme Court held that while the power to legislate is derived from Article 245, the areas of legislation are demarcated by the three lists under Schedule VII. It was held that:

> *"32. One of the proven methods of examining the legislative competence of an enactment is by the application of doctrine of pith and substance. This doctrine is applied when the legislative competence of a Legislature with regard to a particular enactment is challenged with reference to the Entries in various lists and if there is a challenge to the legislative competence the courts will try to ascertain the pith and substance of such enactment in question is genuinely referable to the field of legislation allotted to the State under the constitutional scheme."*

51. One time - honoured principle applied to determine legislative competence is that a Court must not take a doctrinaire or pedantic approach but should weigh the question in a liberal manner. Though the entries in the Seventh Schedule only outline the fields of legislation, yet, when legislative competence with respect to an Act is challenged, its legitimacy has to be traced keeping in mind the scope as well as object and reasons of the Act with reference to the Entries in either List II or List III of the Seventh Schedule. The pith and substance of the Act will have to be discerned in light of its objects, scope and effect and the entire Act including its Rules would have to be studied as a whole. If it can be proved that the impugned legislation is one, which is beyond the field of legislation allotted to the State, then the Court is well within its power to strike down such enactment as ultra vires the Constitution on the ground of legislative incompetence.

52. Taxing statutes are distinct. While testing for legislative competence as noticed under Article 248(2) as well as in *Hoechst*

Pharmaceuticals Ltd. Vs State of Bihar (1983) 4 SCC 45, to determine whether the imposition of a certain tax is within legislative competence the nature of the tax will have to be determined through the charging section; what a legislature intends to tax is to be seen from the charging section of the Act. The question here is, whether in imposing entertainment tax on sponsors who make contributions in lieu of advertisements, the state legislature is incidentally acting beyond its field of legislation.

53. Section 6(1) which is the charging section in the Act subjects to levy all payments for admission to any entertainment while Section 6(6) directs that where payment for admission has been made by way of subscription, contribution, donation or otherwise, tax shall be paid on all such payments. For ease of reference Section 6 has been reproduced below:

> "*6. Tax on payment for admission to entertainment*
>
> *(1) Subject to the provisions of this Act, there shall be levied and paid on all payments for admission to any entertainment, other than an entertainment to which Section 7 applies, an entertainment tax at such rate not exceeding one hundred per cent of each such payment as the Government may from 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.*
>
> ……
>
> ……
>
> (6) *Where the payment 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 payment for admission, if any, made otherwise."

A proprietor in the context of Section 6 and for the purpose of the issue at hand is defined under Section 2(o) as:

"(o) "*Proprietor" in relation to any entertainment includes any person-*

(i) Connected with the organization of the entertainment"

54. In this backdrop what is to be determined is whether sponsorship amounts fall within the classification under Section 6(6). The substance of levy under the Act is payment for admission in any form to a place of entertainment. The taxing incidence therefore, is *payment for admission to entertainment*, not the entertainment event itself. When juxtaposed with the scheme of the Act, which is to tax payment made for admission to entertainment, the question, which presents itself, is whether sponsorship amounts, made through agreements, for business purposes are payments for admission to a place of entertainment. Payment for admission to a place of entertainment, in common parlance, would mean payment for the purpose of entry to enjoy or derive amusement from the entertainment event. What sponsors do is diametrically opposite to what is contemplated under the Act. A sponsor is a secondary organizer of the event. While the primary or the chief organizer might be a person who organizes the event in the physical sense, by arranging equipment, entering into performance agreements, coordinating between various stakeholders of an event etc., a sponsor is the one who provides monetary support to the primary organizer. This monetary support is

conditional; certain rights through agreements flow from the primary organizer to the sponsor. Through this agreement the sponsor is allowed access to the place of entertainment but not in the sense contemplated by the Act. The sponsor accesses the place of entertainment for setting up its advertisements, banners logos etc. all of which are part of organizing the event. When a sponsor is allowed to set up a stall for the purpose of selling its products, the sponsor has in effect bought space to sell its products and further its business. *A sponsor does not make the payments for gratification or for deriving pleasure from the events*; these are business transactions to be understood in the commercial sense. Thus, the sponsor is not one getting entertained. The Entertainment Tax Act, under Section 6(6) taxes any payment made through subscription, contribution donation or otherwise. The common denominator in all such payments is that these classes of payments are made for securing seats or any other accommodation in return for entertainment and not for furthering businesses or for advertising.

55. There is authority- the petitioners had relied on some judgments in this regard- for the proposition that mere definitional change of a term, in a taxing enactment, without change or amendment of the charging provision, does not result in a valid levy. Thus, in *M/s Tata Sky Ltd* (supra), the Supreme Court held it to be so, in the following terms:

"36. On behalf of the State the imposition of levy on DTH was sought to be justified on the basis of sub-clause(4) of clause (d) of section 2 which reads as under:

"(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 specified period or on a continuous basis;"

37. In our view, the submission is untenable for more reasons than one. First, section 2 (d) (iv)is only the measure of tax and it does not create the charge which is created by section 3. The question of going to the measure of the tax would arise only if it is found that the charge of tax is attracted. Under section 3 read with section 2 (d) and section 2 (a) , the charge or levy of tax is attracted only if an entertainment takes place in a specified place or locations and persons are admitted to the place on payment of a charge to the proprietor providing the entertainment. In the present case, as DTH operation is not a place-related entertainment, it is not covered by the charging section 3 read with section 2 (a) and 2 (b) of the 1936 Act. Consequently, the question of going to section 2 (d) (iv) does not arise. Moreover, even if section 2 (d) (iv) is to be read as an extension of section 3 and, thus, as a part of the charge, it does not make any difference at all because section 2 (d) (iv) refers to "entertainment" which takes us back to section 2 (b) and finally to section 2 (a).

38. We have held that DTH is not covered by the provisions of section 3 read with section 2 (a) 2 (b) and 2 (d) of the 1936 Act. The issue gets further settled on reference being made to the mechanism of collection of the charge as provided under section 4 of the 1936 Act. Section 4 (1) mandates that no person shall be admitted to any entertainment other than entertainment by V.C.R. except with a ticket stamped with an impressed, embossed, engraved or adhesive stamp issued by the State Government of nominal value equal to the duty payable under

Section 3; sub-section (2) of Section 4 provides for different modes specified thereunder for payment of the amount of duty due on the entertainment. Neither the provision of Section 4 (1) nor any of the modes provided under Section 4 (2) can be made applicable for collection of duty on DTH operation. Further, it is noted above that Section 8 provides rule making powers. In exercise of the powers under that provision the Madhya Pradesh Entertainment Duty and Advertisement Tax Rules 1942 were framed. A perusal of the Rules makes it absolutely clear that the collection mechanism under the 1936 Act is based on revenue stamps stuck to the tickets issued by the proprietor for entry to the specified place where entertainment is held.

39. The machinery for collection of duty provided under the 1936 Act has no application to DTH. It is well settled that if the collection machinery provided under the Act is such that it cannot be applied to an event, it follows that the event is beyond the charge created by the taxing statute. See: Commissioner of Income Tax v B.C. Srinivasa Setty, (1981) 2 SCC 460, Commissioner of Income Tax Ernakulam, Kerala v Official Liquidator, Palai Central Bank Ltd.(1985) 1 SCC 45 (pages 50-51) PNB Finance Ltd v Commissioner of Income Tax (2008) 13 SCC 94 (paragraphs 21 and 24 pages 100 to 101).

40. In light of the discussions made above, we are clearly of the view that the 1936 Act cannot be extended to cover DTH operations being carried out by the appellants.

56. In *M/s Martin Lottery Agency Ltd,* likewise, insertion of an explanation was held to be insufficient to constitute levy (in that case, of service tax, through amendment to the Finance Act of 1994). The Supreme Court held that:

> *"The explanation, in our opinion, cannot be said to be a simple clarification as it introduces a new concept stating that organizing of the lottery is a form of entertainment.*

Introduction of such new concept itself would have a constitutional implication. In the year 2003, while amending the provisions of 1994 Act, the Constitution was also amended and Article 268A and Entry 92C in List I were inserted. The courts are in future required to determine whether a service tax within the meaning of Entry 92C would cover sale of lottery or it would come within the purview of residuary entry containing Entry 97 List I. If it is held to be a taxing provision within the purview of Entry 97, the same will have a bearing on the States. The Explanation so read appears to be a charging provision. It states about taxing need. It can be termed to be asui generis tax. If it is a different kind of tax, the same may be held to be running contrary to the ordinary concept of service tax. It may, thus, be held to be a standalone clause. A constitutional question may have to be raised and answered as to whether the taxing power can be segregated. If by reason of the said explanation, the taxing net has been widened, it cannot be held to be retrospective in operation."

57. This court's reasoning is bolstered, to a considerable extent, because in the past, whenever the legislature wished to expand the levy of tax, not only did it amend the definition clause, but also amended the charging provision, as in the case of DTH service and video service. This is apparent from the amendment to the Entertainment Tax Act, carried out with effect from 1 February, 2010, which introduced the following amendments, not only to the definition, but to the charging provisions as well as the machinery under the rules. The relevant parts of the enactment and the rules are reproduced below:

(fb) "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 a cable television network.

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(g) "cable service" means the transmission by cables of programme including re-transmission by cables of any broadcast television signals;

(h) "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;‖
xxxxxxxxxxxxxxx

(ka) "multi-system operator (MSO)" means any person including an individual, group of persons, public or body corporate, firm or any other organization or body, who or which is engaged in the business of receiving television signals and value added services from a broadcaster or his authorized agencies and distributing the same or transmitting his own programming service including production and transmission of programmes and packages, directly to the multiple subscribers or through one or more cable operators and includes its authorized distribution agencies by whatever name called;

xxxxxxxxxxxxxxx

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

(o) "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;

(iv) having licence to provide direct-to-home (DTH) service, by the Central Government under section 4 of the Indian Telegraph Act, 1885 (13 of 1885), and the Indian Wireless Telegraphy Act, 1933 (17 of 1933) and also include service provider of cable television signals and value added services, registered or licensed under the Cable Television Network (Regulation) Act, 1995 (7 of 1995);

xxxxxxxxxxxxxxxx

(s) "subscriber" means a person who receives the signals of cable 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 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;

xxxxxxxxxxxxxxxx

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, notify in this behalf, which shall be collected by the proprietor and paid to the Government in the manner prescribed.

(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 hotel or a restaurant; the proprietor may, in lieu of payment under sub-section (1), pay a compounded payment to the Government on such conditions 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 compounded payment may be notified for the different categories of hotels.

(4) The proprietor of a video cinema shall be liable to pay entertainment tax at a rate to be notified by the Government from time to time in this behalf.

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

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45. Power to make rules (1) The Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide, for-

(a) collection of tax and payment thereof in the government account by the proprietor;

xxxxxxxxxxxxxxx

Rule 26: Payment of tax for cable service (1) The proprietor of a cable television network liable to pay tax in accordance with sub-section (1) of section 7 of the Act shall file monthly returns in Form 10 in duplicate showing the number of subscribers, the name and address of each subscriber, the amount received from each subscriber and the amount of tax calculated as per the rates notified by the Government. The amount of tax so calculated shall be deposited in the Government account in the form of pay order/demand draft and the return and challan of payment shall be furnished to the assessing authority within seven days from the end of the month for which the tax is due. The provisions of sub-rules (2) and (3) of rule 25 shall mutatis mutandis apply with regard to payment of tax for cable service.

(2) Where entertainment tax is payable by a hotel in accordance with sub-section (3) of section 7, the tax shall be payable at a rate to be notified by the Government for every room having the facility of cable service. The proprietor shall file a monthly return in Form - 11 in duplicate showing the category of hotel, number of rooms having the facility of cable service and the amount of tax calculated. The amount of tax so calculated shall be deposited in the Government account and the return and challan of payment shall be furnished to the assessing authority within seven days from the end of the month for which tax is due and the provisions of sub-rules (2) and (3) of rule 25 shall mutatis mutandis apply.

(3) Where the subscriber is a restaurant, the entertainment tax shall be paid as per the provisions of sub-section (3) of of section 7 of the Act and each room and premises where signals of cable television network are received, shall be treated as a subscriber. The provisions of sub-rules (2) and (3) of rule 25 shall mutatis mutandis apply."

58. It is evident, from the above provisions that Section 7 is a separate charging section. It clearly stipulates that entertainment tax is to be levied on all payments for admission to entertainment, *inter alia*, through a cable television network or DTH service. Now, if the respondent/NCT's arguments were to be accepted, there was no necessity of amending the charging provision, of the very same enactment, when according to that logic, the object of bringing to tax other diverse elements would have been achieved by merely amending the definition. However, the amendments of 2010, which *not only amended the definition, but also the charging provision, and provided a separate regime for the collection mechanism*, contradict the revenue's position that it is inessential to amend the charging provision and that amendment to the definition would be sufficient in this case.

59. *Tata Sky* (supra) and *M/s Martin Lottery* (supra) are also authorities for the proposition that without a charging provision or a viable machinery for collection of the tax, the levy fails. This was first explained in *B.C. Srinivasa Setty* (supra) where the Supreme Court held as follows:

> *"A transaction to which those provisions cannot be applied must be regarded as never intended by s. 45 to be the subject of the charge. This inference flows from the general arrangement of the provisions in the Income Tax Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case*

bears a relationship to the nature of the charge. Thus the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrality of the statutory scheme provided for each head."

60. In *Virtual Soft Systems v Commissioner of Income Tax*, 2007 (289) 83the Supreme Court again reiterated the principle by saying that *"the charge and its computation were two parts of an integral whole and concluded therefore, that if the computation could not be done, the charge was not intended to apply."* A similar view was expressed in *Commissioner of Income Tax v D.P. Sandhu Bros* [2005] 273 ITR 1 (SC) where describing the judgment in *Srinivasa Setty* it was held that *"all transactions encompassed by Section 45 must fall within the computation provisions of Section 48. If the computation as provided under Section 48 could not be applied to a particular*

transaction, it must be regarded as "never intended by Section 45 to be the subject of the charge".

61. *Govind Saran Ganga Saran vs. Commissioner of Sales Tax and Ors*1985 (Supp) SCC 205 held that:

> *"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 these 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."*

In view of the above position, this court would have to also consider whether the mechanism and collection provisions exist in respect of the Entertainment Tax Act levy, to make it effective. In view of the clear pronouncements of the courts, without a mechanism or collection provisions, the levy would fail. For this purpose, in Rule 11 of the Rules, Form 5 and 6 have been prescribed. The said Rule reads as under:-

> *"11. Form and manner of information before holding an entertainment*
>
> *A person or society desirous of holding an entertainment shall submit to the Commissioner an application in Form "5" where it is a ticketed programme and in Form "6" where the admission*

to the entertainment is exclusively by invitation, at least seven clear days before the date of such entertainment:

PROVIDED that, the Commissioner may accept the application at a shorter period if he is satisfied that there were cogent grounds or difficulties for not submitting the application earlier and there is sufficient time for depositing the security, getting the tickets attested, obtaining Form "7" register and for completing other necessary formalities before starting the show. "

62. A reading of the above Rule clarifies that in cases of ticketed programmes/events, information in Form 5 has to be submitted and in cases of non-ticketed programmes/events, information in application Form 6 has to be submitted. The said information has to be provided at least seven clear days before the date of such event i.e. holidays have to be excluded. The Commissioner, however, has the option to entertain the said applications at a shorter time period, provided the applicant makes an application in Form 7 giving cogent grounds or difficulties for not submitting the application earlier. A plain reading of Form 5 indicates that an applicant has to give details of place or places where shows are proposed to be held, specify the number of shows including special shows, if any, to be held on a daily basis, etc. In Form 6 an applicant has to provide details of place or places where shows are proposed to be held, details of expenses, sources for meeting the expenses, name of sponsors (Serial No. 10) and the amount sponsored by them, advertiser and the amount received from them. Details with regard to number of shows daily held, number of seats in each class, number of each kind of tickets, etc. too has to be furnished. Form 6 stipulates that an applicant should give details of the

amount of security deposit, if any, lying with the department if shows were previously held and amount of arrears of tax, if any, to be deposited in respect of shows previously held.

63. The forms, after submission are to be processed and dealt with by the authorities under Section 13 of the Act read with Rules 30 and 31. Section 13 reads as under:-

> *"Section 13 - Deposit and forfeiture of security (1) Every proprietor before holding an entertainment on which tax is leviable shall deposit such security and in such manner as may be prescribed. The Commissioner may deduct any arrears of tax from the security and may vary or forfeit the security in such manner as may be prescribed.*
>
> *(2) No order to forfeit the security shall be made under sub-section (1) unless, after giving the proprietor reasonable opportunity of being heard, the Commissioner is satisfied for reasons to be recorded that the proprietor has evaded the tax or violated the provisions of this Act or rules made thereunder.*
>
> *(3) Any person aggrieved by an order forfeiting the security may, within thirty days from the date of service of such order prefer an appeal to the appellate authority in such manner as may be prescribed and the order of the appellate authority shall be final."*

64. Section 13 (1) specifies that every proprietor before holding an entertainment on which tax is leviable shall deposit security in such a manner as may be prescribed. The Commissioner can deduct arrears of tax from the security and may vary or forfeit the security in a manner as prescribed. Section 13 (2) postulates that no order of forfeiture of security under Section 13 (1) could be made before giving reasonable opportunity of hearing to the proprietor or applicant.

It stipulates that Commissioner can order forfeiture of security for reasons to be recorded upon satisfaction that the proprietor has evaded tax or violated the provisions of the Act or Rules made thereunder. An order under sub-section (1) and (2) is appealable within 30 days before the appellate authority in such a manner as may be prescribed and the order of the appellate authority shall be final. It is noticeable that sub-section (2) is only applicable in cases of an order forfeiting the security and not to any other order. Rules 30 and 31 are also relevant and read:-

> *"30. Manner of depositing security The proprietor is required to deposit security under sub-section (1) of section 13 of the Act shall furnish a security in the form of bank draft or pay order or bank guarantee or a fixed deposit receipt, for such amount as may be specified by the Commissioner under rule 31.*
>
> *31. Amount of security [(1)] The amount of security shall be fixed by the Commissioner and shall not be more than the amount of the total tax chargeable for the full house capacity. In case of cinemas and other regular programmes of entertainment it shall before seven days as calculated with reference to the number of maximum shows to be held during seven days and shall not be less than fifty per cent of such amount:*
>
> *PROVIDED that in case of a cinema which has not defaulted in the deposit of tax during the preceding three years, the Commissioner may on application in this behalf, reduce the minimum amount of security as he may deem fit. He may, however, re-fix the amount of security as prescribed under this rule in case of any subsequent default in the deposit of tax:*
>
> *PROVIDED FURTHER that the amount of security may be fixed at an amount higher than the full house capacity, if the Commissioner deems it fit in the interest of revenue.*

[(2) The amount of security for a direct-to-home (DTH) service shall be fixed by the Commissioner and shall not be more than the total tax chargeable for a period of three months.]"

65. By Rule 31, the Commissioner is entitled to fix the amount of security, not exceeding the amount of the total tax chargeable for the full house capacity. The proprietor is required to deposit security in terms of Rule 30 (1) by way of bank draft or pay order or bank guarantee or a fixed deposit receipt, for such amount as may be specified by the Commissioner under Rule 31. The second proviso stipulates that the amount of security may be higher than the full house capacity, if the Commissioner deems it fit in the interest of revenue.

66. The revenue had sought to urge that the columns, in Form 6, especially Sl. No. 10 indicates the machinery provision for collection in this case. This court is unable to concur. Just a reference to the expression "sponsor" would not, *per se,* render a sponsor into a proprietor, nor even an entertainment event, for which admission is free, into a taxing event. Section 6 (6), which is relied here, as the backup provision under the Act, is of no avail, because that provides for the eventuality of admissions being *"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 payment for admission, if any, made otherwise.*" The object of the event, is not to facilitate admissions to it, wholly or partly. The object rather is to ensure that the designers get a platform, to showcase their talents. The admission is not to all; nor available upon payment; it is by invitation. The sponsor may or may not secure

any admission rights; if it does, it is wholly irrelevant. Even if it does and is allotted space for a kiosk or other desk, that is not *per se* an admission to an entertainment event. The entry given through passes, etc to sponsors is purely incidental.

67. There are various forms of sponsorship of different kinds of events. For instance, a movie or a show may be put together purely through sponsorship funding. In such an event sponsorship is an alternative to raising finances or other forms of funding, where the organizer borrows moneys. The arrangement with the sponsor may only be to exhibit the product or a brand logo periodically, or for a certain time duration. Now, if admission to such event is through tickets, the price of the ticket would determine the entry; it is that "admission" and the cost of the ticket, which is taken into consideration for levy of entertainment tax. Any other interpretation would result in extremely distorted consequences, because a priced entry event, carrying fixed rates (or slabs, as in movie halls) can result in multiple taxation incidences, if the state were to be believed. One such instance, to illustrate, is the cinematographic production *"Zindagi na milegi dobara"* which received sponsorship funding from companies, where a soft drink beverage was featured - in the production, - ref https://www.slideshare.net/amyberi/case-study-on-360-degree-marketing-zindagi-na-milegi-dobara). Likewise, in *Yaadein*, apparently the producers received substantial amounts from a mouth-freshener producing company. The sponsor's objective in these cases is typically to secure visibility for their products/services. The

end production may or may not be priced. If it is, the cost of the ticket for admission purposes, *only*, is the taxing incident. Any other interpretation would inject an uncontrolled element of subjectivity to the incidence of taxation, which is confined to entry to an admission event and nothing else.

68. Exhibitions, fashion shows, cultural festivals are generally conducted as a marketing exercise to further business of the concerned industry. For instance, in a college/cultural festival several private (and corporate) sponsors, in lieu of advertisement fund the festival. Such festivals are typically organized to facilitate interaction and dialogue between students from similar disciplines from different colleges. All such events are by invitation only where students do not purchase tickets and the presence of music or competitions or other kinds of events does not rob these festivals of its essential character of being a forum for student interaction. Even in the case of IPL matches, where the events are entertainment events and are ticketed, sponsors play a different role and do not share the same equation as the general public, which buys tickets to witness the matches for entertainment purposes. For instance, during the IPL tournament, when a sponsor such as Pepsi, as the official sponsor of IPL (for some of the seasons), makes sponsorship payments, it receives the rights to advertise- across platforms including television and radio throughout the country.

69. In such cases, can sponsors be subjected to entertainment tax? Or in another case, when aero shows are held with various private companies showcasing their products to potential buyers, can the

sponsors of such events be subjected to entertainment tax? If the same show is ticketed and opened to the public who may have no interest in propagating the industry, then, in such cases an entertainment tax can be levied on the public buying such tickets. However, to tax sponsors, who pay to secure space for business purposes under the Act would be incongruous. Closer home and on a more relatable note, the Bar Council organizes non-ticketed events for its members where there is no entry fee and the events are sponsored. At such events, lawyers may perform shows like stand up comedies, mimicry etc. but that does not necessarily mean that these are entertainment events in the context of the Entertainment Tax Act or that the sponsors are making contributions towards securing seat/ accommodation in a place of entertainment.

70. This court is fortified in its opinion that the levy in the present case, is premised on the event, i.e., admission to entertainment, which presupposes that the object of the entry should be for entertainment purposes only, in two remarkable precedents. In *J. Lyons & Co. Ltd. v. Fox.* 1919 (1) KB 11 music concerts were held during and after the service of tea and dinner. The diner was permitted to stay for one hour after the service of dinner had ceased. No charge was made in any form except for the meals which were served both at a fixed price and a-la-carte, and for which a bill was rendered to the customer before he left the restaurant. By a majority it was held that payments made by the customers to the restaurant were not payment for admission to entertainment within the meaning of section 1(1) of the Finance (New

Duties) Act, 1916, and that the entertainment duty was therefore not chargeable in respect thereof. The majority of the Judges held that the payments made by the customers of the restaurants were not "payments for admission" to an entertainment within the meaning of the Act. Bailhache J. put the matter thus:

> *"The question, therefore, which we have to determine is, what is the meaning of those words 'payment for admission' to an entertainment in that section. I ask myself whether any ordinary intelligent person who had taken tea or had dined at the Trocadero would, using ordinary language, say that he had paid for admission to the Trocadero. The answer to that question must be in the negative. In ordinary language when one has paid for a dinner in a restaurant, one does not say that one has paid for admission to the restaurant any more than, when one pays for a pair of boots bought in a shop, one would say one was paying for admission to the shop."*

71. In *Calico Mills Ltd. vs. State of Madhya Pradesh & Ors.* AIR 1961 MP 257 a nominal entry charge of ₹ 2 was levied in an establishment (*"the Calico Dome"*) which sold cloth and other related merchandise. Fashion models gave special performances at certain times. The charge to the store was uniform. The court held that such charge was an entry charge to the establishment, to restrict access having regard to vagaries of certain customers, rather than an entry to an entertainment event:

> *"The natural import of the term 'entertainment' is amusement and gratification or some sort. The term connotes something in the nature of an organised entertainment. This is evident from the fact that the Act was enacted to provide for the levy of a duty in respect of admission to theatres, cinemas and other places of public entertainment. Therefore an entertainment to come within the definition of Section 2 (b) and of the provisions*

of the Act must be some exhibition, performance, amusement, game or sport for the purpose of entertainment, that is, for affording some sort of amusement and gratification to those who see or hear it.

In the present case, it is impossible to say on the agreed facts that there is any exhibition, performance, amusement, game or sport which is an integral component factor attracting the visitors to the Calico Dome. In the return, much emphasis was laid on the fact that during the evening hours there was "a special programme of fashion show by specially trained girls .....and for that show seating arrangement was also made inside the dome and a stage was also erected for the performance of the show".

But learned Government Advocate did not urge before us that this showing off of the fabrics by the mannequins was- any performance, amusement, game or sport. He, however, argued that the Dome was a place of entertainment inasmuch as it was an exhibition. Learned Government Advocate did not go to the extent of saying that the mannequins themselves were an "exhibition". On the other hand, he contended that even without the mannequins the display of the Fabrics by the petitioners in the manner they did inside the Dome was in itself an exhibition and an entertainment within the meaning of Section 2 (b).

We are unable to accept this argument, which seems to us to ignore certain basic facts and the primary object with which the petitioners put up the Dome for the display of their goods. No-body can doubt that the object of the display of the fabrics manufactured by the petitioners inside the Calico Dome was to advertise them and to promote their sales. There was not anything in the nature of an organised entertainment in the display of the fabrics themselves.

A person who visited the Dome went there as a prospective buyer and not as a spectator or as one of the audience to an entertainment. A display of the fabrics by mannequins wearing

them was no doubt arranged during the evening hours. But that was not for the purpose of affording amusement Or gratification to the visitors but for enabling them to make a selection in the purchase of the goods they desired. It is common knowledge that the elegance and beauty of a wearing apparel can be best judged and appreciated when it is shown off by a person wearing it and not when it is folded and wrapped in packages.

It is also well known that many drapers and milliners of repute and standing display their goods on dummy models. It seems to us that a place where fabrics are displayed and shown off by mannequins wearing them is no more a place of entertainment than a shop establishment where wearing apparels are displayed on dummy models. Nothing turns on the fact that the display by mannequins was on a stage or on the fact that there was a seating arrangement inside the Dome for having a good view of the display, or again on the fact that "many fashionable ladies and gentlemen of the town were attracted more towards the show than towards the purchase of cloth". Many of them might have gone to the place merely for the purpose of watching the display and seeing something which they had not seen before. But the fact that these people went out of curiosity and novelty did not make the exhibition of cloth or the display by mannequins inside the Dome an entertainment, which otherwise was not an entertainment.

The word "exhibition" occurring in the definition of "entertainment" in Section 2 (b) must take its colour from the natural import of the term 'entertainment'. If certain goods are exposed to view for the purpose of sale, there is no doubt an exhibition of goods in the sense of "showing". But that is not any entertainment. The exhibition for sale of the fabrics themselves in elegant surroundings under a canopy put up. by the petitioners did not afford any gratification, diversion or amusement.

It was no more than a display of cloth and apparels in a well-decorated shop. The display by mannequins was simply a

spectacle of living people instead of dummy models showing of the fabrics for impressing on the visitors the 'chic' of the material manufactured by the petitioner-Mills. To call such an exhibition "entertainment" is to give a very strained meaning to the word and to the language of the Act. If, as we think, there was no entertainment inside the Dome then it follows that any payment made by a visitor for admission to the Dome cannot be regarded as 'payment for admission' to entertainment

In fact, it is clear from the admitted facts of the case that no charge was made for admission to the Calico Dome. It is not disputed that the petitioners were entitled to regulate the system of their trade and to restrict entry to the Dome. If, having regard to limited space inside the Dome, and apprehending a rush of visitors attracted by a feature, very common and old in the premier cities of the countries but a new one in Jabalpur, the petitioners thought it necessary to restrict entry to the Dome to bona fide purchasers and secured this by requiring the visitors in certain hours to obtain a token which could be exchanged for Rs. 2/- worth of Calico cloth, it cannot be said that the visitor paid Rs. 2/- for admission to the Dome.

The position of such a visitor is no different from that of a person paying for cloth purchased in a shop. One does not speak of such a person as one paying for admission to the shop. It may be that some persons interested more in the feature of display of fabrics by mannequins than in the purchase of any cloth did not make any purchase and did not cash in the form of cloth the value of the token. Or. again it may be that those making purchases of high value were indifferent to the credit allowable to them on the strength of a token.

But because of such vagaries of some visitors, one cannot run away from the facts and hold that the amount paid for the token was a payment for admission to an entertainment within the meaning of the Act. The token of Rs. 2/- obtained by a person visiting the Dome during evening hours was nothing more than a part advance payment towards the purchases that may be

made. We do not entertain the slightest doubt that there was no entertainment within the provisions of the Act and the token obtained by a person visiting the Dome during certain hours was not a payment for admission to the Dome, much less a payment for admission to a place in which entertainment was held."

72. For the above reasons, it is held that sponsorship amounts received by the petitioners became part of the admission to the entertainment events - not for FDCI; nor for the BCCI (which only provided on site advertising) or GMR (the sponsorship amounts received by it being for other rights of advertisement, exclusive of what was given by BCCI). In the case of BCCI and GMR, the arguments of the revenue, stand out in stark relief, because the entertainment event, i.e., cricket match, is controlled by one admission through tickets, which are paid for (and in respect of which tax is demanded and paid); yet the sponsorship amounts received *for the same match can potentially be collected by the revenue, under the Entertainment Tax Act.* This would result in multiple levies (three fold, to be exact) on one taxing event under one taxation statute- *a fortiori* an arbitrary result.

73. The Court is also of the opinion that the reliance on Section 6 (6), Rule 11 and Form 6 in the present case does not help the revenue. A juxtaposition of Section 6 (6) with Section 6 (7) underlines the importance of the place where entertainment is provided. Further, Section 6 is subject to other provisions of the Act. Importantly, the reference to events by invitation (under Form 6) is relatable only to the extent contemplated by Section 6 (6). The relevant part of Rule 11

states that the proprietor has to file *"Form "5" where it is a ticketed programme and in Form "6" where the admission to the entertainment is exclusively by invitation, at least seven clear days before the date of such entertainment."* The import of these expressions is, and can only be to what is alluded to by Section 6 (6), i.e. *"Where the payment 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.."* This would cover cases, where the event viewers' entry is paid, to the proprietor, thorough some form of *prior subscription, or contribution,* or a lump sum paid in advance, by some or all parties, or even the booking of a show for viewing by invitees. In such cases, the event continues its essential character as an entertainment event, the admission for which is payable. *The form of payment is the subject matter of Section 6 (6).* In the case of sponsorships – of events like the ones conducted by FDCI, the event is sponsored or entirely funded by third parties; the event is *per se* not for amusement, but primarily for business promotion. Likewise, the sponsorship amounts paid in the other cases (BCCI, GMR, DEN) are not to enable entry of someone to be amused or entertained, but rather *to enable visibility of the sponsor's products or services. The placing of hoardings, or advertisements on site cannot be said to form "entry" to an entertainment event.* For these reasons, it is held that the levy in this case also fails for absence of a defined and valid collection mechanism.

74. Now, to deal with the revenue's argument that the amendments are merely clarificatory in nature. The revenue relied on *Gold Coin Health Food Private Ltd* (supra) and *Ambae Picture Palace* (supra) for this proposition and also urged that the expression "entertainment" was defined in an inclusive manner. So read, Section 6 (6) read with Form 6 had always created a levy and a mechanism. Therefore, the clarification being what it is, is a declaration of what existed (since inception of the enactment) and consequently, was retrospective.

75. This court notices that in *M/s Martin Lottery*, a decision rendered after *Gold Coin Health Food (P) Ltd* (supra) in fact noticed this amendment.

> "*the Court must be satisfied that the Parliament did not intend to introduce a substantive change in the law. As stated hereinbefore, for the aforementioned purpose, the expressions like `for the removal of doubts' are not conclusive. The said expressions appear to have been used under assumption that organizing games of chance would be rendition of service."*

The court also noticed and quoted the following passage from *Virtual Soft Systems Ltd v Commissioner of Income Tax* 2007 (9) SCC 665, and held as follows:

> *"It may be noted that the amendment made to Section 271 by the Finance Act, 2002 only stated that the amended provision would come into force with effect from 1.4.2003. The statute nowhere stated that the said amendment was either clarificatory or declaratory. On the contrary, the statue stated that the said amendment would come into effect on 1.4.2003 and therefore, would apply to only to future periods and not to any period*

prior to 1.4.2003 or to any assessment year prior to assessment year 2004-2005. It is the well settled legal position that an amendment can be considered to be declaratory and clarificatory only if the statue itself expressly and unequivocally states that it is a declaratory and clarificatory provision. If there is no such clear statement in the statute itself, the amendment will not be considered to be merely declaratory or clarificatory.

Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement made in the statute but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods."

76. The revenue/respondents' arguments are untenable, in this court's opinion. In the absence of the amendment, according to their plea, the impost based on sponsorship was still leviable, because the definition was inclusive. This argument is unsound. It is settled that there has to be clear authority of law for a valid levy, by reason of Article 265 of the Constitution and the subject of the levy should be precisely or definitely known. This much was said, in *Indian Banks Association v Devkala Consultancy Services* AIR 2004 SC 2615, when it was observed as follows:

"In the event, the contention of the appellants is accepted, the same would give rise to incongruous results. Such an interpretation, as is well-known, must be avoided, if avoidable. Furthermore, a statutory impost must be definite. Having regard to Article 265 read with Article 366(28) of the Constitution of India nothing is realizable as a tax or by way of

recovery of tax or any action akin thereto which is not permitted by law."

77. The argument that sponsored events and sponsorship *per se* were covered by the un-amended Act, is therefore, insubstantial and rejected. The sequitur is that the amendment introduced a new element. By itself, in the absence of change to the enacting part creating a levy, (as discussed previously) the addition of the two impugned explanation, with retrospective effect cannot result in a valid impost; such impost cannot be retrospective in character. It is therefore held that the amendment is not clarificatory; it is also of no consequence given that there is no amendment to the charging section. Nor has a fresh charging provision been introduced introducing a fresh levy. In view of the opinion expressed as to the effect of the amendment, it is held that the retrospectivity assigned to it, is of no consequence. However, it is also held that as an amending enactment, which sought to introduce a new levy, which did not exist earlier, the impugned notification would be unreasonable because it would - were it indeed operative - impose onerous obligations upon transactions and those sought to be covered by it, for periods when it was not in force. Those ostensibly covered by it, would have to provision for demands which could not have been levied, because those obligations did not exist.

78. Sections 9 and 10 of the Act require that for any person to enter a place of entertainment a valid ticket with a duly paid tax on it would have to be presented. The exception to this rule is carved out in respect of persons who have some specific duty to perform in connection with

the entertainment. The Court has concluded that in the cases of FDCI, those entering the venue, upon invitation or those who enter, to make arrangements do not have to buy tickets. In the case of other ticketed events, such as cricketing or football fixtures, GMR and other organizers charge entertainment tax and collect it from those entering to view the event. Section 9 and 10 read as follows:

> "9. *Restriction of admission*
>
> *Save as otherwise expressly provided by or under the Act, no person (other than a person who has some specific duty to perform in connection with the entertainment, or duty imposed upon him by law, or a person authorized by the Government in this behalf) shall be admitted to any entertainment except with a ticket in the prescribed form denoting that the proper tax payable under Section 6 has been paid*."

Section 10 reads out as:

> "*10. Restriction on entry to entertainment*
>
> *No person (other than a person who has specific duty to perform in connection with the entertainment, or duty imposed upon him by law, or a person authorized by the Government in this behalf) shall enter or obtain admission to an entertainment without being in possession of a proper ticket as required under Section 9*."

Rule 11 requires organizers to submit applications in Form 5 for ticketed events and Form 6 in case of non-ticketed events. While Form 5 under item 8 requires the organizer to disclose "*charge for admission to various classes (excluding tax), entertainment tax and surcharge and total payable.*" Under head 10 and 11 of Form 6 the disclosure include "name of sponsors and the amount sponsored by

them" and "*name of advertiser and amount received from them*" respectively. While submitting application under Form 6, it is not expected from an organizer to pay entertainment tax on sponsorship amounts, an aspect which is otherwise clearly spelt out in Form 5- i.e. entertainment tax paid proportionately on the ticket.

79. The upshot of the above discussion is that in regard to concluded or past transactions, where the organiser or proprietor of the event had no opportunity to collect tax – either because the event was not ticketed (as admission was not paid for) or the entertainment event itself like in sports events, was based on tickets, on which entertainment tax was paid, the requirement of paying amounts, *now,* on the basis that the past event too is taxable, results in onerous consequences. Speaking about retrospective levies, the Supreme Court in *D. Cavasji v State of Karnataka* 1985 (1) SCR 825stated as follows:

> *"It may be open to the Legislature to impose the levy at the higher rate with prospective operation but levy of taxation at higher rate which really amounts to imposition of tax with retrospective effect has to be justified on proper and cogent grounds."*

In a more recent decision, *Commissioner of Income Tax v Vatika Industries* 2015 (1) SCC 1 the Supreme Court pointed out the *rationale* for a general rule of construction against retrospectivity of statutes, in the following manner:

> *"The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events*

of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lexprospicitnon respicit: law looks forward not backward. As was observed in Phillips vs. Eyre[3], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law."

In its seminal decision, i.e. *Rai Ramakrishna v State of Bihar* 1964 (1) SCR 897 the Supreme Court held as follows:

"Where the legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions. Similarly, there is no doubt that the legislative power in question includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed. This position is treated as firmly established since the decision of the Federal Court in the case of The United Provinces V.Mst. Atiqa Begum (1). It is also true that though the Legislature can pass a law and make its provisions, retrospective, it would be relevant to consider the effect of the said retrospective operation of the law both in respect of the

legislative competence of the legislature and the reasonableness of the restrictions imposed by it. In other words, it may be open to a party affected by the provisions of the Act to contend that the retrospective operation of the Act so completely alters the character of the tax imposed by it as to take it outside the limits of the entry which gives the legislature competence to enact the law; or, it may be open to it to contend in the alternative that the, restrictions imposed by the Act are so unreasonable that they should be struck down on the ground that they contravene his fundamental rights guaranteed under Article 19 (1) (f) & (g)."

Yet later in *Tata Motors v State of Bihar*, 2004 (5) SCC 783the Supreme Court had to examine the validity of introduction of a provision with retrospective effect, that partially withdrew a benefit that had been enjoyed by assesseess. This is what the court stated:

"It is no doubt true that the legislature has the powers to make laws retrospectively including tax laws. Levies can be imposed or withdrawn but if a particular levy is sought to be imposed only for a particular period and not prior or subsequently it is open to debate whether the statute passes the test of reasonableness at all. In the present case, the High Court sustained the enactment by adverting to Rai Ramkrishna's case when the benefit of the rule had been withdrawn for a specific period. The learned counsel for the State contended that the amendments had been made to overcome certain defects arising on account of the decision of the tribunal in regard to the modalities of working out the relief. But, the impugned amendment brought about by Section 26 is not for that purpose. Assuming that it was the legislative policy not to grant set off in respect of waste or scrap material generated, it becomes difficult to appreciate the stand of the State in the light of the fact that the original Rule continued to be in operation (with certain modifications) subsequent to 1.4.1988. The reason

for withdrawal of the benefit retrospectively for a limited period is not forthcoming. It is no doubt true that the State has enormous powers in the matter of legislation and in enacting fiscal laws. Great leverage is allowed in the matter of taxation laws because several fiscal adjustments have to be made by the Government depending upon the needs of the Revenue and the economic circumstances prevailing in the State. Even so an action taken by the State cannot be so irrational and so arbitrary so as to introduce one set of rules for one period and another set of rules for another period by amending the laws in such a manner as to withdraw the benefit that had been given earlier resulting in higher burdens so far as the assessee is concerned without any reason. Retrospective withdrawal of the benefit of set-off only for a particular period should be justified on some tangible and rational ground, when challenged on the ground of unconstitutionality. Unfortunately, the State could not succeed in doing so. The view of the High Court that the impugned amendment of Rule 41-E was of clarificatory nature to remove the doubts in interpretation cannot be upheld. In fact, the High Court did not elaborate as to how the impugned legislation is merely clarificatory. In that view of the matter, although we recognise the fact that the State has enormous powers in the matter of legislation both prospectively and retrospectively and can evolve its own policy, we do not think that in the present cases any material has been placed before the Court as to why the amendments were confined only to a period of eight years and not either before or subsequently and, therefore, we are of the view that the impugned provision, namely, Section 26 deserves to be quashed by striking down the words "not being waste goods or scrap goods or by products" occurring in the said Section 26 of the Maharashtra Act IX of 1989 and the authorities concerned shall rework assessments as if that law had not been passed and give appropriate benefits according to law to the parties concerned."

80. This Court has concluded, earlier in the course of this judgment, that the amendment is not clarificatory; nor can it be said to introduce a valid levy, because of lack of any amendment to the charging

provision; nor is there any valid mechanism to collect such levy. Therefore, the retrospectivity assigned to the amendment, is clearly arbitrary and unreasonable. It is so declared.

81. One last aspect needs to be dealt with. The revenue had contended that since many petitioners had sought exemptions and in some cases, deposited amounts pursuant to demands, the present proceedings on their part are not maintainable. The invocation of the doctrine of estoppel or waiver, in the opinion of this court, under such circumstances is inapt. This is because, the Supreme Court has held, in a series of judgments, that there can be no waiver of fundamental or other statutory rights, nor can such procedural hurdles bar the inquiry into validity of statutes or rules. *State of Punjab & Anr v Devans Modern Brewaries Ltd* 2004 (11) SCC 26 articulated, through a Constitution Bench, this principle, as follows:

> *"Even otherwise when the legislative competence of a State is in question, the same goes to the root of the jurisdiction. Once it is found that the State Legislature has exceeded its jurisdiction in imposing the impugned levy, the same being a fraud on the Constitution cannot be sustained on the procedural doctrine of estoppel or waiver."*

(Also ref *Suraj Mall Mehto v AV Viswanath Sastri* AIR 1954 SC 545; *Bashesharnath v. I.T Commissioner* AIR 1959 SC 149; and *Olga Tellis v Bombay Municipal Corporation* AIR 1986 SC 180). For these reasons, it is held that the plea that the petitions cannot be entertained, is insubstantial and therefore, rejected.

82. In view of the foregoing reasons, this court summarizes its findings and issues the following directions:

(1) The impugned amendment does not result in a valid levy of entertainment tax; mere amendment to the definition of "payment for admission" under Section 2 (m) of the Act cannot, in the absence of an amendment to the charging section, or introduction of a new charging section, introduce a levy. Therefore, the demands made on the basis of the amendments are hereby declared as contrary to Articles 14 and 265 of the Constitution of India.

(2) The impugned levy, to the extent it does not introduce a separate machinery also fails and a direction to that effect is also issued;

(3) *Arguendo*, the impugned amendment is to be valid, it is not clarificatory but in fact a new amendment. Therefore, granting retrospective effect to it, would impose onerous and harsh conditions, that could never have been provisioned for by the event proprietors. As a result, the retrospective effect given to the impugned amendment is void as violative of Articles 14 and 265 of the Constitution of India.

(4) The petitioners cannot be said to have waived their right to challenge the levy or collection of amounts as duty in the circumstances of these cases;

(5) The amounts collected by the respondents, from FDCI, BCCI, DEN and other petitioners are directed to be refunded to them, with interest @ 7 percent per annum from date of payment, within 8 weeks

from today. In the case of GMR, the amounts collected towards sponsorship receipts (as opposed to ticket collections for which tax has been deposited in the normal course) shall be similarly refunded, with similar rate of interest within 8 weeks.

83. All the writ petitions are allowed in terms of the above directions without any order as to costs.

S. RAVINDRA BHAT
(JUDGE)

DECEMBER 22, 2017

OPINION OF DEEPA SHARMA, J.

1. I have had the benefit of reading the judgment of my learned brother Judge. Since I hold different view, I have decided to write a separate judgment:-

2. These are 22 writ petitions. In writ petitions bearing W.P.(C) No.2563/2013, W.P.(C) No.6728/2013, W.P.(C) No.4792/2014, W.P.(C) No.3626/2015, W.P.(C) No.3308/2015, W.P.(C) No.2886/2015 and W.P.(C) No.3247/2015 (Group-A), the petitioner/Fashion Designs Council of India (hereinafter referred to as "FDCI") has challenged the assessment orders dated 08.03.2013, 19.06.2014 and 29.12.2014, wherein the entertainment tax has been imposed on the sponsorship amounts received by the FDCI for conducting the events.

3. In writ petitions bearing W.P.(C) No.6767/2014, W.P.(C) No.2825/2015, W.P.(C) No.9166/2015, W.P.(C) No.6839/2015, W.P.(C) No.5994/2016, W.P.(C) No.1927/2016, W.P.(C) No.9153/2016, W.P.(C) No.4966/2013, W.P.(C) No.10729/2016, W.P.(C) No.10731/2016, W.P.(C) No.7495/2014, W.P.(C) No. 9661/2016 and W.P.(C) No.12287/2015, under challenge are the letters dated 18.09.2014, 09.03.2015, 15.09.2015, 10.07.2015, 01.07.2016, 15.02.2016, 28.09.2016, 14.01.2013, 06.10.2016 and 21.12.2015 respectively issued to the petitioners FDCI, Board for Control of Cricket in India (BCCI), DEN Soccer Private Limited and Pro Sportify Private Limited, asking them to furnish the details of sponsorship amounts received, along with agreements and to deposit entertainment tax at the rate of 15% on total sponsorship amount, including other payments, received. In writ petition bearing W.P.(C) No.7465/2013 and W.P.(C) No.2586/2017, filed by GMR Sports Private Limited (hereinafter referred to as the GMR Sports), the petitioner has challenged the notices dated 09.02.2010, 13.05.2010, 12.05.2011, 21.04.2011, 15.04.2011, 31.03.2011, 22.03.2012, 20.03.2012, 04.04.2012, 18.04.2012, 02.05.2012, 11.05.2012, 14.03.2013, 12.04.2013 and 16.03.2017, whereby they were asked to pay entertainment tax on the sponsorship receipts for IPL seasons 2010 to 2013 and also sought declaration that no entertainment tax is leviable on sponsorship receipt. All these writ petitions are grouped as Group 'B' cases.

4. In all these writ petitions, the main challenge of the petitioners relates to levy of entertainment tax on sponsorship amount received by

them for organizing the respective events. It is argued that sponsorship amount cannot be subjected to tax and by adding Explanation 2 to the definition of Section 2(m) of the Delhi Entertainment and Betting Tax Act, 1996 (hereinafter referred to as "the Act"), levy on sponsorship amount is introduced for the first time and thus a new regime of entertainment tax has been introduced with retrospective effect. The sponsorship amount paid or value of goods supplied or services rendered or benefits provided to the organizers of an entertainment programme were never in the tax net and now by this deeming provision, these are considered deemed payment for the admission to an entertainment. This way the legislature has enlarged the scope of Section 2 (m) which cannot be done by adding an Explanation to the main provision, without amending the main provision. The petitioners have also sought the quashing of Explanation 2 of Section 2(m) of the Act.

5. On the other hand, the main contention of respondents is that the definition of Section 2(m) of the Act is inclusive and wide enough to include all the payments made, may it be called by any name and made in any form for tickets or other accommodations in any form in a place of entertainment. It is argued that even before Explanation 2 was added, sponsorship amount received by FDCI for holding fashion shows was subjected to entertainment tax and this Court in earlier writ petition being W.P.(C) No. 1145/2010 titled as ***Fashion Design Council of India vs. GNCT and Ors.,*** has dealt with this issue and remanded the matter with the direction to examine the sponsorship documents and then to assess the tax and this way the Coordinate

Bench of this Court had upheld the levy of tax on sponsorship amount received by FDCI for conducting the fashion show. Also, this Court in the said matter had upheld the refusal on the part of respondents to give 100% exemption to FDCI from entertainment tax and upheld the order of the respondents by which the exemption from entertainment tax on the sponsorship amounts was restricted to 50% of the total tax payable.

6. It is further argued that the Hon'ble Supreme Court also in ***Amit Kumar vs. State of U.P.*** *(2008) 1 SCC 528* has clearly held that fashion shows are entertainment and organizers have to pay entertainment tax on the sponsorship amounts received by them. It is thus apparent that the impugned amendment is only clarificatory/explanatory in nature and does not introduce any new levy.

7. The detailed arguments of learned Senior Counsel of both the parties have already been recorded in detail by my learned brother in his order. It is futile to reproduce the same again; however, I have taken note of those detailed arguments.

8. I have given thoughtful consideration to the contentions and arguments of learned Senior Counsel and have also examined the various provisions of the Act. I proceed to answer the issue posed in these petitions.

9. Essentially, the issue is whether the sponsorship amount paid by sponsors to the organizers and in lieu of which sponsors and/or their authorized representatives gain entry in a place of entertainment on invitations or passes and/or are also permitted to display their

products, logo or brand name, is payment for admission under Section 2(m) of the Act or introduced for the first time by adding impugned Explanation 2 with retrospective effect.

10. The principles of interpretation are well settled. The Hon'ble Supreme Court in ***Chief Justice of A.P. v. L.V.A. Dixitulu***, *(1979) 2 SCC 34* has clearly held that a Statute has to be interpreted in terms of the intention of the Legislature for which the Act has been enacted, gathered from the language of the provision. It is the language used in the provision which should guide the Courts while interpreting the Statute. Even where two interpretations are possible, the Courts should adopt the interpretation which is in harmony with the other part of the Statute. The relevant paragraphs are reproduced as under: -

> *"66. The primary principle of interpretation is that a Constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the Rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the and literal confines of the provision and to call in aid other well recognised rules of construction, such as its legislative/history, the basic scheme and framework of the statute as a whole, each portion*

throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

67. Where two alternative constructions are possible, the court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment.....”

(emphasis supplied)

11. The Hon'ble Supreme Court in ***RBI v. Peerless General Finance & Investment Co. Ltd*** *(1987) 1 SCC 424* has also held that one of the rules of interpretation is to interpret the same in consonance with the object for which it was enacted. The Court held that the interpretation should match the contextual. The relevant paragraph is reproduced as under:-

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context,

its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place....."

(emphasis supplied)

12. In ***Doypack Systems (P) Ltd. v. Union of India,*** *(1988) 2 SCC 299***,** the Apex Court has, while discussing the principles of interpretation of a Statute, held that the literal construction of the Statute should be given primacy, keeping in mind the intention of the Parliament for which the Statute has been enacted. The relevant paragraphs are reproduced as under:-

"58. The words in the statute must, prima facie, be given their ordinary meanings. Where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary. Nothing has been shown to warrant that literal construction should not be given effect to.....

59. It has to be reiterated that the object of interpretation of a statute is to discover the intention of the Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore the meaning of the statute, is primarily to be sought in the words used

in the statute itself, which must, if they are plain and unambiguous, be applied as they stand…."

(emphasis supplied)

13. The same principles were again reiterated by the Apex Court in ***Gurudevdatta VKSSS Maryadit v. State of Maharashtra*** *(2001) 4 SCC 534*, wherein the Court has again held that the cardinal principle of interpretation is to give ordinary meaning to the words used by the Legislature and the words has to be understood in their natural, ordinary and popular sense and be construed according to their grammatical meaning. The relevant paragraph is reproduced as under:-

"26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute….."

(emphasis supplied)

14. In ***British Airways Plc. v. Union of India*** *(2002) 2 SCC 95,* the Court has put much emphasis on the theory of harmonious construction of a Statute. The Court has held as under:-

> *"8. While interpreting a statute the court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment..... The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation."*
>
> *(emphasis supplied)*

15. From the settled principle of law, it is apparent that, while interpreting a particular provision of a Statute, the grammatical structure of the provisions of the Act has to be given primacy. A particular provision should not be interpreted in isolation, but in context to the object for which that particular Statute has been enacted and the interpretation should further the said object. Where the words used in a Statue are clear and unambiguous, the ordinary grammatical

interpretation to those words should be given unless such an interpretation leads to absurdity.

16. In order to determine the issue in hand which essentially relate to the interpretation of Section 2(m) of the Act and the added Explanation 2 to it, it is necessary to understand the scope and object of the whole Act.

17. Section 9 and Section 10 of the Act puts total restrictions on the admission to a place of entertainment of any person unless such person is in possession of a valid ticket or he/she is a person exempted therein. Section 9 and Section 10 of the Act are reproduced as under for convenience:-

> ***"9. Restriction of admission*** -
>
> *Save as otherwise expressly provided by or under this Act, no person (other than a person who has some specific duty to perform in connection with the entertainment, or duty imposed upon him by law, or a person authorized by the government in this behalf) shall be admitted to any entertainment except with a ticket in the prescribed form denoting that the proper tax payable under section 6 has been paid."*
>
> ***"10. Restriction on entry to entertainment-***
>
> *No person (other than a person who has some specific duty to perform in connection with the entertainment, or duty imposed upon him by law, or a person authorized by the government in this behalf) shall enter or obtain admission to an entertainment without being in possession of a proper ticket as required under section 9."*

18. The term 'ticket' is defined under Section 2(u) of the Act. The provision is reproduced as under:-

> *"'ticket' means a ticket or a complimentary pass for the purposes of securing admission to an entertainment in accordance with the provisions of this Act or the rules made thereunder and a "duplicate ticket", means a ticket or set of tickets used or intended to be used otherwise than in accordance with this Act or the rules made thereunder;"*

19. Section 6 of the Act, which is the charging Section, imposes tax on all "the payments for admission". It casts duty on the proprietor to collect the tax from the person seeking admission and deposit it. The tax is to be paid by person seeking admission and duty is on the proprietor of the entertainment event to collect and deposit it with the revenue. Even where admission is free or on concessional rates, the tax is to be levied on the full rate payable for entry where the entry is generally on payment. Even where lump sum payments are made by way of subscription, contribution, donation or otherwise and if such payments are for the admission to an entertainment, the tax is payable on it. Where in a hotel, club or restaurant entertainment is provided by way of cabarets, floor shows or when an entertainment is organized on special occasions and any free meal or refreshment is provided to the customers with a view to attract them, Section 6 of the Act imposes tax on such free meals and refreshments.

20. Section 6 is reproduced as under in order to make it convenient to understand the provision:-

"6. Tax on <u>payment for admission to entertainment</u>-

(1) Subject to the provisions of this Act, ***there shall be levied and paid on all payments for admission to any entertainment****, other than an entertainment to which section 7 applies,* ***an entertainment tax*** *at such rate not exceeding one hundred per cent of each such payment as the government may from 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.*

(2) Nothing in sub-section (1) shall preclude the government from notifying different rates of entertainment tax for different classes of entertainment or for different payment for admission to entertainment.

(3) Where the payment for admission to an entertainment together with the tax is not multiple of fifty paise, then notwithstanding anything contained in sub-section (1) or sub-section (2) or any notification issued thereunder, the tax shall be increased to such extent and be so computed that the aggregate of such payment for admission to entertainment and the tax is rounded off to the next higher multiple of fifty paise, and such increased tax shall also be collected by the proprietor and paid to the government in the manner 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 a concessional rate, the same amount of tax shall be payable as if such person was admitted on full payment.

(5) Where the admission to a place of entertainment is generally on payment, and if any entertainment is held in lieu of the regular entertainment programme without payment of admission or with payment of admission less than what would have been paid in the

normal course, the proprietor shall be liable to pay tax which would have been payable in a normal course at full house capacity or the tax for the programme held in lieu of the regular entertainment programme whichever is higher.

(6) Where the payment 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 payment for admission, if any, made otherwise.

(7) Where in a hotel or a restaurant, or a club, entertainment is provided by way of cabarets, floor shows, or entertainment is organized on special occasion along with any meal or refreshment with a view to attract customers, the same shall be taxed at a rate to be notified under sub-section (1).''

21. The language of Section 6 unambiguously states that entertainment tax is to be paid on all *'payments for admission'*. The term '*payment for admission'* is defined in Section 2(m) of the Act. Section 6 uses the expression *'there shall be levied and paid on all ''payments for admission to any entertainment'',* the entertainment tax.

22. The expression '*payment for admission'* is defined in Section 2(m). Before the addition of Explanation 2, the impugned Notification, Section 2(m) read as under:-

''2 (m) "payment for admission" includes-

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

(ii) any payment for cable service;

(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, by whatever name called for any purpose whatsoever, 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;

(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;

(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.

Explanation: Any subscription raised, contribution received or donation collected in connection with an entertainment, where admission is partly or entirely by tickets/invitation specifying the amount of admission or reduced rate of ticket shall be deemed to be payment for admission."

23. The definition starts with, using the expression *"payment for admission **includes**"*. The use of word ***'includes'*** in the definition unambiguously demonstrates the intent of the Legislature. The conscious use of the word ***'includes'*** by the Legislature seems to have been done with the intent to give widest possible interpretation to this provision.

24. The Hon'ble Supreme Court in ***M/s Geeta Enterprises and Ors v. State of U.P & Ors,*** *(1983) 4 SCC 202* discussed the meaning of expression ***'includes'*** whenever used by the Legislature and observed as under:-

> *"13. The Allahabad High Court in the case of Gopal Krishna Agarwal v. State of Uttar Pradesh, which was also a case under the Act, held that entertainment tax was leviable on video games. The High Court has very carefully analysed sub-section (3) of Section 2 of the Act and the import of the word 'entertainment' and observes as follows:-*
>
> *"**The context in which the word 'includes' has been used in the definition clauses of the Act does not indicate that the legislature intended to put a restriction or a limitation on words like 'entertainment' or 'admission to an entertainment' or 'payment for admission'.** With the advance of civilization and scientific developments new forms of entertainments have come into existence. 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. In any case it is a payment connected with entertainment which a person is required to make as a condition of attending the entertainment." (emphasis supplied)*

25. The Court concluded in para 14 as under:-

> *"14. We find ourselves in entire agreement with the observations of the Court and fully approve of the ratio decidendi of this case. The Allahabad High Court has given almost the same reasons as given by us in the earlier part of the judgment."*

26. While upholding the findings of the Allahabad High Court in ***Gopal Krishna Agarwal (supra),*** the Hon'ble Supreme Court set aside the findings of the Madhya Pradesh High Court in ***Harris Wilson v. State of Madhya Pradesh*** *AIR 1982 MP 171* which had taken a contrary view.

27. The Apex Court again had the occasion to interpret the word 'include' in ***N.D.P. Namboodripad (Dead) by LRs vs. Union of India (UOI) and Ors.*** *(2007) 4 SCC 502.* The Hon'ble Supreme Court, while interpreting the meaning of the word 'include' had reiterated that it should be given the widest possible meaning. The Hon'ble Supreme Court stated in para 18 that, *"...it is no doubt true that generally when the word 'include' is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive...."*

28. The Hon'ble Supreme Court in an earlier judgment ***P. Kasilingam and Ors. vs. P.S.G. College of Technology and Ors.*** *AIR 1995 SC 1395,* while discussing the meaning of words 'means' and 'includes' has held as under:-

> *"19....A particular expression is often defined by the Legislature by using the word 'means' or the word*

'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression that is put down in definition." (See: Gough v. Gough [(1891) 2 QB 665:60 LJ QB 726]; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court[(1990) 3 SCC 682, 717 : 1991 SCC (L&S) 71]). The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words 'means and includes', on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions....."

(emphasis supplied)

29. Again, in ***Bharat Cooperative Bank (Mumbai) Ltd. vs. Cooperative Bank Employees Union*** *(2007) 4 SCC 685*, the Hon'ble Supreme Court, while defining the meaning of expression 'include' used by the Legislature has held in para 23:-

"23....On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition; makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise...."

(emphasis supplied)

30. The same principle of interpretation of the word 'include' has been reiterated by the Hon'ble Supreme Court in the case ***Hamdard (Wakf) Laboratories vs. Deputy Labour Commissioner and Ors.*** AIR

2008 SC 968 wherein the Apex Court has held that *"When an interpretation clause uses the word "includes", it is prima facie extensive…".*

31. In ***Commercial Taxation Officer vs. Rajasthan Taxchem Ltd.*** *(2007) 3 SCC 124,* the Hon'ble Supreme Court has again put emphasis on the need to give wider interpretation to the word 'include. The Apex Court has held as under:-

> *"22...The word includes gives a wider meaning to the words or phrases in the Statute. The word includes is usually used in the interpretation clause in order to enlarge the meaning of the words in the statute. When the word include is used in the words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact but also those things which the interpretation clause declares they shall include...."*
>
> *(emphasis supplied)*

32. Earlier also, the Hon'ble Supreme Court in ***S.K. Gupta and Anr. vs. K.P. Jain and Anr.*** *(1979) 3 SCC 54,* while discussing the meaning and import of word 'include' has clearly held in para 24 of its judgment that *"....But where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable but it also bears its extended statutory meaning. At any rate, such expansive definition should be so construed as not cutting down the enacting provisions of an Act unless the phrase is absolutely clear in having opposite effect.."*

(emphasis supplied)

33. It therefore is clear that the fundamental canon of statutory construction is that a literal interpretation is the first and foremost approach. If the words are plain and clear, the Courts must give effect to its ordinary meaning without adding or subtracting anything. It is the grammatical interpretation which is needed to be given to a word used in a provision and the same should be in harmony and consonance with the Statute.

34. In the Act, the Legislature has used the expression 'include' in Section 2(m) of the Act which defines the *payment for admission* and also in Section 2(aa) of the Act which defines *admission to an entertainment*. From the object of the Act and the language used by the Legislature in other provisions of the Act clearly shows that the Legislature has consciously used the word 'include' in Section 2(m) and Section 2(aa) of the Act. The use of the word 'include' in these two definitions, defining 'payment for admission' and 'admission to an entertainment' is inclusive in nature. The use of expression clearly shows the intention of the Legislature to give expanded and wide meaning to the definitions of 'payment for admission' and 'admission to an entertainment'. The object and purpose of passing this Act was to impose entertainment tax on the admissions to an entertainment. The use of the expression 'include' is intended to have been used in these two definitions with the object to expand the meaning of the definitions to include all the payments for admission and admissions to an entertainment with intent to curtail the non-payment of entertainment tax by camouflaging the payments or the admissions to an entertainment events. The expression ***"include"*** thus needs to be

given widest connotation to fully justify the intention of Legislature which is to interpret the Act in such a manner which help in tackling the situation and efforts made to avoid taxes by adopting indigenous methods, by couching or disguising payments made to organizers. This view finds support from the findings of the Apex Court in ***British Airways Plc (supra),*** wherein the Hon'ble Court has clearly held that *"it is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy"* and to keep in mind *"the consequences which are likely to flow upon the intended interpretation"*.

35. Section 2(m) (i) of the Act envisages that besides payment for seats, payments made for *"other accommodation in any form in a place of entertainment"* is also to be treated as payment for admission. The definition makes it clear that besides making payment for seats, if payment is made for other accommodations in any form in a place of entertainment, such payment is payment for admission. Such accommodation could be in the form of display of products or logo or brand names or permission to put up the advertisement in a place of entertainment, and then if any payment in lieu of such accommodation is made to the organizer, as per this definition, it is payment for admission to an entertainment.

36. This payment could be payment in the form of sponsorship amount. If on account of payment of the sponsorship amount, the sponsors are accommodated to display their products or logo or brand name or put up their advertisements, then this sponsorship amount paid as per definition of Section 2(m)(i) of the Act is payment for

admission. This is the only interpretation that can be given to this provision.

37. Sub-clause (iv) of clause (m) of Section 2 of the Act includes within its ambit, any payment made by a person in any form, called by whatever name, may be made for any purpose, connected with the entertainment and if in lieu of that, a person is allowed to attend the entertainment or allowed to continue to attend it, then such payment by virtue of this provision, is payment for admission. The use of the words and expression ***"any payment, by whatever name called for any purpose whatsoever",*** if that purpose is *"connected with entertainment"* and which a person is required to make ***"in any form"*** as a ***"condition of attending"***, unambiguously depicts the intention of Legislature to give widest amplitude to this provision. To give narrow or restricted interpretation to the definition would certainly defeat the object of the provision and intent of the Legislature.

38. The Hon'ble Supreme Court in ***Gurudevdatta VKSSS Maryadit (supra)*** has clearly held that "*the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning....*" . The well-settled principle is that the words have to be given its ordinary meaning, especially where the words are clear, plain and unambiguous. The words used are certainly the best source to know and understand the intention of the Legislature while framing the said law.

39. Earlier, there was only one Explanation to Section 2(m) of the Act. By impugned amendment, Explanation 2 was added. The earlier

Explanation is now termed as Explanation 1 and is reproduced as under:-

> *"Explanation 1: Any subscription raised, contribution received or donation collected in connection with an entertainment, where admission is partly or entirely by tickets/invitation specifying the amount of admission or reduced rate of ticket shall be deemed to be payment for admission."*

40. As per this Explanation, any subscription raised, contribution received or donation collected in connection with an entertainment, where admission is partly or entirely by tickets/invitation shall be deemed to be payment for admission. This Explanation clarifies to some extent the expression "any payment", "by whatever name called for" and "made for any purpose whatsoever" used in Section 2(m) of the Act, by stating that even where the payments received are termed as subscription, contribution or donation, it is payment for admission. This shows that even before the impugned amendment, Section 2(m) of the Act has postulated that payments by whatever name it may be called for, if it is made for entry to a place of entrainment, then such payments even if it is termed as subscription, donation or contribution shall be deemed payment for admission. The Legislature has used the expressions *"payments for other accommodation in any form in a place of entertainment"* in Section 2(m)(i) of the Act. Similarly, in Section 2(m)(iv) of the Act, the language used by the Legislature, is any payments made, any name given to such payment and given for any purpose which is 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, then such payment made in any form is taxable. It could be in the form of providing certain free services or other benefits or any other freebees. Language of Section 2(m) of the Act is wide enough to include the payment *made in any form*. The conscious use of such wide range language by the Legislature only indicates that it has been used with an object to circumvent the evasion of tax.

41. The said intention can also be seen, in the language used while defining *"Admission to an entertainment"* in Section 2(aa) of the Act. In this definition, the Legislature has again used the expression ***includes.*** The expression 'admission to entertainment' includes *"admission to any place in which entertainment is held"*. While defining the expression *"Admission to an entertainment",* the Legislature has not used the expression "Admission of *a person* to a place where entertainment is held" rather it has used the language *"includes admission to any place where entertainment is held"*. Reading of this plain inclusive language suggests that admission to a place of entertainment could be of a person or by any other way like display of goods, brand names or logo or advertisement of one's product etc. at a place where entertainment is being held. Wide amplitude of the provision cannot certainly be restricted. When both the definitions of admission to an entertainment and definition for payment for admission, is read together, it clearly shows that where payment is made for accommodation of the nature of advertisement or display of logo/brand name, it is admission to a place where the entertainment is held and, therefore, is any payment is made and that

payment may have been given any name, the tax is leviable on such payment. The Act envisages tax on payments made in any manner, or by any name, if by making that payment, admission to a place of entertainment is sought, then tax is leviable on such payment.

42. The impugned Notification is to be seen in this background for ascertaining if the Legislature vide impugned Explanation 2 has added new levies which were not envisaged in the main provision i.e. Section 2 (m) of the Act. The impugned notification reads as under:-

> *"Explanation 2: Any sponsorship amount paid or value of goods supplied or services rendered or benefits provided to the organizer of an entertainment programme in lieu of advertisement of sponsor's product/brand name or otherwise shall be deemed to be payment for admission."*

43. This Explanation envisages that any sponsorship amount paid or value of goods supplied or services rendered or benefits provided to the organizer of an entertainment programme in lieu of advertisement of sponsor's product/brand name, etc. is deemed to be payment for admission.

44. The purpose and object of an Explanation which is added to any Section is to clarify and explain the original provision. There is no dispute to the proposition of law that the Legislature cannot by way of explanation add any new levy, without amending the main provision. The Hon'ble Supreme Court in the case of ***S. Sundaram Pillai and Ors. vs. V.R. Pattabiraman & Ors.*** *(1985) 1 SCC 591* had the occasion to consider the scope of Explanation and the Hon'ble Court has held as under:-

"53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve.

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

The same principles were reiterated by the Hon'ble Supreme Court in ***Dipak Chandra Ruhidas v. Chandan Kumar Sarkar*** *(2003) 7 SCC 66.*

45. This Court needs to judge the nature of impugned Explanation in the light of these principles which the Apex Court has formulated, in order to conclude whether the impugned Explanation is

explanatory/clarificatory or it adds new levy, if it is latter, then it has to go.

46. For this, we need to construe Section 2(m). As already discussed, Section 2(m)(i) of the Act states that when a payment is made for seats or other accommodations in any form in a place of entertainment then such payment for seats or other accommodation in any form is subjected to tax as the same is payment for admission. It is apparent that the language used by the Legislature in Section 2(aa) and Section 2(m) of the Act is of widest amplitude. Thus, it can be safely discern from it that the Legislature has always intended to include levy on the payments made for tickets or other accommodations of any nature in a place of entertainment when admission to a place where entertainment is being held, is sought. The conjoint reading of Sections 2(aa) and 2(m)(i) clarify the intention of the Legislature that it had intended to levy taxes on the payments made for other accommodations in a place of entertainment, in any form, which could be, as already discussed, by display of brand/logo or putting up of advertisement, considering it an admission to a place in which entertainment is being held. Similarly, any payment by whatever name it may be called for, which a person is required to make "in any form" as a condition precedent to attending or continue attending the entertainment then such payment made in any form, is also payment for admission under Section 2(m) of the Act. Such payments could be termed as sponsorship amount or be called by any other name and such payments can also be in the form of providing free meals, beverages, decoration of the venue or other services or

other benefits to the organizers of the events. The provision wraps within it all these payments as it clearly states that payments in any form in lieu of which a person is allowed to attend or continue to attend the entertainment. It is crucial to note that the Legislature in Section 2(m) has used the expression "includes". It states "payment for admission" "includes" and, therefore, the definition of payment for admission is inclusive one and has to be given wider interpretation.

47. The petitioners in these petitions have challenged the levy of tax on sponsorship amounts, alleging that tax on the sponsorship amount was not leviable as per Section 2(m) and it has sought to be brought within the purview of Section 2(m) of the Act by adding Explanation 2 to it and in this way the new tax provision has been added without amending main Section.

48. The undisputed facts are that the FDCI is a registered Society which was established solely for the purpose of promoting and fostering the growth of the Indian Fashion industry. The events so organized by FDCI are non- ticketed events, i.e., entry to the shows organized by it is exclusively by invitation, both for domestic and international buyers, associated professionals and media. It was granted 100% exemption from the liability to pay entertainment tax under the Act in respect of the events held by it for the period 2002-2004. However, for the year 2008-2009, such exemption for holding such events was withdrawn and as a special case, considering the recession in the industry and export sectors and to project Delhi as a world class city, the liability of FDCI to pay the tax, was restricted to 50% of the tax payable.

49. FDCI approached this Court in writ petitions bearing W.P.(C) No.1145/2010, W.P.(C) No.3199/2011, W.P.(C) No.3200/2011, W.P.(C) No.3201/2011, W.P.(C) No.6564/2011, W.P.(C) No.7505/2011, W.P.(C) No.7506/2011, W.P.(C) No.1169/2010 and W.P.(C) No.4728/2010 against the assessment orders and demand of 50% of the entertainment tax and non-issuance of No Objection Certificate (NOC) on account of non-payment of entertainment tax. This Court directed the issuance of NOC subject to deposit of money. Before Additional Entertainment Tax Officer (AETO), FDCI raised two contentions. The first was that the Fashion shows were not 'entertainment' under the Act and the second was, that the sponsorship amounts received by it were not "payment for admission to the entertainment" and, therefore, non-chargeable to entertainment tax. The AETO rejected both the contentions of FDCI.

50. The contentions raised by FDCI before AETO is noted by Coordinate Bench of this Court in para 4 of its judgment dated 30.04.2012, reads as under:-

> *"4. A perusal of the assessment orders shows that the principal contentions raised by the petitioners before the AETO were these. The first contention was that the Fashion show was not an "entertainment" under the Act. This contention was rejected by the AETO who held that it is an exhibition of designs and clothing and would also amount to a performance by the models on the ramp and thus the Fashion show amounts to an "entertainment". The other contention raised by the petitioner was that the sponsorship amount received in respect of the Wills Lifestyle India Fashion Week was not "payment for admission to the entertainment" and therefore not chargeable to*

> *entertainment tax. This contention was also rejected by the AETO, relying upon the inclusive definition of the term "payment for admission" in Section 2 (m) of the Act."*
>
> *(emphasis supplied)*

51. However, while challenging the assessment orders before this Court, the FDCI in the writ petitions confined its contentions only to two grounds. The contentions raised by the FDCI before the Division Bench of this Court in these writ petitions was noted by Division Bench as under. In para 7, the first contention is noted as follows:-

> *"7. The first contention is based on the powers of delegation given under Section 4 of the Act to the government."*

52. It, therefore, is clear that FDCI in these earlier writ petitions did not challenge the findings of AETO that the fashion shows are entertainment events within the meaning of the Act. This Court has dealt with the second contention of the FDCI in para 15 of the said judgment dated 30.04.2012 and observed as under:

> *"15. The second contention put forth before us is that the sponsorship amounts collected by the petitioner cannot be considered as "payment for admission" within the meaning of Section 2 (m) or Section 6 (6) of the Act. It is stated that sponsors make payment of the amounts to the petitioner for sponsoring the Fashion show and there is no stipulation that the amounts are received by the petitioner on condition that some persons will be allowed admission to the Fashion shows without any separate payment for the same. This contention was put forward before the AETO. But he has not chosen to examine the same on the basis of the facts, the agreements between the petitioner and the sponsors. He has examined the*

question whether the Fashion shows are "entertainment" within the meaning of the Act, an aspect about which there is now no dispute. The AETO has referred to the question whether the sponsorship amount collected by the petitioner represented payment for admission to an entertainment in para 17 of his order dated 11.06.2009, which is an assessment order for the period 15.10.2008 to 19.10.2009. He has merely referred to Section 2(m) of the Act, and particularly to clause (i) of the provision. He has noted that the definition of the expression "payment for admission" is an inclusive definition and, therefore, should be construed liberally. He has also referred to Section 2(aa) of the Act which defines the term "admission to the entertainment". From this provision he has drawn the inference that even if the payment received by the petitioner is not in consideration of allotment of seats to the sponsor, it would still fall for being considered as payment for admission because of the inclusive definition which is wide enough to cover participation in any Fashion show. In support of his conclusion the AETO merely referred to Section 6(6) of the Act in paras 24 and 25 of the impugned order."

53. The finding that fashion shows are entertainment has attained finality since matter though taken to the Hon'ble Supreme Court was withdrawn. Even otherwise in ***Amit Kumar*** *(supra),* the Hon'ble Supreme Court has clearly stated that fashion shows are subjected to entertainment tax even though the invite was only by invitation. The Court held that such acts are *subterfuge* to avoid tax. The Court has held as under:-

"19. We have carefully considered the submissions made on behalf of the respective parties and we are inclined to agree with Mr. Dviwedi that the fashion

show was held with full knowledge that entertainment tax was payable in respect thereof and that though tickets may not have been issued in respect of the programme and only invitation cards had been issued, the same was merely a subterfuge for the purpose of evading and/or avoiding payment of entertainment tax. It is difficult to believe that the fashion show was held with the object of educating prospective students who would be interested in joining the Institute of Art, Fashion Designing and Modelling and was, therefore, exempt under Section 11(3) of the 1979 Act. As the advertisement referred to above indicates the object of the show was to invite people to come and watch the new world of glamour and modelling and to see the world of exotic fashion in Gorakhpur itself."

(emphasis supplied)

54. Even otherwise, the question whether an event of fashion shows is an entertainment within the meaning of Act or not, is a question of facts, to be determined by the concerned authorities in terms of settled principles of law as set out in various pronouncements, including ***M/s Geeta Enterprises and Ors.*** *(supra)*, based on evidences and documents produced before it.

55. In ***M/s Geeta Enterprises and Ors.*** *(supra)*, the Hon'ble Supreme Court has interpreted the expression *'entertainment'* as used in Section 2 (3) of The Uttar Pradesh Entertainment and Betting Tax Act, 1937, which is akin to Section 2(i) of the Act which defines the word 'entertainment' and Section 3 of The Uttar Pradesh Entertainment and Betting Tax Act, 1937, is akin to Section 6 of the Act. In ***M/s Geeta Enterprises and Ors.*** *(supra)*,the Apex Court has

laid down the parameters to be considered while deciding whether an event is an entertainment or not. The Court has held as under:–

> *"12. 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 Section 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. that the show may provide any kind of amusement whether sport, game or even a performance which requires some amount of skill.*
>
> *In some of the cases, it has been held that even holding of a tombola in a club hall amounts to entertainment although the playing of tombola does, to some extent, involves a little skill.*
>
> *3. that even if admission to the hall may be free but if the exhibitor derives some benefit in terms of money it would be deemed to be an entertainment.*
>
> *4. that the duration of the show or the identity of the person who operates the machine and derives pleasure or entertainment or that the operator who pays himself, feels entertained is wholly irrelevant, in judging the actual meaning of the word 'entertainment' as used in Section 2 (3) of the Act. So also the fact that the income derived from the*

show is shared by one or more persons who run the show." *(emphasis supplied)*

56. The Court has clearly held *"that the operator who pays himself, feels entertained is wholly irrelevant, in judging the actual meaning of the word 'entertainment'.* Hence, it is apparent that if a person pays for seats or other accommodation in any form in a place of entertainment, it is not essential that he should be entertained.

57. In ***M/s Geeta Enterprises and Ors.*** *(supra)*, the Hon'ble Supreme Court has categorically held that when a show is an entertainment than any payment made for admission to such entertainment in any form, is levy to tax. The Court further held that even where the entry to a show is free, if the exhibitor derives some benefits in terms of money, such shows shall be ***deemed to be an entertainment*** and that it is immaterial if the income is shared by more persons.

58. The findings of the Hon'ble Supreme Court in ***M/s Geeta Enterprises*** *(supra)* is in relation to the video shows, which though are entertainment, and where the admission was free but the payment was to be made for the use of game machine and the Court on these facts held that the money charged for the use of the video machine is payment for admission to an entertainment and so taxable. It is the use of video machines located in the place of entertainment and the payment made for the use of such video machines and the profits earned by the organizers, which weighed in the mind of the Court when the Court held that such payments are payment for admission to a place of entertainment.

59. Applying the same analogy where anyone uses a place of entertainment for display of its brand name/logo/products and pays for it in any form, either in cash terming it as sponsorship money or in kind, i.e., by giving some benefits in the form of freebees which could be free goods, free services or other benefits to the organizers and thereby causing profits to the organizers, then such benefits and sponsorship money and payments made is admission to a place of entertainment. It is apparent that in such scenario, the organizers are saving its expenditure on such services while organizing the events and thus earning profits. By virtue of definition of payment for admission in Section 2(m) of the Act, these certainly have to be considered as payments for admission in a place of entertainment. No one can be allowed to evade tax by camouflage. The definition of payment for admission in Section 2(m) of the Act is wide enough to include all payments by piercing the camouflage as also observed by the Apex Court in para 12 of ***M/s Geeta Enterprises*** *(supra)* where it has clearly held that even where the admission to an entertainment is free, *"but if organizers derives some benefit in terms of money, it would be deemed to be an entertainment"*.

60. This Court in earlier challenge by FDCI in its judgment dated 30.04.2012 in para 16, has clearly held that *"unless the terms and conditions of the sponsorship agreement are examined it may not be possible to ascertain the true nature of the payment and decide about the applicability of the relevant provisions of the Act..."*

This makes clear that this Court in its earlier judgment has clearly opined that whether a sponsorship amount paid amounts to

payment for admission or not is a question of facts, to be ascertained from documents. In this context, this Court has further observed that "*The provisions of the Act have to be applied only to the facts gathered and governing the case and not in vacuo."*

61. This Court has clearly held that true nature of the payment is essentially to be ascertained from the agreements and other documents for determining the issue whether payment made is payment for admission as defined in Section 2(m) of the Act. Nomenclature of the payment is immaterial. The Coordinate Bench of this Court in earlier judgment dated 30.04.2012 held that fashion shows are entertainment and it is the discretion of authorities to grant exemption or not and thereby upheld the charge of 50% tax of the tax payable by FDCI. The Court remanded the matter for ascertaining the payable tax and in this context, the Court has held as under:-

> *"20. Whether to grant exemption to the Fashion events from entertainment tax or not is a discretionary power granted to the Government of NCT of Delhi. However, the discretion is controlled by the criteria mentioned in the section. Even if the criteria stands satisfied, it is for the government to decide whether full exemption or part exemption is to be given to the petitioner from entertainment tax. The exemption, whether full or part, may also be granted subject to such terms and conditions as the government may deem fit to impose. It appears that essentially it is a matter which is within the domain of the executive and judicial review is limited to examining whether the relevant criteria have been kept in view and whether the decision making process has been just and fair. It is not for Court to examine the correctness of the decision of the executive. The Court can examine only*

the decision making process. On a perusal of the order passed by the Government of NCT of Delhi on 10.09.2009 and on a fair reading thereof we find that the petitioner has been given a personal hearing to explain its petition for exemption from entertainment tax and thus the rules of natural justice have been adhered to, though Section 14 of the Act does not specifically refer to the grant of a personal hearing. Secondly, all the points raised by the petitioner in support of the claim for exemption have been duly noted in the impugned order and taken into consideration by the competent authority. After taking into account all the relevant criteria and the submissions made by the petitioner, the competent authority has taken a decision to grant exemption to the petitioner from payment of entertainment tax only to the extent of 50% of the tax amount as a special case. In coming to this decision it seems to us that there is no flaw, irregularity or irrationality in the decision of the competent authority justifying interference under Article 226 of the Constitution of India. The relevant part of the impugned order which has been extracted by us hereinabove bear out the reasons for not accepting the claim of the petitioner in full. The petitioner has been treated fairly and objectively and we, therefore, decline to interfere.

23. In these writ petitions, interim directions were issued for deposit of tax as condition for issue of NOC for holding the events. The events were permitted to be held as the petitioners deposited the tax as directed by this Court. In the assessment orders to be passed under Section 15 of the Act, pursuant to the disposal of the writ petitions, the AETO may raise demands including interest, subject to appropriate/ suitable adjustments for tax already deposited, and subject to the petitioner being given reasonable opportunity of being heard."

62. The said order was challenged by FDCI before the Hon'ble Supreme Court in SLP (C) No.23411/2012. The said SLP was withdrawn by the FDCI with permission to approach the appropriate forum if any adverse order is passed by the authority concerned in pursuance of the remand order. These findings of the Coordinate Bench of this Court that FDCI is liable to pay 50% of tax leviable, has attained finality.

63. The argument that the sponsorship amount is beyond the scope of Section 2(m) and no tax can be levied on it under Section 6 is without any merit. The sponsorship amount was considered payment for admission by Hon'ble Supreme Court also in ***Amit Kumar*** *(supra)* also. The findings of the Apex Court in ***Amit Kumar*** *(supra)* and of the Coordinate Bench of this Court in writ petitions *(supra)* were given before the impugned Explanation was added to Section 2(m) of the Act.

64. Sections 9 and 10 of the Act put total embargo on the admission of any person to any entertainment, except as provided in these provisions. If any person supplies goods or renders services or provides benefits to the organizers of an entertainment programme and in lieu of that he is allowed to put up his advertisements, to display his product/brand name, etc. thus allowed admission to a place where entertainment is held, in view of Section 2(aa) of the Act, it is admission to an entertainment. Naturally, he is permitted to do so by the organizers of those events only in lieu of the benefits he has provided to him. To put it otherwise, a person is when accommodated in the manner that he is permitted to display its product/brand name in

an entertainment event in lieu of certain value of goods supplied by it or/and services rendered by it or/and the benefits provided to the organizers, then such value of goods supplied and services rendered or benefit provided amounts to payment for admission to such an entertainment and are leviable to tax. Such payments can be said to have been made in these forms, a situation envisaged in Section 2(m) (iv) which includes payments made *"in any form"*.

65. The language of charging Section 6(6) of the Act further clarifies the intent of Legislature that the Section 2(m) of the Act is required to be given the widest possible interpretation to avoid the theft of tax. It is the charging Section and levy entertainment tax on every payment for admission to any entertainment. For the sake of repetition, Section 6(6) of the Act is reproduced herein:-

> *"**6. Tax on payment for admission to entertainment-***
>
> *(1) to (5) XXX XXX XXX*
>
> *(6) Where the payment 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 payment for admission, if any, made otherwise.*

66. This clause levy tax on two types of payments. Firstly, on payments made in lump sum and secondly, on the amount of payments *"made otherwise for admission"*. The expression *"made otherwise"* thus includes payments made in other forms for admission to a place of entertainment. Section 2(m) of the Act states that any payment made in any form is payment for admission. On superimposing the

charging Section 6(6) of the Act on Section 2(m) of the Act, it is clear that charge shall be levied on *"payments made otherwise"* and as discussed earlier it could be in the form of benefits, services etc. This shows that even before the impugned amendment was added to Section 2(m) of the Act, such services or benefits were subjected to entertainment tax. This goes to show that the Explanation has simply clarified the provisions of Section 2(m). It is clarificatory in nature and is intended to remove the loopholes of which the entertainment industry is amenable to take advantage in order to avoid the taxes. Vide this Explanation, the Legislature is certainly not introducing any new tax regime which is not covered under Section 2(m) of the Act. There is no doubt that the purpose and aim of an Explanation should be to advance the scope of the Act. If the Explanation is meant to suppress the mischief, adopted to subserve the main object of the Statute, the Explanation cannot be struck down. This Explanation provides an additional support to the dominant object of this Act and also furthers the meaning and object and intendment of the Act. It also removes the vagueness and clarifies the provisions of the Act to make it consistent with the object of the Act.

67. The argument that the Legislature has travelled beyond its jurisdiction by adding new regime of tax without amending the provision thus has no merit.

68. In the case of ***CIT vs. Gold Coin health Food Private Limited*** *(2008) 9 SCC 622*, the Hon'ble Supreme Court has clearly held that where a Statue is passed which is clarificatory and explanatory to a former Statute, the subsequent Statue relates back to the time when the

prior Act was passed. The relevant paragraphs are reproduced as under:-

> *"18. As noted by this Court in CIT v. Podar Cement (P) Ltd. [(1997) 5 SCC 482] the circumstances under which the amendment was brought in existence and the consequences of the amendment will have to be taken care of while deciding the issue as to whether the amendment was clarificatory or substantive in nature and, whether it will have retrospective effect or it was not so.*
>
> *19. In Principles of Statutory Interpretation, 11th Edn., 2008, Justice G.P. Singh has stated the position regarding retrospective operation of statutes as follows:*
>
> > *"The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court: 'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word "enacted".' But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be*

retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' or 'shall be deemed never to have included' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law.

20. In Zile Singh v. State of Haryana [(2004) 8 SCC 1] sc held as under (SCC pp. 8-9, paras 13-15)

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the

statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only—'nova constitutio futuris formam imponere debet non praeteritis'—a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).

14. The presumption against retrospective operation is not applicable to declaratory statutes ... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended ... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment

> *of this nature will have retrospective effect (ibid., pp. 468-69).*
>
> *21. Above being the position, the inevitable conclusion is that Explanation 4 to Section 271(1)(c) is clarificatory and not substantive. The view expressed to the contrary in Virtual case [(2007) 9 SCC 665] is not correct."*

69. Also, in the case of ***ETO v. Ambae Picture Palace*** *(1994) 1 SCC 209*, the Hon'ble Supreme Court has clearly held that when the Parliament or State Legislature has the competence to legislate, they can do so prospectively as well as retrospectively and the taxation laws are no exception to this power. The retrospective effect of Explanation 2 does not make it illegal for two reasons; firstly that the Legislature has in express terms made it operational with retrospective effect and secondly, the very nature of amendment is clarificatory and thus does not in any way affects the existing rights of the parties.

70. Another argument of the petitioners is that no machinery and methodology is provided under the Act to calculate the tax on the payments as described in Explanation 2 of the Act. It is argued that the amendment is vague and unguided and there is no mechanism for determining the value of the goods supplied or services rendered or benefits provided.

71. On the other hand, it is argued on behalf of the Revenue that Section 8 of the Act restricts holding of an entertainment without prior information to the Commissioner. Rule 11 of Delhi Entertainment and Betting Tax Rules, 1997 (hereinafter referred to as "the Rules") deals with the manner in which such information is to be furnished to the

Commissioner by a Society or a person. It requires that an organizer shall supply information in Form-5 in case of ticketed event and in Form-6 where the admission is exclusively by invitation. It is argued that Form-6 is comprehensive and requires an organizer to disclose besides name and nature of entertainment, the estimate of expenses, sources of meeting the expenses, name of sponsors and the sponsorship amount and name of advertiser and the amount received from them and to disclose also the number of seats in each class, manner and criteria of distribution of invitation cards and levy can be easily laid on the basis of this information. It is further argued that Government had issued notification under Section 6 of the Act wherein it has fixed the entertainment tax at the rate of 15%. As per Rule 25 of the Rules, the tax is to be paid by proprietor on the basis of returns of payment for admission to the entertainment furnished in terms of Section 11 (b) of the Act and thus the organizer is required to pay tax on the basis of return furnished by him. It is argued that Section 15 of the Act requires that on the basis of information furnished by an organization in Form 6, the assessment is to be done and under certain circumstances reasonable opportunity to the proprietor is mandated before passing of the assessment order. The aggrieved person also is provided a right to appeal to the Commissioner against such order. The Act has also made the provision of Appellate Authority whose jurisdiction can be invoked against order of Commissioner. The Act thus provides sufficient mechanism and it cannot be said that there is no machinery provided

for charging tax on payments, as envisaged in Explanation, received for admission to an entertainment.

72. I have given thoughtful consideration to the arguments of learned Senior Counsel of the parties. Their arguments in detail on this point are recorded by my learned brother in his order and therefore not repeated again.

73. Section 6 is the charging Section. Sub-section (1) of Section 6 of the Act makes it mandatory to levy entertainment tax on *"all payments for admission to any entertainment"*. The language used is *"there shall be levied"*. On imposing the definition of *"payment for admission"* in Section 2(m) of the Act, it is evident that all payments made in any form or be termed by any name either for seats or other accommodation in any form in a place of entertainment, the charge shall be levied on such payments which may be in terms of money or which could be in terms of benefits/services etc. as already discussed and it is the duty of organizer to collect and deposit it.

74. Section 8 of the Act prohibits the holding of any event except with the prior information to the Commissioner in the prescribed manner. Rule 11 of the Rules provides the manner in which such information is to be furnished. The same is reproduced as under:-

> ***"11. Form and manner of information before holding an entertainment***
>
> *A person or society desirous of holding an entertainment shall submit to the Commissioner an application in Form "5" where it is a ticketed programme and in Form "6" where the admission to the entertainment is exclusively by invitation, at least*

seven clear days before the date of such entertainment:

PROVIDED that, the Commissioner may accept the application at a shorter period if he is satisfied that there were cogent grounds or difficulties for not submitting the application earlier and there is sufficient time for depositing the security, getting the tickets attested, obtaining Form "7" register and for completing other necessary formalities before starting the show."

75. The information is required to be furnished in term of Rule 11 of the Rules in Form-5 for ticketed events and Form-6 for entertainments which are exclusively by invitation. Form 6 is reproduced as under:-

"FORM 6

(Prescribed under rule 11)

INFORMATION BEFORE HOLDING AN ENTERTAINMENT WHERE ADMISSION TO THE ENTERTAINMENT IS EXCLUSIVELY BY INVITATION

To

The Commissioner

……..

Sir,

I desire to hold an entertainment in which admission is solely on the basis of invitation and submit the following information as required under rule 11 of the Rules made under the said Act:-

1. Name of entertainment

2. Nature of entertainment

3. Name of permanent as well as local address of the proprietor

4. Name and permanent as well as local address of the person who will be responsible for management and for conducting day-to-day business.

5. Approximate period of stay in Delhi

6. Place or places where shows are proposed to be held

7. Date from which shows are proposed to be started

8. Estimate of expenses with details

9. Sources for meeting the expenses

10. Name of sponsors and the amount sponsored by them

11. Name of advertiser and the amount received from them

12. Number of shows to be given daily as well as special shows, if any, and the time of starting of each show

13. Number of seats in each class

14. Total number of each kind of tickets printed for each class for each show

15. Name of place and date, if any, where shows were last held

16. Last serial number of each kind of ticket for each class and for each show issued at last place

17. The amount of security deposit if any, lying with the department if shows were held previously

18. The amount of arrears of tax, if any, to be deposited in respect of shows held previously

19. Manner and criteria of distribution of invitation cards

20. Outlets of distribution of invitation cards if distribution if on first come first serve basis

21. Specimen signature of the persons who own

22. Specimen signature of the person responsible for management

23. Additional information, if any, required by the Commissioner

Date…….

Signature……..”

76. The said Rule thus also distinguishes in the events which are ticketed and those which are non-ticketed, i.e., where the admission is by invitation. Here, it is important to note that pursuant to Sections 8 and 9, there is absolute restriction to entry to a place of entertainment (excluding those exempted under Sections 8 and 9) otherwise than on a ticket, and ticket also includes complimentary passes [Section 2 (u)]. From the language of Form 6, it is clear that the organizer is required to disclose the expenditure incurred and the sources of such expenses. While disclosing such expenses and its sources, the organizer has to disclose of the contracts he has entered into with various entities or persons whom he had allowed admission to a place of entertainment either for seats or/and by accommodating them to the extent of allowing them to display their logo, brand name or put up their advertisements. Where the agreement is to provide free services, free beverages, food etc. and in lieu of such accommodation, the organizer accommodated them to the extent that they were permitted to display their brand name, logo or advertise their product in a place of entertainment, that being payment for admission to a place of entertainment is taxable. These are the expenses which the organizer has saved and thus earned profit. Form 6 requires an organizer to disclose its expenses and sources to meet such expenses and where certain expenses are met by others by providing services, goods and other benefits the organizer while filling Form 6 needs to disclose it.

77. Section 6(6) of the Act envisages where payment is made in lump sum such as in the form of subscription, contribution, donation or 'otherwise' then tax is leviable on this lump sum amount paid towards subscription, contribution and donation. This provision also levies tax on "payments for admission made otherwise". On conjoint reading of Section 2(m) of the Act and this provision, it is clear that any payment made otherwise in any other form, which form could be by providing services, giving certain benefits or by supply of certain goods, or lump sum amount termed as sponsorship, the tax is to be levied on such benefits which saves the expenditure of the organizer which he would have otherwise incurred for organizing the event. It certainly cannot be said that there is no charging provision under the Act.

78. Section 6(7) of the Act further clarifies the intention of Legislature to include in tax net the free refreshment and meals provided in an entertainment event. No doubt, this provision is restricted to hotel etc. but when the Act provides levy on such items in clear terms, it cannot be said that the Act provides no method of calculating taxes on such services, goods or benefits or freebees.

79. It is also clear that Form 6, which is meant for non-ticketed events like the one held by FDCI, the organizer of an event is required to furnish wide arena of information like estimate of expenses with details, sources for meeting the expenses, name of sponsors and the amount sponsored by them, name of advertisers and the amount received from them, number of seats in each class, last serial number of each kind of ticket for each class and for each show issued at last

place, the manner and criteria of distribution of invitation cards, outlets of distribution of invitation cards if distribution is on first come first serve basis and any other additional information, if any, required by the Commissioner. The list is exhaustive, wherein the organizer of an event can very clearly disclose sponsorship amounts received by him. He can also disclose the value of goods, which are not difficult to be valued. Also, it is noteworthy that even before the impugned Explanation 2, the Form 6 required the organizer of a non-ticketed event to disclose as per serial No.10 and 11 of Form 6, the name of sponsors and advertiser and the amount received from them. This further shows that impugned amendment does not levy new taxes.

80. As regards the value of benefits or services he has received from persons whom he has allowed admission, is concerned, he knows the expenditure he had to incur if those services or benefits are not provided to him and he had to incur those expenses on his own. These facts are within his knowledge, being organizer or manager of the entertainment event. Form 6 contains columns which require an organizer of the event to estimate the expenses and disclose its source. It therefore cannot be said that the Act has no charging Section or the Act does not provide the manner in which the information is needed to be conveyed to authorities.

81. The organizers of the sponsored entertainment event cannot be allowed to escape their liability to pay taxes simply because instead of receiving money in cash, they are receiving it in form of services, benefits and/or goods. The argument that machinery provided under the Act for calculation of tax is not equipped to do so in these cases

has no merit. To hold it otherwise would encourage the organizers to adopt dubious means and methods to avoid payment of taxes.

82. GMR Sports, DEN Soccer Private Limited, Pro Sportify Private Limited and BCCI conduct ticketed entertainment events and are required to furnish the requisite information in Form 5. As per Serial 10, 11 and 12 of the said Form, they are required to disclose the number of seats in each class, starting serial number of each kind of tickets, for each class for each show, total number of each kind of tickets printed for each class for each show.

83. In such events also if the organizer in lieu of sponsorship or certain benefits allowed admission which it cannot do except by issue of ticket (Sections 9&10) and ticket also includes passes [Section 2(u)] then even if the entry is free or on concessional rate, by virtue of Section 6(4), the tax is payable on full amount. Since no person can be allowed entry to an entertainment, except on a ticket to such person (due to prohibition of Sections 9 and 10 of the Act) and if anyone in lieu of benefits/services or other benefits and sponsorship amounts, allowed to put up its advertisement and thus allowed admission to a place of entertainment, the tax has to be levied on such benefits, services or sponsorship amount because by virtue of Section 6(4) of the Act, even if the admission is free of charge or on concessional rate. Where the admission is generally on payment, the tax has to be paid as if the entry was on payment of full charge. It therefore cannot be said that the Act does not provide sufficient machinery for levying tax.

84. Harmonious and effective interpretation is needed to be given to the provisions of a Statute, keeping in mind its prime object and the

purpose. The Act prohibits the entry to any place of entertainment except as provided in Sections 9 and 10 of the Act and Section 2(m) of the Act defines payment for admission which definition is inclusive. The object and purpose of the Legislature for making the definition of Section 2(m) of the Act so broad and inclusive is to defeat indigenous methods adopted to avoid tax. The Hon'ble Supreme Court had also acknowledged this attitude of organizers that in order to avoid taxes, they tactfully invent new methods. In ***Amit Kumar*** *(supra)* case, the Hon'ble Supreme Court has come heavily on FDCI and while rejecting their contentions that entry by invitation cards was not 'payment for admission', the Hon'ble Supreme Court has held *that though tickets may not have been issued in respect of the programme and only invitation cards had been issued, the same was merely a* ***subterfuge for the purpose of evading and/or avoiding payment of entertainment tax.***

85. I thus conclude that sponsorship amounts are payments for entry to a place of entertainment if it fulfills other requirements of Section 2(m) of the Act. Similarly, putting up advertisements, display of product/brand name etc. in place of entertainment is admission to an entertainment in terms of Section 2(aa) of the Act. The impugned amendment, whereby Explanation 2 is added retrospectively, is explanatory and clarifactory in nature and does not add any new regime of taxation and the Act has sufficient machinery to levy taxes.

86. In Group 'A' writ petitions, the petitioners have failed to point out any defects in the assessment orders levying taxes on the

sponsorship amounts received by FDCI. The petitions thus fail and dismissed.

87. In Group 'B' cases, the petitioners have challenged various letters requiring them to furnish details of sponsorship amounts received by them and were also directed to submit the agreements. This demand is also in consonance of directions issued by this Court in its earlier decision in ***Fashion Design Council of India*** *(supra),* whereby this Court had directed the authorities to examine contracts before reaching to the conclusion that the sponsorship amount is payment for admission in place of entertainment. Sections 15 and 15A of the Act also empowers the assessing officer to issue summons to any person and examine him under oath and ask him or anyone to produce documents. In Group 'B' cases since the authorities have exercised their powers while issuing the impugned notices, no ground for interference exist. Also, the direction to deposit 15% tax is in terms of Section 6 of the Act. The writ petitions in Group 'B' are also dismissed. No order as to costs.

DEEPA SHARMA
(JUDGE)

DECEMBER 22, 2017
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