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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1813 OF 2016
WITH
NOTICE OF MOTION NO.6 OF 2017

1. FICCI-Multiplex Association of India, A Society incorporated under the Societies Registration Act, 1860 and having its registered office at Federation House, Tansen Marg, New Delhi-110 001

2. Dnyandas Damodar Chaphalkar, Secretary of the Petitioner No.1, Adult, Indian Citizen, having office at Chaphalkar Brother, Mangala Multiplex, 111-Shivajinagar Pune-411 005. … Petitioners/ Applicant

Versus

1. State of Maharashtra Mantralaya, Mumbai 400 032 (through the Government Pleader, High Court, Original Side)

2. Additional Collector, Aurangabad Office of the Collector, Near Trazeri Office, Labour Colony, Aurangabad, Maharashtra- 431 001

3. Collector and District Magistrate Old Custom House, Shahid Bhagat Singh Road, Fort, Mumbai – 400 001. … Respondents

WITH
WRIT PETITION NO.1689 OF 2015

1. Big Tree Entertainment Pvt. Ltd.
Wajeda House, Behind Gazebo House,
Gulmohar Cross Road No.7,
Juhu Scheme , Mumbai 400 049

2. Rajesh Balpande
Director of Petitioner No.1
Having office at Wajeda House,
Behind Gazebo House,
Gulmohar Cross Road No.7,
Jubhu Scheme,
Mumbai 400 049. ... Petitioners

Versus

1. State of Maharashtra
Revenue and Forests Department,
Mantralaya, Mumbai-400 032
(through the Government Pleader,
Original Side)

2. The Collector, Mumbai Suburban
District, 9th floor, Administrative
Building, Government Colony,
Bandra (East),
Mumbai 400 051. … Respondents

Mr. Naresh Thacker a/w Mr. Chakrapani Misra, Mr. Sameer Bindra, Ms. Ananya Misra i/by Khaitan & Co. for the Petitioners in WP/1813/2016 and for the Applicant in NMW/6/2017.

Mr. Rohan Rajadhyakshaa/w Mr. Rajendra Barot, Mr. Dhaval Vora, Mr. DhirajkumarTotala and Mr. Tejas Raghav i/by AZB & Partners for the Petitioners in WP/1689/2015.

Mr. Milind More, Addl. G. P. for Respondents Nos.1 & 3 in WP/1813/2016 and for Respondents Nos.1 & 2 in WP/1689/2015 for State of Maharashtra.

CORAM	M.S. Sonak& Jitendra Jain, JJ.
RESERVED ON	28 July 2025
PRONOUNCED ON	6 August 2025

Judgment (Per Jitendra Jain, J.)

1. By this petition under Article 226 of the Constitution of India, petitioner no.1- Association of Multiplex Theatres in Writ Petition No.1813 of 2016, have sought the following reliefs: -

> *"a) to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction to quash and set aside the impugned Amendment and the impugned Circulars, annexed hereto as Exhibits F, G and H;*
>
> *b) to issue a declaratory writ declaring that the impugned Amendment only has prospective effect from 29/12/2014 and does not operate in a retrospective manner;*
>
> *c) to issue a declaratory writ declaring that in view of the impugned Amendment, respondents No.1 did not have the power to levy and collect Entertainment duty on the Convenience Fee till 29/12/2024, for providing the facility of online booking of tickets."*

2. The petitioners in Writ Petition No.1689 of 2015, seek precisely the following reliefs: -

> *"(a) For an order to declare that the Impugned Amendment Act is not applicable to the transaction fees/service charge/ convenience fees charged by the online booking service providers including the 1st petitioner;*
>
> *(b) In the alternative to the above prayer, for an appropriate writ, order and declaration to quash/declare as null and void the Impugned Amendment Act."*

3. The petitioners are challenging the insertion of the seventh proviso in Section 2(b) of the Maharashtra Entertainments Duty Act (MED) by the Maharashtra Act No.XLII of 2014, which received assent of the Governor on 29 December 2014. The impugned proviso reads as under: -

> *"Provided also that, any payment not exceeding ten rupees or any such amount as may be specified by the State Government, from time to time, by notification in the Official Gazette, per ticket if charged by the proprietor himself or through any service provider towards service charges, separately for providing facility for online ticket booking in all entertainments, in that case, such payment towards such service charges shall not be included in the payment for admission, subject to the condition that the proprietor and the service provider shall submit the data of online tickets sold per month, and online internet handling fee or convenience charges charged thereof and also the certified copies of agreement for online ticket booking services to the Collector before seventh day of every succeeding month; and any amount of such service charges in any form more than ten rupees or more than such amount as may be specified by the State Government, from time to time, by notification in the Official Gazette, levied by the proprietor himself or through any service provider, for providing facility for online ticket booking, shall be included in the payment for admission.*
>
> *Explanation – For the purpose of this proviso, the expression "service provider" means and includes any person or any company or agent who is authorized or permitted by the proprietor of any entertainment to book online tickets through their website or portal or by any other means."*

4. The Statement of Objects and Reasons for inserting the impugned proviso is as under :-

> "STATEMENT OF OBJECTS AND REASONS
>
> The Maharashtra Entertainments Duty Act (I of 1923), provides for the levy and collection of entertainments duty on

different types and forms of entertainments in the State.

2. Now a days, use of modern technology is a necessity of life especially in the urban areas. There is high demand for booking tickets online for various entertainments, like Cinema, International One day Cricket Matches and Indian Premier League (IPL) One day Cricket Matches, Amusement Park, etc. It is observed that the service providers authorized by the proprietors are charging exorbitant amount per ticket as internet handling fee or convenience charge for online ticket booking service, which resulted in undue financial exploitation of persons admitted to such entertainments.

In order to curb this exploitation, the Government of Maharashtra has decided to levy entertainment duty on the amounts charged towards service charges by the proprietors themselves or through service providers which exceeds rupees ten or any such amount as may be specified by the State Government, from time to time, by notification in the Official Gazette, per ticket as internet handling fee or convenience charge for online ticket booking services for all entertainments, which will result into restricting the amount of service charges for online ticket services. It is, therefore, expedient to amend section 2 of the Maharashtra Entertainments Duty Act (I of 1923) suitably."

5. By order dated 21 July 2015 in Writ Petition No.1813 of 2016 in paragraph No.3, the Co-ordinate Bench had directed the cinema owners as well as service providers to provide all information regarding amounts received by them on sale of tickets online. On 19 August 2015, the Co-ordinate Bench had directed the service providers to provide all information, including copies of the agreement received by them on the sale of tickets online, directly to the State Authorities.

6. We are unsure whether the cinema owners and/or service providers have complied with these directions. The respondents should verify if compliance has been achieved. If not, we disapprove of the petitioners' failure to comply with our orders. During the hearing, neither the petitioners nor the respondents provided us with any information regarding this compliance, despite our inquiries.

7. On 13 June 2016, Rule was granted in Writ Petition No. 1813 of 2016. On 24 January 2017, since demand notices were received by some of the members of the petitioner no.1 in Writ Petition No.1813 of 2016, the statement of the learned AGP was recorded that the officers concerned would not proceed further in the matter, and this statement was taken on record. Thereafter, the matter has now been listed for final hearing.

8. Insofar as Writ Petition No.1689 of 2015 is concerned, in order dated 8 May 2015 it was recorded that the Authorities under the Act have not demanded any entertainment duty from the petitioners who are service providers for online booking tickets issued by the cinema owners. It was also recorded *that prima facie*, no prejudice will be caused to the petitioners if cinema owners are directed to provide to the Authorities information about amounts being received by the cinema owners from the funds/charges received by the service providers for online ticket booking. On

23 June 2015, the Co-ordinate Bench has *prima facie* observed that the petitioners would not be liable to pay entertainment duty on the amount received and retained by the service provider for providing the service of online booking. The State Government was directed to indicate whether it accepts the said interpretation of the provisions of the Amendment Act of 2014.

9. On 21 July 2015, the Co-ordinate Bench directed the cinema owners as well as the service providers to provide all amounts received by them on the sale of tickets online. On 19 August 2015, since the service providers did not provide the information as directed by our earlier order, the service providers were once again directed to provide all information, including copies of agreements, amounts received by them on sale of tickets, etc., to the State Government. On 2 September 2015, Rule was granted in Writ Petition No.1689 of 2015 and interim relief restraining respondents from recovering duty from the service providers was passed. However, it was clarified that this would not preclude the respondents from making recovery of entertainment duty from the cinema owners, subject to the rights contended in Writ Petition 1813/2016. Thereafter, the matter has now been listed before this Bench for final hearing.

10. The petitioner no.1 in Writ Petition No.1813 of 2016 is an Association of Multiplex Theatres in which there is more

than one screen for exhibiting a movie/film. To watch a movie, a person must buy a ticket, which entitles him to watch the film. Before the advent of internet technology, a person who wished to watch a movie had to go to the theatre and buy a ticket. However, with rapid advancement in technology, the theatre owner invested in technology so that a person who wished to buy a ticket to entertain himself by watching a film/movie, did not need to be physically present at the theatre to buy the ticket, but could buy the ticket at his own convenient time and from his convenient location by logging into the online portal of the theatre owner. However, if a person desired to buy the ticket online from the portal of the theatre owner at his convenience, then in addition to the price of the ticket, he was required to pay a certain extra sum known as 'convenience fees/charges/service charges'. For e.g., if a person wishes to watch a movie by buying a ticket at the counter, then he has to pay Rs.100/-, but if a person desires to buy a ticket online to watch a movie, then he has to pay Rs 120/-, i.e. Rs.100/- being the cost of the ticket and Rs.20/- being the convenience fees for booking the ticket online. By the impugned proviso, the State seeks to recover entertainment duty on Rs. 20/- by treating the same as 'payment of admission.' The counsel showed us one document for the petitioners in Writ Petition No.1813 of 2016, which is a consolidated invoice issued giving a break-up of the cost of the ticket and convenience charges for online ticket booking. It is on this backdrop that the petitioners have challenged the

impugned proviso before this Court, as not only is it *ultra vires* but also contrary to the scheme of the MED Act.

Submissions of the Petitioners in Writ Petition No.1813 of 2016:-

11. Mr. Thacker, learned counsel for the petitioners in Writ Petition No.1813 of 2016, has submitted that the petitioners have paid service tax under the Finance Act, 1994, on the "convenience fees" charged on online ticket booking. He submitted that Section 66B of the Finance Act, 1994, provides for a negative list on which service tax is not payable, and clause (j) of the said section refers to admission to entertainment events or access to amusement facilities. He, therefore, submitted that since the transaction of providing convenience for booking tickets online is the subject matter of the Finance Act, 1994, which is occupied exclusively by Union List I of Schedule to the Constitution of India, the State cannot levy entertainment duty by the impugned proviso. He submitted that under Article 246 of the Constitution of India read with Entry 62 of List II to the Schedule thereto, the State is empowered to levy tax on entertainment and receipt of convenience charges for online ticket booking does not fall within the term 'entertainment' and therefore the State is not competent to levy duty on the same. Therefore, the impugned provision is *ultra vires.*

12. Mr. Thacker further submitted that the members of

the petitioners have started a separate line of business activity, which is selling tickets online, and, therefore, it does not fall within the definition of "entertainment" as defined by Section 2 (a) of the MED Act. He further submitted that by insertion of the impugned proviso in the definition of "payment of admission", the measure of tax is sought to be amended without there being an amendment in the charging Section, i.e. Section 3 of the MED Act and the impugned proviso seeks to tax new activity through the definition of "payment of admission". He further submitted that by a deeming fiction, the scope of the main Section 2 (b) of the MED Act cannot be enlarged, and the function of the proviso is to exclude something which is in the main provision and not to introduce a new levy on such activity. He, therefore, submitted that the impugned amendment seeking to amend the definition of "payment of admission" is bad in law and *ultra vires*.

13. Mr. Thacker submitted that charging "convenience fees" is not a condition for attending entertainment, but it is a facility given to a customer to book the ticket without coming to the theatre and standing in a queue. He submitted that there is no direct connection between the charging of "convenience fees" for online ticket booking and entertainment, and therefore, the provision of Section 2(b)(iv) does not apply to such a transaction. He submitted that "convenience fees" are not in respect of admission to entertainment, but rather for the facility provided to

customers for booking tickets online without visiting the theatre. Consequently, the proviso travels beyond the main provision.

14. Mr. Thacker, learned counsel for the petitioners, relied upon the provisions of Sections 2(e), 2(e-e), 2(e-e-1), 2(f), 3, 3(1)(c), 3(15), 4 and 4E of the MED Act and contended that whenever a new form of entertainment was sought to be taxed, the relevant provisions of definition, charging section, etc. were amended. He gave an example of DTH form of entertainment, which was brought within the tax net by amending the above respective provisions. He also relied upon Rule 7 and Rule 16 of the Bombay Entertainments Duty Rules in support of this contention. He relied upon the decision of the Supreme Court in the case of ***Tata Sky Limited vs. State of Madhya Pradesh & Ors.[1],*** in support of his submission and submitted that since the activity of online ticket booking is not brought in various sections of the Act, no duty can be levied. He further submitted that the activity of online ticket booking is not covered under Section 2 (a) of the MED Act and, therefore, there is no justification for levying entertainment duty on "convenience fees" and relied upon the decision of a Co-ordinate Bench of this Court in the case of ***Royal Western India Turf Club Ltd. vs. State of Maharashtra and Ors.[2]***

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1 (2013) 4 Supreme Court Cases 656

2 2022 SCC OnLine Bom 1456

15. Mr. Thacker further submitted that the impugned proviso is a deeming provision and the same cannot enlarge the scope of taxable service and travel beyond the main provision and, therefore, even on this count, there cannot be any levy of entertainment duty on online ticket booking. For this proposition, he relied upon the decisions of the Supreme Court in the case of ***Vodafone International Holdings vs. Union of India***[3] ***& Commissioner of Income Tax, Bombay City II vs. Shakuntala***[4] ***.***

16. Mr. Thacker further relied upon the decision of the Delhi High Court in the case of ***Fashion Design Council of India vs. Govt. of NCT of Delhi and Another***[5], and submitted that even before the Delhi High Court the activity of fashion show was sought to be taxed under the Delhi Entertainment and Betting Tax Act by introducing an Explanation with retrospective effect which was held to be unconstitutional without changes in the definition of entertainment, charging and machinery provisions.

17. Mr. Thacker, learned counsel for the petitioners submitted that the impugned proviso is violative of Articles 14 and 300A of the Constitution of India and further is beyond legislative competence as mandated by Article 246(3) of the Constitution of India since the activity sought to be taxed does

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3 (2012) 6 SCC 613

4 (1961) 43 ITR 352

5 (2025) 138 GSTR 34

not constitute "entertainment" and no study has been done or any representation sought from the petitioners before introducing the impugned proviso and there is no basis for excluding sum up to Rs.10/- from payment of admission in case of online ticket booking and to include more than Rs.10/- with respect to the said activity and therefore is arbitrary and unreasonable.

18. Mr. Thacker submitted that the petitioners were carrying on a separate business of booking tickets online for their customers. He submitted that the convenience fee charged for this separate business had nothing to do with the payment for admission to entertainment. He submitted that there was no element of entertainment involved in providing online tickets to the customers. He submitted that unless the State established the aspect of entertainment, the levy of any duty on payment for admission to entertainment was impermissible and beyond the State's legislative competence or also beyond the scope of the said Act. To explain what constitutes "payment for admission to entertainment", Mr. Thacker relied on ***PVR Ltd. Vs. CTO*** [6]; ***Ramanlal B Jariwala Vs. Dist. Magistrate, Surat***[7]; ***Royal Western India Turf Club Ltd. (supra)***; ***Fashion Design Council of India Vs. GNCT (supra)***and ***Tata Sky Ltd.*** (supra).

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6 2020 SCC OnLine Mad 27257

7 1990 SCC OnLine Guj 135

19. Mr. Thacker argued that the definition of the term "ticket" under Section 2(h) of the said Act, when read in conjunction with the expressions "payment of admission" under Section 2(b) and "admission to an entertainment" under Section 2(d), leaves no doubt that the price of the ticket alone constitutes payment for admission to entertainment. He contended that an unrelated and separate transaction, in the form of an online ticket booking service, cannot be subjected to entertainment duty, merely because there is a somewhat remote connection between online booking charges and entertainment. He relied on ***PVR Ltd. Vs. CTO (supra)*** to support this argument.

20. Mr. Thacker, without prejudice, submitted that even if the facility of online ticket booking could be said to be connected with entertainment, still, it cannot be regarded as a condition for attending entertainment. He submitted that unless this is a condition, there is no question of levy of any duty under the said Act. He further submitted that uniformity is essential to determine the payment of admission to entertainment. He submitted that since this element of uniformity was absent, the separate levy for online booking of tickets can never be regarded as payment for admission to entertainment. He submitted that unless these ingredients were satisfied, the State could not levy any duty on convenience fee or service charge separately levied for online booking.

21. Mr. Thacker argued that the Maharashtra Act No.XLII of 2014 introduced the impugned seventh proviso to Section 2(b) of the said Act. This was a definition clause and an amendment to the definition clause can never affect the charging section, i.e. Section 3 of the said Act. In any event, Mr. Thacker submitted that the purpose of a proviso is to carve out an exception from the main provision and a proviso cannot be used to enlarge the enacting clause or the main provision. He therefore submitted that by relying upon the impugned proviso, no entertainment duty could be levied on the charges or convenience fee for online ticket booking. He relied on the following judgments:-

(1) Haryana Land Development Bank Vs. Employees Union[8]*;*

(2) Shah Bhojraj Kuverji Oil Mills Vs Subhash Chandra Yograj Sinha[9]*;*

(3) Dwarka Prasad Vs. Dwarka Das Saraf[10]

(4) Mangala Waman Karandikar Vs Prakash Damodar Ranade[11]*;*

(5) Ambalal Sarabhai Enterprises Ltd. Vs. Amrit Lal & Co.[12]*; and*

(6) Thomas T. V. Vs. Joint Secretary and others[13]*;*

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8 (2004) 1 SCC 574

9 1961 SCC OnLine SC 60

10 (1976) 1 SCC 128

11 (2023) 6 SCC 139

12 (2001) 8 SCC 397

13 2020 SCC OnLine Ker. 434

22. Mr. Thacker submitted that no separate machinery has been provided to assess and collect tax on online ticket bookings. In the absence of any procedural machinery, the impugned amendment becomes unworkable and must be struck down as *ultra vires* and unconstitutional. He relied on ***CIT Vs. B. C. Srinivasa Setty***[14]and ***Fashion Design Council of India (supra)***.

Submissions of the Petitioners in Writ Petition No. 1689 of 2015 :-

23. Mr. Rajadhyaksha, the learned counsel for the petitioners in Writ Petition No.1689 of 2015, submitted that the petitioner No. 1 is not the owner of any theatre and undertakes the business of booking tickets to various theatres and other entertainment events independently of the theatres or other entertainment establishments. He, therefore, submitted that the case of the petitioners, to whom he represents, is distinct from the case of the petitioners in Writ Petition No.1813 of 2016. He submitted that the petitioners are not "proprietor" of any entertainment and therefore no entertainment duty can be charged on the petitioners.

24. Mr. Rajadhyaksha, learned counsel for the petitioners in Writ Petition No.1689 of 2015 adopted the submissions made by Mr. Thacker. He further relied upon the Statement of Objects and Reasons of the 2014 Amendment Act and

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14 (1981) 2 SCC 460

submitted that the impugned proviso is a colourable exercise of power to levy entertainment duty when the object is to curb charging of an exorbitant amount as "convenience charge" for online ticket booking service. He submitted that the Objects and Reasons clearly demonstrate the colourable exercise of power in enacting the impugned proviso and, therefore, it needs to be declared as *ultra vires* since Entry 62 of List II does not cover this aspect. He submitted that to determine the legislative competence it is important to ascertain the true character of legislation, and to examine the true character of legislation the Statement of Objects and Reasons is one of the most crucial materials to be examined. Mr. Rajadhyaksha relied upon the decision of the Supreme Court in the case of ***Union of India Vs. Shah Goverdhan L. Kabra Teachers' College***[15], ***A. Manjula Bhashini vs. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Limited***[16] and ***Jaora Sugar Mills (P) Ltd. vs. State of Madhya Pradesh***[17], in support of his submission.

25. Mr. Rajadhyaksha further submitted that the activity of the petitioners is rendering of service which is covered by Entry 92-C of List I, as it existed at the relevant time, and the power to tax such service is with the Union of India and not with the State. Therefore, the State is incompetent to levy tax on this activity.

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15 (2002) 8 SCC 228

16 (2009) 8 SCC 431

17 (1996) 1 SCR 523

26. Mr. Rajadhyaksha further placing reliance on the decision of the Supreme Court in the case of ***N.D.P, Namboodripad vs. Union of India***[18] submitted that the definition under Section 2 (b) of the MED Act is exhaustive and since "convenience fee" is not a condition for attending the entertainment, same cannot be brought to tax by amending the definition of "payment for admission". He placed strong reliance on the decision of the Madras High Court in the case of ***PVR Ltd. Vs. C.T.O.*** in support of his submission.

27. He further relied upon the decision of the Gujarat High Court in the case of ***Ramanlal B. Jariwala vs. District Magistrate, Surat (supra)*** where charges for providing lift facility were held not to be exigible to entertainment duty. Similarly, he relied upon the decision of this Court in the case of ***Royal Western India Turf Club Ltd. (supra)*** where charges for bringing mobile phones inside the race course were held to be not a condition for entry into the race course and therefore, entertainment duty was not chargeable on such charges.

28. Mr. Rajadhyaksha submitted that a proviso, even if appearing to carve out an exception from the main provision, can never be inconsistent with what is expressed in the main provision and if it is so, it would be *ultra vires* the main provision and must be struck down. He submitted that in the

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18 (2007) 4 SCC 502

present case, the impugned amendment, which is a proviso, is ex facie inconsistent with what is expressed in the main provision and therefore it should be struck down as *ultra vires* the main provision. He relied on ***J. K. Industries Vs. Chief Inspector of Factories and Boilers*** [19]to support this contention.

29. Mr. Rajadhyaksha submitted that the fee charged by the petitioners for online ticket booking is, in addition to, and separate from the ticket price, which is fixed and charged by the proprietor of the cinema for the purposes of admission to entertainment. In other words, he submitted that the fees levied by the petitioners are for a separate service or facility for online ticket booking which has no connection whatsoever with the entertainment provided by the cinema owners or other entertainment providers. Furthermore, he pointed out that purchasing tickets online is optional and therefore cannot be regarded as a condition for admission to the entertainment venue. He submitted that for this reason also the legislative competence to levy any service tax or duty on such activity would fall within Entry 92-C of List I, which lies exclusively with Parliament and not the State Legislature. In any event, he submitted that this would fall under the residuary Entry 97 of List I and again, be within the legislative competence of Parliament and not the State Legislature.

30. Mr. Rajadhyaksha submitted that to attract the

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19 (1996) 6 SCC 665

provisions of Section 2(b)(iv) of the said Act, two conditions have to be fulfilled, i.e. (i) being "connected with an entertainment" and (ii) being "required" to be made as a "condition of attending, or continuing to attend the entertainment". He submitted that both these conditions must be conjunctively fulfilled and since neither of the criteria was fulfilled in the present case, there was no question of levying any entertainment duty on online booking charges separately levied by the petitioners.

31. For all the above reasons, Mr. Rajadhyaksha submitted that the impugned amendment be struck down and, in any event, it be declared that the petitioners were not liable to pay any entertainment duty under the said Act.

Submissions of the Respondent-State:-

32. Mr. More, learned counsel for the respondents, defended the challenge to the impugned proviso by submitting that under Schedule Seventh, List II, Entry 62, the State has the power to levy entertainment tax. He submitted that by applying the principle of "pith and substance", the activity of online ticket booking is exigible to entertainment tax under the said entry. He relied upon the decision in the case of ***The State Of Karnataka vs M/S. Drive-In Enterprises***[20] and ***Federation Of Hotel & Restaurant vs Union Of India & Ors***[21].

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20 2001 (4) SCC 60

21 AIR 1990 Supreme Court 1637

33. He submitted that the term 'convenience fees' effectively constitutes part of the cost of enjoying entertainment, and therefore, it is, in essence, a component of admission for entertainment and consequently subject to duty. Mr. More relied upon paragraph Nos. 17.26, 17.30, 17.31, 17.33, 17.34, and 17.36 of the decision of the Supreme Court in the case of ***The State Of Kerala vs Asianet Satellite Communications Ltd.& Ors.***[22] to support his submissions.

34. Mr. More thereafter analysed the Scheme of the MED Act by referring to Section 2(a) which defines “entertainment” and emphasized the phrase “or any other charges” used in the said definition would include convenience charges for online ticket booking. Mr. More also took us through Section 2(b) which defines “payment of admission” and submitted that clause (iv) is widely worded to include convenience fees within its ambit. Mr. More relied upon various provisos to Section 2(b) and defended the insertion of the impugned proviso.

35. Mr. More, learned counsel for the respondents, also took us through Sections 3, 4, and 7 of the MED Act and submitted that there is a sufficient mechanism in the Act for charging and recovery of duty, which the impugned proviso would collect. He, therefore, argued that the petitioners' submission that there is no machinery provision for the

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[22] 2025 SCC OnLine SC 1225

imposition, collection, and recovery is unfounded. Mr. More relied upon the decision of the Co-ordinate Bench of this Court in the case of ***Vasant Madhav Patwardhan v. State of Maharashtra***[23] and the decision of the Supreme Court in the case of ***A. Suresh and Ors vs. State of Tamil Nadu***[24]**,** to rebut the submission made by Mr. Rajadhyaksha regarding a colourable piece of legislation. He submitted that no case is made out for striking down the impugned proviso on this ground.

36. Mr. More further relied upon the decisions of the Supreme Court in the case of ***Venkateshwara Theatre vs. State of Andhra Pradesh***[25] and ***Express Hotels (P) Ltd. vs. State of Gujarat*** [26] and submitted that the impugned proviso is within the competence of the State under Entry 62, List II of the Seventh Schedule to the Constitution. He submitted that taxes on entertainment would include the power of the State to make changes in the measure of taxes. Therefore, the contention of the petitioners that the impugned proviso transgresses into List I, which is the exclusive domain of the Union, is to be rejected.

37. Mr. More also relied upon the decision of the Supreme Court in the case of ***Federation of Hotel and***

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23 2000 SCC OnLine Bom 244

24 (1997) 1 SCC 319

25 (1993) 3 SCC 677

26 (1989) 3 SCC 677

Restaurant vs. Union of India (supra) to submit that in case of overlapping fields, entries in the Seventh Schedule should be so interpreted to avoid conflict. He submitted that under the Finance Act, 1994, what is sought to be taxed is the activity of rendering services of online booking, whereas under Entry 62 of List II of the Seventh Schedule, what is sought to be taxed is entertainment, and the impugned proviso is a measure of tax to compute the duty. Changes are made in the 'measure of tax' to determine the entertainment duty, which is within the legislative competence of the State.

38. Mr. More, distinguished the decision of the Madras High Court in the case of ***PVR Limited (supra)*** by submitting that it was a case where the challenge was to an assessment order and the vires of the provision was not challenged before the Hon'ble Madras High Court. He further submitted that the online booking charges constitute a condition for buying the ticket to an entertainment and the provisions of the MED Act are different than the provisions of the Tamil Nadu Entertainment Duty Act. He, therefore, submitted that the decision of ***PVR Limited (supra)*** does not apply to the facts of the present case.

39. Mr. More, therefore, summing up, pleaded for dismissal of both petitions.

<u>Submissions of the Petitioners in Rejoinder :-</u>

40. Mr. Thacker, learned counsel for the petitioners in

Writ Petition No.1813 of 2016, distinguished the decision of the Supreme Court in the case of ***Drive-In Enterprises (supra)*** on the grounds that, in that case, there were two auditoriums within the same complex—one for individuals arriving by car and another without a vehicle. He further relied upon paragraph 11 and argued that the nomenclature of the levy does not determine the matter, but rather its real nature and character are crucial in assessing the competence or power of the State Legislature to enact laws imposing such levies. He contended that the primary purpose of the impugned proviso is to levy tax on online booking transactions by categorising them as entertainment, despite no changes to the definition of entertainment or the charging section. Furthermore, since there is no entertainment involved in online ticket booking, he argued that the impugned proviso is *ultra vires.*

41. Mr. Rajadhyaksha, learned counsel for the petitioners in Writ Petition No.1689 of 2015, submitted that the only entry on which the respondents have based their case is Entry 62 of List II. He argued that, based on the Statement of Objects and Reasons, reply, and submissions made by the respondents, what is sought to be taxed is the transaction of online ticket booking, which does not fall within Entry 62 of List II. He further contended that the test of colourable legislation must be examined by scrutinising the entry, and consequently, the legislature's competency must be assessed on that basis. He maintained that the payment of a

"convenience fee" for online ticket booking is neither a condition for attending entertainment nor is it connected to entertainment, nor does it satisfy the test of uniformity; therefore, the provisions of Section 2(b)(iv) are not applicable, and the impugned proviso should be declared *ultra vires.* He also pointed out that the Statement of Objects and Reasons clearly show that what is being taxed involves introducing a new activity—online ticket booking—under the purview of the MED Act, without any corresponding amendments in the definition of entertainment, the charging section, or the method of levy. Furthermore, he argued that curbing excessive charges through levies is not covered by Entry 62 of List II.

42. Mr. Rajadhyaksha relied on paragraph 13 of the decision of the Supreme Court in the case of ***Drive-In Enterprises (supra).*** He submitted that the issue of entertainment must be examined when a person is inside the place of entertainment. He submitted that the activity of online ticket booking is outside the place of entertainment and therefore, the State does not have the power to levy entertainment duty on this transaction.

43. Mr. Rajadhyaksha also placed reliance on paragraph 26 of the decision of the Supreme Court in the case of ***Federation of Hotel and Restaurant Association of India Vs. Union of India (supra)*** and prayed for a declaration of the

proviso being *ultra vires* Article 246(3) of the Constitution of India. He, however, submitted that uniformity would apply to a class of persons inside the venue of entertainment. Therefore, the test of uniformity must be satisfied, which in the instant case is not, and thus, even on this count, also the impugned proviso is invalid.

Analysis & Conclusions

44. At the outset, we wish to state that insofar as petitioners in Writ Petition No.1689 of 2015 are concerned, there is no demand notice or any proceedings initiated against the petitioners. It is only on the apprehension that proceedings would be initiated that the present petition is filed seeking a declaration and injunction against the respondents from proceeding against the petitioners. Still, the petitioners, by suppressing vital documents like their contractual arrangements with the theatre owners, have pressed for reliefs in this petition.

45. On a query being raised by the Court, learned counsel for the petitioners in Writ Petition No.1689 of 2015 submitted that after the demand is raised on the cinema theatre owner, then pursuant to the agreement between them, cinema theatre owners would raise demand on the petitioners, and therefore, they have filed the present petition. In our view, if that was so, it was vital to have disclosed the contractual arrangements with the theatre owners. The

petition admits contracts with about 150 theatre owners, but none were disclosed or annexed. The State did bring one of the agreements on record, but that hardly suffices or relieves the petitioners from making full and candid disclosures.

46. Besides, the contention now raised would require this Court to adjudicate upon the terms of the agreement between the two private parties in the Writ Petition, which cannot be done under Article 226 of the Constitution of India. On a perusal of one of the agreements annexed in the reply filed by the respondents, there are clauses which deal with the sharing of convenience fees, bearing of various taxes by the parties and the arbitration clause. If, according to the Petitioners, their agreements do not entitle the theatre owners to pass on the tax liability to the online booking agencies, whom the petitioners represent, it is for such booking agencies to contest the claims if and when made, before the Courts or the arbitration mechanism if provided.

47. Even the bald argument that the petitioners or their members are covered by the impugned amendment involves a factual question that requires investigation, particularly by examining the 150 agreements entered by the petitioners with cinema owners/theatre owners, etc. This exercise cannot be ordinarily undertaken in an Article 226 petition bereft of material pleadings or documents. In any case, we have considered the submissions made by Mr. Rajadhyaksha so that

our decision on the challenge to the vires by the petitioners in Writ Petition No.1813 of 2016 is complete and the petitioners or their members take no further advantage of the circumstance arising out of their suppression of material particulars or deficient pleadings in their petition.

48. Before we delve into the reasoning, it is apt to reproduce the relevant provisions of the MED Act, which are as under:-

> *"2 **Definition** - In this Act, unless there is anything repugnant in the subject or context -*
>
> *(a-1) to (a-3) ……..*
>
> *(a) "entertainment" includes any exhibition performance, amusement, game or sport to which persons are admitted for payment, or, in the case of television exhibition with the aid of any type of antenna with a cable network attached to it or cable television or Direct-to-Home (DTH) Broadcasting Service, for which persons are required to make payment by way of contribution or subscription or installation and connection charges or any other charges collected in any manner whatsoever but does not include magic show and temporary amusement including games and rides.*
> *……..*
>
> *(b) "payment of admission" in relation to the levy of entertainments duty, includes,—*
>
> *(i) any payments 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 duty or more duty is required ;*
>
> *(ii) any payment for seats or other accommodation in a place of entertainment;*

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

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

(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 for admission to a video exhibition irrespective of whether any eatables or beverages or both are or are not provided to him against such payment;

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

(vii) any payment made by person to the proprietor of a Direct-to-Home (DTH) Broadcasting Service by way of contribution, subscription, installation or connection charges, or any other charges collected in any manner whatsoever for Direct-to-Home (DTH) Broadcasting Service with the aid of any type of set at a residential or non-residential place of connection-holder directly to the Satellite ;[and]

(viii) any payment made by way of sponsorship amount for a programme which is organised only for invitees, without selling tickets ;

Explanation.— For the purposes of this sub-clause any

expenditure incurred by any cooperative society including a co-operative housing society or by the management of, any factory, hotel, lodge, bar, permit room, pub, or by a person or group of persons, for the purchase of any type of antenna or any other apparatus for securing transmission through the cable network of cable television attached to it, for its members, or for workers or customers or for himself or themselves, as the case may be, shall be deemed to be the payment made under this sub-clause for the television exhibition with the aid of any type of antenna with cable network attached to it or cable television :

Provided that, where regular tickets are not issued by the proprietor for admission to a video exhibition and the amount charged to a person admitted to the exhibition is inclusive of the price for any eatables or beverages or both, then seventy-five per cent., of such amount shall be deemed to be payment for such admission :

Provided further that,[subject to the provisions of sub-section (13) of section 3] any payment not exceeding [seven rupees in case of ordinary and air-cooled cinemas and nine rupees in case of air-conditioned cinemas] per proprietor towards service charges separately and the proprietor shows to the satisfaction of the prescribed officer as defined in the rules made under this Act that the amount of such service charges is spent by him towards maintenance and providing facilities and safety measures in the permanent cinema [or quasi-permanent cinema] in addition to those required under the provisions of the Bombay Cinemas (Regulation) Act, 1953 and the Maharashtra Cinemas (Regulation) Rules, 1966, or any other law for the time being in force, such service charges shall not be included in the payment for admission;

Provided also that, the proprietor shall submit, before the 30th September of every year, to the prescribed officer the audited accounts of the service charges collected and spent by him towards maintenance and providing facilities and safety measures as provided in the second proviso. The proprietor shall be allowed to carry forward unspent amount of service charges for [four financial years] immediately

following the financial year in which the amount has remained so unspent. If the prescribed officer on perusal of the accounts is satisfied at the end of the admissible period for which the proprietor is allowed to carry forward the unspent amount of the service charges or part thereof, that, the said amount has not been spent towards the maintenance and providing facilities and safety measures as provided in the second proviso, then the said amount of service charges or part thereof, not so spent shall be included in the payment for admission and thereupon, the provisions of sub-sections (2) to (5) of section 4-B shall, mutatis mutandis, apply for the purpose of assessment of the entertainments duty at the rate specified in clause (c) of sub-section (1) or clause (a) of sub-section (3) of section 3 of this Act: financial year in which the amount has remained so unspent. If the prescribed officer on perusal of the accounts is satisfied at the end of the admissible period for which the proprietor is allowed to carry forward the unspent amount of the service charges or part thereof, that, the said amount has not been spent towards the maintenance and providing facilities and safety measures as provided in the second proviso, then the said amount of service charges or part thereof, not so spent shall be included in the payment for admission and thereupon, the provisions of sub-sections (2) to (5) of section 4-B shall, mutatis mutandis, apply for the purpose of assessment of the entertainments duty at the rate specified in clause (c) of sub-section (1) or clause (a) of sub-section (3) of section 3 of this Act.

Provided also that, the proprietor shall be allowed to set off the amount spent in a financial year in excess of the amount collected as service charges in that financial year towards maintenance and for providing facilities and safety measures as provided in the second proviso, against the amount of the service charges which will be collected during the next four financial years immediately following the financial year in which the excess amount is spent:

Provided also that, any payment not exceeding (one rupee) per ticket if charged by the proprietor of a touring cinema towards service charges, separately and the proprietor of

such touring cinema shows to the satisfaction of the prescribed officer (as defined in the rules made under this Act), that such payment made is spent by him during the license period towards maintenance and providing facilities and safety measures in such touring cinema, as specified by the State Government (by notification in the Official Gazette issued in this behalf), in addition to those required under the provisions Ben of the "Bombay Cinemas (Regulation) Act, 1953 and the Maharashtra Cinemas (Regulation) Rules, 1966, or any other law for the time being in force, in that case, such payment towards service charges shall not be included in the payment for admission, subject to the condition that the proprietor of such touring cinema shall submit, to the prescribed officer within a period of one month from the date of expiry of license period, the audited accounts of the service charges collected and spent by him towards the maintenance and for providing the additional specified facilities and safety measures for such touring cinema.

Provided also that, any payment of one rupee] per ticket if charged by the proprietor of a permanent or quasi-permanent cinema having computerised ticket terminal network with the help of information technology through satelite, towards additional service charges, separately in that case, such payment towards additional service charges shall not be included in the payment for admission;

Provided also that, any payment not exceeding ten rupees or any such amount as may be specified by the State Government, from time to time, by notification in the Official Gazette, per ticket if charged by the proprietor himself or through any service provider towards service charges, separately for providing facility for online ticket booking in all entertainments, in that case, such payment towards such service charges shall not be included in the payment for admission, subject to the condition that the proprietor and the service provider shall submit the data of online tickets sold per month, and online internet handling fee or convenience charges charged thereof and also the certified copies of agreement for online ticket booking services to the

Collector before seventh day of every succeeding month; and any amount of such service charges in any form more than ten rupees or more than such amount as may be specified by the State Government, from time to time, by notification in the Official Gazette, levied by the proprietor himself or through any service provider, for providing facility for online ticket booking, shall be included in the payment for admission.

Explanation.—For the purposes of this proviso, the expression "service provider" means and includes any person or any company or agent who is authorized or permitted by the proprietor of any entertainment to book online tickets through their website or portal or by any other means.

…….

(d) "admission to an entertainment", includes admission to any place in which the entertainment is held [or any place where from the entertainment is provided by means of cable connection from any type of antenna with a cable network attached to it or cable television 13[for Direct-to-Home (DTH) Broadcasting service ;

(d-1) to (d-2)…….

(e) "complimentary ticket", means a ticket or pass for admission to an entertainment free of any payment or at reduced rate of payment for such admission;

(e-e) "dance bar" means and includes any bar or permit-room where along with serving liquor, for entertainment, any type of dance is also performed to the tune of any type of music ;

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

……

(f) "entertainment duty", or "duty" in respect of any entertainment means the entertainment duty levied under section 3;

……

(h) "ticket", or "season ticket" means a ticket issued by a proprietor of an entertainment for admission of a person or persons to an entertainment;

……..

3. Duty on payments for admission to entertainment.—
(1) There shall be levied and paid to the State Government [on payment for admission fixed by the proprietor] to any entertainment [expect in the case of video games, exhibition by means of any type of antenna or cable television, [or Internet Protocol Television,] or exhibition by means of Direct-to-Home (DTH) Broadcasting service, bowling alley, go-carting, dance bar, [permit room or beer bar with live orchestra, pub,] discotheque, amusement park, water sports activity, pool game] [or tourist bus with video facility] a duty (hereinafter referred to as "entertainments duty") at the following rates, namely :—

……

4. Method of levy.—
(1) Save as otherwise provided by this Act, no person other than a person who has to perform some duty in connection with an entertainment or a duty imposed upon him by any law, shall be admitted to any entertainment [except with a valid printed ticket or complimentary ticket.]

4E.Collection of duty on cable television through public auction or agent.—
(1) Notwithstanding anything contained in this Act, it shall be lawful for the State Government to lease by public

> *auction, the collection of entertainment duty on cable television including entertainment duty leviable on Direct-to-Home (DTH) Broadcasting service, for any period not exceeding three years at a time or to appoint an agent for the collection thereof.*

49. Before we decide the legislative competency of the State to add the impugned proviso, it is necessary to analyse the Scheme of the MED Act.

Analysis of the MED Act :-

50. The State has enacted the MED Act under the power conferred by Article 246(3) read with Entry 62 of List II in the Seventh Schedule to the Constitution of India, which is referred to as the 'State List.' Entry 62, as it existed at the relevant time before the 101st amendment, reads as under:-

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

51. The preamble to the Act states that the MED Act is an Act to impose duty in respect of admission to entertainment in the State of Bombay and Section 1(2) provides that it extends to the whole of the State of Maharashtra.

52. Section 2 defines various terms for the purposes of the Act. Section 2(a) defines "entertainment" to include any exhibition, performance, amusement, game or sport to which persons are admitted for payment …….for which persons are required to make payment by way of contribution or

subscription or installation and connection charges or any other charges collected, in any manner whatsoever, but does not include magic show and temporary amusement.

53. Section 2(b) defines "payment of admission" in relation to the levy of entertainment duty to include items specified therein and clause (iv) provides for 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.

54. Explanation to Section 2(b) provides that payments made for purchase of any type of antenna or any other apparatus for securing transmission, etc. shall be deemed to be payment for admission. First proviso to Section 2(b) provides for abatement of 25% if amount charged for admission to a video exhibition is inclusive of the price for any eatables or beverages. Second proviso provides that any payment not exceeding Rs. 7/- in case of ordinary and air-cooled cinemas and Rs.9/- in case of air-conditioned cinemas per ticket, if charged, separately and used towards maintenance and providing facilities and safety measures then such service charges shall not be included in the payment for admission. Fifth proviso similarly provides that any payment

not exceeding Re.1/-, if charged, per ticket by the proprietor of a touring cinema towards service charges shall not be included in the payment for admission, subject to the conditions specified therein. Sixth proviso to Section 2(b) provides that any payment of Re.1/- per ticket if charged by the proprietor having computerized ticket terminal network with the help of information technology through satellite, towards additional service charges separately then such additional service charges, shall not be included in the payment for admission.

55. Section 2(c) defines “proprietor” to include persons specified therein. Section 2(d) defines “admission to an entertainment” to include admission to any place in which entertainment is held or any place where from the entertainment is provided by means of cable connection, antenna etc. Section 2(e) defines “complimentary ticket” to mean a ticket or pass for admission to an entertainment free of any payment or at reduced rate of payment for such admission. Section 2(f) defines “entertainment duty” to mean the entertainment duty levied under Section 3. Section 2(h) defines “ticket” or “season ticket” to mean a ticket issued by a proprietor of an entertainment for admission of a person to an entertainment.

56. Section 3 is the charging Section, and it provides that there shall be levied and paid to the State Government

(at the rates specified therein) duty calculated on payment for admission fixed by the proprietor to any entertainment. The rate of entertainment specified therein is certain percentage of the payment for admission based on the limits of the local area where the entertainment takes place. The rate for video game is a fixed amount per month per machine basis. Section 3(3) of the Act provides for an optional method of determining the duty based on certain percentage of the gross collection capacity or houseful tax capacity which in turn is defined on notional basis.

57. Section 3(17) of the MED Act provides for fixed sum of entertainment duty to be paid in advance per month with respect to discotheques in Five Star Hotels and at places other than Five Star Hotels.

58. Section 4(1) of the MED Act provides that no person shall be admitted to any entertainment (except with a valid printed ticket or a complimentary ticket). Section 4(2) provides for consolidated payment of a percentage to be fixed by the State Government of the gross sum received by the proprietor on account of payments for admission to the entertainment and on account of the duty or in accordance with the returns of the payments for admission to the entertainment and on account of the duty.

59. Section 4B deals with the assessment of

entertainment duty based on the returns required to be filed by the proprietor. Section 6 deals with the exemption provided by the State Government if the entertainment is for charitable or educational purposes. Section 7 empowers the State Government to make rules for securing the payment of the entertainment duty and generally for carrying into effect the provisions of the Act.

60. Section 8 empowers the authorities under the Act to enter place of entertainment for administration of this Act. Section 9 deals with recovery of entertainment duty as an arrear of land revenue. Section 9A deals with compounding of offences. Section 9B deals with interest on failure to pay the duty and Section 9C deals with refund of excess duty paid. Section 10-A deals with appeals and revision. The other Sections are not material for the purposes of our adjudication.

61. On the above analysis of the Scheme of the MED Act, the following four essential ingredients of tax are satisfied.

(i) The subject matter of the MED Act is “entertainment”.

(ii) The person liable to pay duty is the “proprietor”.

(iii) The rate/amount of duty is specified in Section 3, and such rate/duty is to be calculated on payment for admission fixed by the proprietor; this is known as the measure of tax or quantification of the amount of duty.

(iv) The taxable event is payment for admission to the entertainment.

62. The taxable event determines the true nature of tax. While the measure of tax does not define the nature of tax, it does determine the quantum of tax that can be levied and collected. There is a distinction between the nature of tax and the measure of tax. The character of the levy remains unchanged by the rate imposed or by the measure of tax. The method of recovery for a levy cannot influence its character.

63. For example, under the Interest-Tax Act, 1974, the levy is on the gross receipt of interest, treating the income as yardstick. However, such a yardstick cannot reclassify the Interest-Tax as a tax on income. The subject of tax is clear and well-defined, but the amount of tax can be measured in different ways for quantification. Developing the measure of taxation is a much more complex task than defining the subject of tax; thus, the Legislature must have greater flexibility in establishing the measure of taxation.

64. The mechanism and method chosen by the Legislature to quantify tax are not decisive of the measure of the tax. It is well established that the measure of taxation cannot alter its nature, and therefore, the Hon'ble Supreme Court in the case of **Tamil Nadu Kalyana Mandap Association vs. Union of India**[27] held that the fact that service tax is levied as a percentage of gross charges for catering does not change or affect the legislative competence of Parliament.

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[27] (2004) 267 ITR 9

65. The entire basis of the petitioners in Writ Petition No.1813 of 2016, namely the Multiplex Association, is founded on oral arguments before the bar that the activity of selling tickets online constitutes a separate business activity, unrelated to the activity of showing movies in theatres. There is no assertion in the petition that the activity of selling tickets online is a distinct business activity of the theatre owners *outside* the activity of screening movies. There are no pleadings or, in any event, serious or proper pleadings to sustain this superstructure sought to be projected during oral arguments.

66. On a query being raised, the learned counsel was unable to show any averment in the petition to this effect but made a feeble attempt by bringing to our notice paragraph 7(f) of the petition wherein it is stated that the convenience fee is an independent and distinct fee for facilitating online booking of tickets and the same is optional. In our view, this averment cannot be construed as a foundation to argue across the bar that selling tickets online is a separate business activity *dehors* the activity of featuring movies. The whole substratum of the petitioners' submissions is based on this oral argument, which does not feature in the petition. This submission deals with factual aspects, and such an argument cannot be based without pleadings and, more so, without verifying the facts of each of the members of petitioner no.1.

67. However, even otherwise, in our view, the substratum of the submissions based on separate business activity cannot be sustained. The submissions made on behalf of the petitioners on this count are misconceived. The impugned proviso does not levy duty on the activity of selling tickets online by treating it as a separate and distinct form of entertainment. What is sought to be taxed is the form of entertainment and admission thereto, which features a movie/film, and there is no dispute that the members of the petitioner no.1 are engaged in the business of featuring movies/films. This is the subject matter of the tax or duty.

68. The change in the basis of arriving at the quantum of duty cannot, by any stretch of imagination, be construed to mean that the Legislature intends to tax a new activity of booking tickets online under the MED Act. The nature of tax remains the same, i.e. entertainment duty. Therefore, any amendments in the measure of tax cannot be construed to mean that the Legislature is seeking to tax a new activity under the MED Act. There is, therefore, no need to amend the definition of “entertainment” or other sections in the Act since no new form of entertainment is sought to be introduced or taxed by the impugned proviso.

69. Section 2(a) defines what “entertainment” is. In the instant case before us, there is no dispute that the exhibition of a movie/film is covered by the phrase “entertainment” as

defined. In this section, it is essential to note that the definition further provides the requirement of making payment by way of contribution or subscription or installation and connection charges or any other charges collected in any manner whatsoever. The phrase "any other charges collected in any manner whatsoever" would, in the facts of the present case, include the convenience fee which a person is required to pay for watching the movie/film.

70. The contention of the petitioners that the measure of tax as defined in Section 2(b) is amended but not the charging Section 3, and therefore, the impugned proviso is bad in law, also cannot be accepted. If the contention of the petitioners' submission is accepted, then the definition clause would become redundant since for every change in the definition section, corresponding changes will have to be made in Section 3. For e.g., if the definition of cable television is amended in the definition section, then, according to the petitioners, since the "cable television" phrase is used in Section 3, corresponding changes should be made in Section 3 also. In our view, this would not be a correct proposition since the definition section itself is meant for interpreting the words used in the whole of the Act unless the context otherwise requires, and in the present case before us, no such case is made out for giving a different meaning than contained in the definition section.

71. The Hon'ble Supreme Court, in the case of ***Bhagwati Developers (P) Ltd. vs. Peerless General Finance & Investment Co. Ltd.***[28]**,** observed in paragraph 30 that "when the word 'securities' has been defined under the SCRA, its meaning would not vary when the same word is used at more than one place in the same statute; otherwise, it will defeat the very object of the definition section." The purpose of a definition is to prevent the need for repeated descriptions of the subject matter to which the words or expressions are applied. In our view, once the definition section is amended, there is no need to amend the phrase used in the charging section, which is already defined, unless there are grounds to not adopt the definition section, which, in this case, the petitioners have failed to establish. Once the definition section is amended, corresponding changes are to be read wherever such a phrase appears in the Act; otherwise, the whole purpose of having the definition section in the Act becomes pointless.

72. Section 2(b) defines "payment of admission" in relation to the levy of entertainment duty. The phrase "in relation to" must be widely construed. Furthermore, Section 2(b)(iv) is in its widest form engrafted into the Act. It defines "payment of admission" to include any payment and clause (iv) provides for ***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***

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28 (2013) 9 SCC 584

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.***

73. Section 2(b)(iv), if applied to the facts of the case, would mean that the "convenience fee" would form part of the payment of admission as defined in the MED Act. If the ingredients therein are satisfied qua such fees, there is no dispute that it is a payment by whatever name called for any purpose whatsoever. A person, by paying convenience fees to book a ticket online, buys a ticket and pays convenience charges, which enables him to watch the film/movie. Therefore, it has a direct connection with the activity of entertainment.

74. To watch a movie, a ticket is required because without a ticket, a person cannot enter the theatre. If such a ticket is booked online, then convenience fees must be paid for purchasing the ticket online, making this payment a condition for entry into the entertainment theatre. A person cannot buy an online ticket without paying the convenience fees, and consequently, he would not be entitled to entertainment, nor would the theatre owner permit such an individual to enter. Therefore, if a person pays for the convenience of booking a ticket online, which entitles him to enter the entertainment premises to enjoy the film, then, in our view, paying the convenience fees is a necessary condition

for attending and entertaining oneself at the theatre.

75. Section 2(b)(iv) expressly provides that such an extra payment is either in addition to the payment for admission or without any such payment for admission. Therefore, Section 2(b)(iv) which is a "measure of tax", since duty is calculated on payment of admission, contemplates that in addition to the primary price paid for the ticket, the "convenience fees" paid at the time of buying the ticket online, entitles the individual to attend the entertainment and would be treated as payment for admission.

76. In our view, the payment of "convenience fees" cannot be detached from the buying of a ticket online for attending the entertainment. Making payment of convenience fees is an inextricable part of buying the ticket online for entertainment. The composite price paid does go a long way in enhancing the experience of the entertainment, i.e., watching the film or gaining seamless admission to the place of entertainment. Splitting the transaction or styling it as a separate activity having no nexus or connection with payment for admission, or calling it by some other name, cannot be grounds to either strike down the levy or declare that it would not be attracted. Therefore, in our view, the "convenience fees" charged would squarely fall within section 2(b)(iv) which defines "payment of admission" and which forms the measure of tax on which rate of duty is to be paid under Section 3 of the MED Act.

77. The phrase used in Section 2(b)(iv) of the MED Act is that payment should be in any form as a condition of attending or continuing to attend the entertainment. The phrase 'condition' means something established or agreed upon as a requisite to the doing or taking effect of something else. Condition is a restraint or bridle annexed and joined to a thing so that by non-performance or not doing thereof, the party to the condition shall receive prejudice and by performance and doing of the same shall receive advantage. In the instant case before us, payment of a convenience fee would satisfy the meaning of the term "condition" since, unless the said payment is made, a person cannot buy the ticket online for entertainment. Therefore, in our view, payment of convenience fees satisfies the ingredients of the phrase "condition" as used in Section 2(b)(iv) of the MED Act.

78. The use of the word 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 the Legislature to give the widest amplitude to this provision. Any restricted interpretation of the definition of Section 2(b)(iv) would defeat the object of the provision and the intent of the Legislature.

79. In ***Markand Saroop Aggarwal And Ors v M. M. Bajaj***

And Anr.[29]***,*** the Supreme Court was concerned with the question of whether charges by restaurant owners for minimum fees, against which food was consumed while a cabaret show was ongoing, would constitute “payment for admission." The Court, after analysing the definition of "payment for admission” in Section 2(6) of the U. P. Entertainment and Betting Tax Act, 1937, read with Section 4(1) of the same Act, concluded that such payments would indeed amount to "payment for admission” for entertainment.

80. The Hon’ble Supreme Court held that such payment was a condition for attending or continuing to attend the entertainment. Though it may be for taking tea or dinner for a minimum charge, but since it is connected with entertainment and as the person is making payment as a condition for attending or continuing to attend the entertainment, it would attract the definition for “payment of admission” under Section 2(6) of the said Act. In our view, the ratio of this decision squarely applies to the facts of the case before us, and more forcefully because in the instant case before us, the convenience fee is paid for booking the ticket online, which would permit the individual to attend the entertainment. Even the cinema owners issued one consolidated invoice for the ticket cost and convenience fees. The said invoice was produced before us by the learned counsel for the petitioners. However, we must add that this composite invoice is not the

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29 (1979) 1 SCC 116

basis for our reasoning. Even a separate invoice would perhaps not have altered the real nature of the charge given the broad definition in the MED Act.

81. The impugned proviso introduced by the 2014 Amendment Act does not seek to levy a duty on a new form of entertainment. It only provides that if a separate amount is charged and it does not exceed Rs. 10/-, then the same will not be treated as payment for admission, but if the amount charged exceeds Rs. 10/-, then it shall be included in the payment for admission. In our view, this proviso is, in its true sense, a proviso which carves out an amount less than Rs. 10/- paid for online booking from the definition of "payment of admission" as given in Section 2(b)(iv).

82. In our view, this proviso is not a deeming provision as sought to be contended nor is it a provision to charge a separate line of activity. In the absence of the impugned proviso, the whole of the convenience fees, whether charged less than Rs.10/- or more than Rs./-10, would have been included in the definition of the phrase "payment of admission" but by this proviso if the amount charged is less than Rs.10/- then it would not be included in the definition of "payment of admission". Therefore, there is no force in submitting that this proviso makes a new activity chargeable to entertainment duty which is not included in the charging section.

83. The proviso aligns with the Statement of Objects and Reasons for introducing the impugned proviso. The reason why an amount charged less than Rs. 10/- is not considered as payment for admission, and more than Rs. 10/- is considered as payment for admission, is that various entities charged exorbitant amounts per ticket as convenience charges for online ticket booking. Therefore, the Legislature deemed it appropriate that if an amount less than Rs. 10/- per ticket is charged as a convenience fee, it would not be regarded as payment for admission. Conversely, if more than Rs. 10/- is charged, it would be regarded as payment for admission on which the rate of duty would be applied. In our view, this cannot be regarded as colourable exercise of power by the State so as to suggest that the Legislature is not empowered to enact the impugned amendment.

84. The petitioners' argument that they have paid service tax under the Finance Act, 1994 on the “convenience fees” and therefore, the State lacks the power to levy entertainment duty on the activity of providing convenience through online ticket booking is based on the assumption that online ticket booking constitutes a separate business activity, which we have already observed above is incorrect. In any case, by applying the principle of “pith and substance,” under the Finance Act, 1994, the activity of rendering a service is a taxable entry. Conversely, under the MED Act, duty is levied

on admission to entertainment, and for calculating the duty, one of the measures of tax to be included is the amount charged as convenience fees. Thus, both are separate and distinct. The activity of rendering a service is taxed by the Centre, while the entertainment activity is taxed by the State, and the impugned proviso seeks to amend the measure of tax used for calculating the duty. Therefore, the petitioners' argument on this point cannot be accepted.

85. Section 2(b) contains various provisos. The second proviso provides that if payment does not exceed the amount specified therein as the service charges specified for the nature of services offered therein, then such service charges shall not be included in the payment for admission. This itself indicates that if any activity is directly connected with entertainment, then even if it is treated separately, but the amount exceeds what is specified in the proviso, then the same shall be treated as payment for admission. To the same effect are the fifth and sixth provisos to Section 2(b).

86. The import of these provisos is that even if the proprietor treats the activity by charging separately, but if the amount exceeds what is prescribed therein, then it will be treated as payment for admission, and if the payment is less than the specified amount, then it will not be treated as payment for admission. That does not mean that the service of providing air-conditioned or touring cinema or computerized

ticket terminal is a separate line of entertainment which is sought to be taxed but what is sought to be taxed is entertainment and these activities are directly related to entertainment and the payment made for these activities constitutes the “measure of tax” on which rate of duty is applied.

87. Section 4 of the MED Act states that no one shall be admitted to any entertainment without a valid printed ticket or a complimentary ticket. Therefore, it cannot be argued that only the amount paid for the ticket should be considered the payment for admission, which is the basis for the duty payable. Section 4(1) solely regulates who can enter the place of entertainment. Conversely, this provision supports the respondents' case that a ticket is a necessary condition for admission to any entertainment. In our case, if the individual purchases a ticket online, the charges paid as “convenience fees” would be regarded as a condition for attending the entertainment, and thus, these would fall within the scope of the measure of tax as defined by Section 2(b)(iv). The rate of duty specified in Section 3 of the MED Act would then apply.

88. The Hon’ble Supreme Court in the case of ***Geeta Enterprises and others v. State of U. P. & Ors.***[30] has established four tests for an activity to be considered "entertainment," one of which is that even if admission to the hall is free, if the

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30 (1983) 4 SCC 202

exhibitor gains some benefit in money, it would be regarded as entertainment. In the present case, the "convenience fee" is a benefit that the theatre owner gains by encouraging individuals to purchase tickets at their convenience, at a time and place suitable for them, so they can attend the theatre to watch the movie or film. Therefore, convenience fees for online ticket booking to watch a movie or film would constitute payment of admission.

89. Mr. Thacker, learned counsel for the petitioners in Writ Petition No.1813 of 2016, relied upon Rule 7 of the Bombay Entertainment Duty Rules, 1958, to contend that the duty is to be levied only on the price of the ticket. In our view, this contention cannot be accepted. Rule 7 merely specifies what must be printed on the ticket and how many parts the ticket should have. It does not determine the measure or levy of the entertainment duty. The measure and levy of the duty are to be determined by reading Section 3 and Section 2(b) of the MED Act. When read in this manner, the convenience fee is a payment for admission under Section 2(b)(iv), read together with Section 2(a) and Section 3(1) of the MED Act. Any other interpretation would render the said three Sections redundant, and the Rules cannot be interpreted in a manner that makes these provisions meaningless. Section 2(b)(iv) explicitly states that the payment can be either in addition to, or separate from, the payment for admission. Moreover, this interpretation cannot be accepted because, as per Section 2(b)

(viii), payment for admission includes sponsorship amounts for a programme organised for invitees without ticket sales. If the interpretation proposed by the learned counsel were accepted, no entertainment duty would be levied where tickets are not sold but invitees are allowed to attend the event. Therefore, this contention must be rejected.

90. Before the advent of online ticket booking, tickets were sold at the theatre counter, which was manned by a person. The theatre owner would certainly consider the cost of the counter clerk, printing tickets, and other expenses when setting the ticket price. Now, due to technological innovation, tickets are sold not only at the counter but also online. If, before the introduction of technology, theatre owners paid entertainment duty based on the ticket price—which included the cost of the counter clerk—then it is unclear why, when ticket sales shift to an online mode, the charges called "convenience fees" cannot be regarded as part of the cost of entry to the theatre. Furthermore, merely changing the mode of sale from counter to online does not mean that selling tickets online constitutes a separate business activity. From this perspective, there is a clear connection between convenience fees and the cost of purchasing a ticket to enter the theatre, especially when tickets are booked online. Therefore, it satisfies the precondition under Section 2(b)(iv) for considering it as a payment for admission.

91. In our view, Section 3(1) of the MED Act, which is the charging section, contains the phrase "payment for admission" and the same read with Section 2(b)(iv) which defines "payment of admission" would mean not only the actual payment made by a person for entertainment but also what he pays to the proprietor for admission to entertainment. Entertainment duty is levied on what is paid by the person entertained for providing entertainment by the proprietor. Therefore, even from this perspective, convenience fees squarely fall within Section 2(b)(iv) read with Section 2(a) and Section 3(1) of the MED Act.

92. Now, we propose to discuss the submissions concerning legislative competence and the alleged infringement of Articles 14 and 19 of the Constitution.

93. There is minimal scope for challenge to constitutional validity. The fulcrum of the constitutional challenge is the question of legislative competence. Every fiscal legislation is an experiment in achieving certain desired ends, and the trial-and-error method is inherent in every such experiment. The law is very clear that Legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrine or straitjacket formula and this is particularly true in the case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be

dealt with, greater play in the joints has to be allowed to the Legislature. Every legislation, particularly in economic matters, cannot provide for all possible situations or anticipate all possible abuses.

94. As held in ***R. K. Garg Vs. Union of India***[31], every legislation particularly in economic matters is essentially empiric and it is based on experimentation. There may be crudities, inequities and even possibilities of abuse but on that account alone it cannot be struck down as invalid. These can always be set right by the Legislature by passing amendments. The court must therefore adjudge the constitutionality of such legislation by the generality of its provisions. Laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. Moreover, there is always a presumption in favour of the constitutionality of a statute and the burden is upon he who attacks it to show that there has been a clear transgression of the constitutional principles. The Legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination is based on adequate grounds.

95. In adjudging constitutionality, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume

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31 (1982) 133 ITR 239 (SC)

every state of facts which can be conceived existing at the time of legislation. The court must, while examining the constitutional validity of a legislation in economic matters, "be resilient, not rigid, forward looking, not static, liberal, not verbal". It must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary. The trial and error method is inherent in every legislative effort to deal with an obstinate social or economic issue and if it is found that any immunity or exemption granted under the Act is being utilised for tax evasion or avoidance not intended by the Legislature, the Act can always be amended and the abuse terminated.

96. It is also relevant to note the views of Justice Frankfurter in the case of ***Morey vs. Doud***[32] which is reproduced hereunder:-

> *"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The Legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."*

97. Firstly, it must be kept at the forefront that while considering a challenge to the constitutionality of legislation,

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32 354 US 457 (1957)

the court must presume its constitutionality, and the burden lies heavily on those who challenge the constitutional validity. The basic principles governing legislative power in the context of the present case can be culled out from the dicta of the Supreme Court in ***Hoechst Pharmaceuticals Ltd. v. State of Bihar***[33]and in the decision of the Constitution Bench in ***State of W.B. v. Kesoram Industries Ltd.***[34]***.***

98. The main Article in the Constitution of India dealing with legislative power is Article 246. Article 246 of the Constitution of India separates the legislative fields between Parliament and the Legislature of any State. Parliament can exclusively make laws with respect to any of the matters enumerated in List I - Union List in the Seventh Schedule to the Constitution under Article 246(1). Subject to power of the Parliament, the Legislature of any State can make laws under Article 246(2) with respect to any of the matters enumerated in List III - the Concurrent List. Subject to the above, the legislature of any State has exclusive power under Article 246(3) of the Constitution of India to make laws with respect to any of the matters enumerated in List II - State list.

99. The various entries in the three Lists are "fields" of legislation. The entries in the lists must be interpreted liberally and not in a narrow or pedantic sense. Power to

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33 (1983) 4 SCC 45

34 (2004) 10 SCC 201

legislate as to the principal matter mentioned explicitly in the entry shall also include legislation touching incidental and ancillary matters.

100. It is a well-settled principle of law that the Legislature can impose tax on entertainment on person providing entertainment as indeed on the person receiving entertainment. In other words, there is no reason to preclude legislation from imposing tax on the person who provides entertainment. Those who receive entertainment are exigible to tax. Those who provide it are similarly not immune to the taxing net.

101. The Supreme Court in the case of ***Express Hotels Private Limited vs State Of Gujarat***[35], observed that the concept of "luxuries" in the legislative entry takes within it everything that can fairly and reasonably be said to be comprehended in it. The actual measure of levy is a matter of legislative policy and convenience. So long as legislation has a reasonable nexus, the concept of "luxuries" in a broad and general sense in the expression in which it is comprehended, the legislative competence extends to all matters with respect to that field or topic of legislation.

102. Applying the said ratio to the facts of our case, the convenience fee is charged for booking the ticket online,

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35 AIR 1989 SC 1949

which is for the purpose of entry for entertainment. Therefore, the convenience fees have a reasonable and direct nexus with the concept of entertainment. Since payment for admission is a measure of the levy, it is a matter of legislative policy and convenience as to what amount and rate of duty should be charged. In the instant case, as observed by us above, the convenience fee is a measure of tax which has a direct connection with the subject matter of tax and the charging provision and therefore the State is competent to enact the impugned proviso. In our view, legislative competence and nexus between the taxing power and the subject of taxation are clearly established in the present case, and what should be the measure after having established such nexus is a matter of fiscal policy, which is best left to the wisdom of the legislature and not for this Court to decide.

103. The measure of tax cannot be equated with the taxing event and is distinct from it. The Legislature has the discretion in structuring a fiscal levy to devise a suitable measure of tax, so long as the measure chosen by the Legislature is not entirely alien to the nature of the levy, so as to change the fundamental nature of the levy. The standard adopted as a basis for assessment may shed light on the nature of the levy, but is not conclusive in defining it. When a statutory measure for assessing tax is considered, it need not align exactly with the specific details of the levy itself; instead, a broad-based standard of reference can be employed for

determining the measure of the levy. Any statutory standard that maintains a connection to the essential character of the levy can be regarded as a valid foundation for tax assessment. In the present case, payment of convenience fees has a clear and direct link to entertainment activities and, therefore, it serves as a valid basis for levying entertainment duty.

104. Mr. More is justified in placing reliance on the decision of this Court in the case of ***Vasant Madhav Patwardhan (supra)*** for justifying the State competency to enact the impugned proviso. The Co-ordinate Bench has examined all the aspects dealing with the challenge to the competency of the State in levying the entertainment duty on DTH, and similar submissions are canvassed even before us in the present matter, and the vires of the State's power to legislate were upheld. The appeal against the said decision was dismissed by the Hon'ble Supreme Court in ***Vasant Madhav Patwardhan vs. State of Maharashtra***[36].

105. In ***Drive-In Enterprises (supra)***, the appeal before the Supreme Court stemmed from the Karnataka High Court's decision to declare the provisions of the Karnataka Entertainments Tax Act, 1958, unconstitutional for exceeding legislative powers. The State of Karnataka had imposed an entertainment tax on the admission of vehicles into drive-in theatres. The petitioners contended that the State Legislature

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36 2006 SCC Online 471

could impose an entertainment tax only on human beings, not on inanimate objects. The Supreme Court applied the doctrine of pith and substance to determine the true character of the levy. It was held that when the validity of an enactment is challenged, the Court must identify its true nature and character by examining the entire legislation, including its purpose, scope, and effect. The Court's task is to uncover the fundamental nature of the levy, its pith and substance, which in turn informs the assessment of the State Legislature's competence. Having elaborated on the concept of pith and substance, the Supreme Court, while analysing Entry 62 of List II in Schedule Seventh to the Constitution of India, concluded that the tax burden fell on entertainment itself, which necessarily involves persons being entertained. Therefore, the tax was levied on the persons entertained.

106. The relevant observations from this judgment for the present case are as follows (SCC pp. 66-67, para 13)

> *"13. Entry 62 List II of the Seventh Schedule empowers the State Legislature to levy tax on luxuries, entertainment, amusements, betting and gambling. Under Entry 62, the State Legislature is competent to enact law to levy tax on luxuries and entertainment. The incidence of tax is on entertainment. Since entertainment necessarily implies the persons entertained, therefore, the incidence of tax is on the person entertained. Coming to the question whether the State Legislature is competent to levy tax on admission of cars/motor vehicles inside the drive-in theatre especially when it is argued that cars/motor vehicles are not the persons entertained. Section 3 which is the charging provision, provides for levy of tax on each payment of admission. Thus, under the Act, the State is competent to*

levy tax on each admission inside the Drive in Theatre. The challenge to the levy is on the ground that the vehicle is not a person entertained and, therefore, the levy is ultra vires. It cannot be disputed that the car or motor vehicle does not go inside the drive-in theatre of its own. It is driven inside the theatre by the person entertained. In other words, the person entertained is admitted inside the drive-in theatre along with the car/motor vehicle. Thereafter, the person entertained while sitting in his car inside the auditorium views the film exhibited therein. This shows that the person entertained is admitted inside the drive-in theatre along with the car/motor vehicle. This further shows that the person entertained carries his car inside the drive-in theatre in order to have better quality of entertainment. The quality of entertainment also depends on with what comfort the person entertained has viewed the cinema films. Thus, the quality of entertainment obtained by a person sitting in his car would be different from a squatter viewing the film show. The levy on entertainment varies with the quality of comfort with which a person enjoys the entertainment inside the drive in theatre. In the present case, a person sitting in his car or motor vehicle has luxury of viewing cinema films in the auditorium. It is the variation in the comfort offered to the person entertained for which the State Government has levied entertainment tax on the person entertained. The real nature and character of the impugned levy is not on the admission of cars or motor vehicles, but the levy is on the person entertained who takes the car inside the theatre and watches the film while sitting in his car. We are, therefore, of the view that in pith and substance the levy is on the person who is entertained. Whatever be the nomenclature of levy, in substance. the levy under heading 'admission of vehicle' is a levy on entertainment and not on admission of vehicle inside the drive-in theatre. As long as in pith and substance the levy satisfies the character of levy i.e. 'entertainment', it is wholly immaterial in what name and form it is imposed. The word entertainment is wide enough to comprehend in it, the luxury or comfort with which a person entertains himself. Once it is found there is a nexus between the legislative competence and subject of taxation, the levy is justified and valid. We, therefore, find that the State Legislature was

> *competent to enact sub-clause (v) of clause (i) of Section 2 of the Act. We accordingly hold that the impugned levy is valid."*
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> *(emphasis supplied)*

Thus, the Supreme Court, applying the doctrine of pith and substance, held that the entertainment tax is on the person entertained. Therefore, Entry 62 in List II, as regards entertainment, pertains to tax on the person being entertained, in the case at hand, the film viewer.

107. In ***Venkateshwara Theatre vs. State of Andhra Pradesh (supra),*** the issue was whether the notional method of calculating duty based on gross collection alters the nature of entertainment duty and whether this surpasses the legislative authority granted to the State Legislature by Entry 62 of List II. The Supreme Court noted that instead of taxing actual payments made for admission by individuals who are admitted to the theatre, the duty is being calculated based on the gross collection capacity per show, estimated from the total potential payments for admissions if all seats are occupied at the maximum rate. This approach does not change the character of the tax or its subject, which remains a tax on entertainment. The original method of levy, based on actual payments, has been replaced by a more practical method. However, adopting this new system does not alter the nature of the tax; it remains a tax on entertainment. Applying the ruling of this decision to our case and as previously analysed, the payment of convenience fees is a levy on

entertainment, as seen from a combined reading of the Scheme of the Act.

108. We also draw support for our above analysis on the competency of the State to make the impugned amendment by relying upon the decision of the Supreme Court in the case of ***State of Kerala vs. Asianet Satellite (supra).*** In this case also, an argument was raised that since the activity of broadcasting is subject matter of service tax, it cannot be subjected to entertainment duty under the Entertainment Duty Act. The Hon'ble Supreme Court by applying the principle of pith and substance upheld the power conferred on the State Legislature to impose entertainment duty on broadcasting and other services under Entry 62, List II.

109. The Hon'ble Supreme Court observed that the core and essence of the provisions of the State Act pertain to the taxation of providers and recipients of entertainment and amusement within that entry, through television broadcasting services. The Court also rejected the argument of colourable legislation. It examined how the broadcaster operates, noting that the activity comprises two aspects: firstly, relaying signals from satellites of various broadcasters of TV channels, and secondly, the purpose of such relaying—namely, the content delivered to the subscriber. This content results in the entertainment of the subscriber. In other words, the Court pointed out that the activities of an assessee involve at least

two elements, aligning with the subject matter of the levy under the Central Finance Act, 1994: broadcasting services and the respective State enactments providing entertainment to the subscriber, corresponding to the Entertainment Duty Act.

110. The Supreme Court further observed that it is well settled that two taxes, which are separate and distinct and imposed on two aspects of an activity, are permissible in law. There is no overlapping because the taxes are relatable to distinct taxation entries in separate legislative lists.

111. The following paragraphs of the decision of the Supreme Court in the case of ***State of Kerala Vs. Asianet Satellite (supra)*** are relevant and support our reasoning :

> *"**8.2.1** The power to legislate which is dealt with under Article 246 has to be read in conjunction with the entries in the three Lists discussed above which define the respective areas of legislative competence of the Union and State Legislatures. While interpreting these entries, they should not be viewed in a narrow or myopic manner but by giving the widest scope to their meaning, particularly, when the vires of a provision of a statue is assailed. In such circumstances, a liberal construction must be given to the entry by looking at the substance of the legislation and not its mere form.*
>
> ***8.2.2** However, while interpreting the entries, in the case of an apparent conflict between the entries in the Lists, every attempt must be made by the Court to harmonise or reconcile them. Where there is an apparent overlapping between two entries, the doctrine of pith and substance is applied to find out the true character of the enactment and the entry within which it would fall. The doctrine of pith and substance, in short, means, if an enactment substantially falls within the powers expressly*

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

8.2.4 *The Privy Council quoted with approval, the observations of Gwyer, CJ in A.L.S.P.P.L. Subrahmanyan Chettiar vs. Muttuswami Goundan, AIR 1941 FC 47 wherein it was observed that overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdictions. It was observed that "Subjects must still overlap, and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with". In the said case, it was further observed that the dominant position of the Central Legislature (Parliament) with regard to matters in List I and List III is established. But the rigour of the literal interpretation is relaxed by the use of the words "with respect to" which signify "pith and substance", and do not forbid a mere incidental encroachment. The learned Chief Justice Gwyer further added as under:*

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

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

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

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

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

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

including export duties" would be wholly redundant. Entries 43 and 44 relate to incorporation, regulation and winding up of corporations. Entry 85 provides separately for corporation tax. Turning to List II, Entries 1 to 44 form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that List form another group, and they deal with taxes. Entry 18, for example, is "Land" and Entry 45 is "Land revenue". Entry 23 is "Regulation of mines" and Entry 50 is "Taxes on mineral rights". The above analysis—and it is not exhaustive of the entries in the Lists—leads to the inference that taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence. And this distinction is also manifest in the language of Article 248 clauses (1) and (2) and of Entry 97 in List I of the Constitution. Construing Entry 42 in the light of the above scheme, it is difficult to resist the conclusion that the power of Parliament to legislate on inter-State trade and commerce under Entry 42 does not include a power to impose a tax on sales in the course of such trade and commerce."

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

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

11.10 *Thereafter, in Federation of Hotel & Restaurant Association of India, the Constitution Bench of this Court had to decide the constitutional validity of the Expenditure Tax Act, 1987 (Central Act 35 of 1987) which envisaged a tax at 10 per cent ad valorem on "chargeable expenditure" incurred in the class of hotels wherein "room charges" for any unit of residential*

accommodation were Rs. 400 per day or more per individual. The Union sought to sustain the legislative competence to enact the impugned law under Article 248 read with Entry 97 - List I.

11.12 *……. "141. As held in Goodricke Group Ltd. [1995 Supp (1) SCC 707] which we have held as correctly decided, this Court has noted the principle of law well established by several decisions that the measure of tax is not determinative of its essential character. The same transaction may involve two or more taxable events in its different aspects. Merely because the aspects overlap, such overlapping does not detract from the distinctiveness of the aspects. In our opinion, there is no question of conflict solely on account of two aspects of the same transaction being utilised by two legislatures for two levies both of which may be taxes or fees or one of which may be a tax and the other a fee falling within two fields of legislation respectively available to the two.*

11.14 In ***Union of India vs. Mohit Minerals Pvt. Ltd., (2018) 13 SCR 139 ("Mohit Minerals Pvt. Ltd.")****, this Court explicitly held that, "the principle is well settled that two taxes/imposts which are separate and distinct imposts and on two different aspects of a transaction are permissible as "in law there is no overlapping.*

11.15.8 *…… it was observed that there is a distinction between the object of tax, the incidence of tax and the machinery for the collection of the tax. The distinction is important but is apt to be confused. Legislative competence is to be determined with reference to the object of the levy and not with reference to its incidence or machinery. There is a further distinction between the objects of taxation in our constitutional scheme. The object of tax may be an article or substance such as a tax on land and buildings under Entry 49 - List II, or a tax on animals and boats under Entry 58 - List II or on a taxable event such as manufacture of goods under Entry 84 - List I, import or export of goods under Entry 83 - List I, entry of goods under Entry 52 - List II, or sale of goods under Entry 54 - List II to name a few. Dealing with Entry 56 – List II it was held that the subject matter of taxation under that entry are goods and passengers. The phrase "carried by road or natural waterways" carves out the kinds of goods or passenger which or who can be subject to tax under the entry.*

After making an analysis of the entry with reference to the dictum in Rai Ramakrishna vs. State of Bihar, AIR 1963 SC 1667, it was observed that entry 66 read with Section 65 (41)(j) and 67 (m-a)

in Chapter V of the Finance Act, 1994 did not seek to levy tax on goods or passengers but the service of transportation itself which is a distinct levy from what is envisaged under Entry 56 – List II. It may be that both the levies are to be measured on the same basis but that does not make the levy the same.

11.18 *To appreciate the extent and the context of the use of 'aspect theory' in India, it would be instructive to reiterate some well-established principles of interpretation of taxation entries. Some of the relevant principles are reiterated as follows:*

i. In interpreting expressions in the Legislative Lists of the Seventh Schedule of the Constitution, a wide meaning should be given to the entries.

ii. In the scheme of the Lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation. They are separately enumerated.

iii. As the fields of taxation are to be found clearly enumerated in Lists I and II, there can be no overlapping in law. There may be overlapping in fact, but there can be no overlapping in law.

iv. In the first instance, the pith and substance or true nature and character of the legislation must be determined with reference to the legislative subject matter and the charging section;

v. The measure of tax is not a true test of the nature of tax;

vi. The same transaction may involve two or more taxable events in its different aspects. Merely because the aspects overlap, such overlapping does not detract from the distinctiveness of the aspects.

11.28 *To determine whether there are different aspects to the activity conducted by the assessees herein which is sought to be taxed by the Union under the Finance Act, 1994 (as amended in different years) as a service tax and by the States under different State legislations as entertainment tax, it is first necessary to examine the taxable events which form the basis of levy of the legislative enactments impugned herein. Thereafter, the modus operandi of the activity undertaken by the assessees herein needs to be understood. Thereafter, a factual determination as to, whether, the taxable event which forms the basis of the levy under the Central and the State enactments corresponds to*

different aspects of the activity under consideration must be undertaken."

112. By applying the principles enunciated by the Supreme Court to the facts before us, it appears that the rendering of online ticket booking is regarded as a service and is taxed under the Finance Act, 1994 by the Union. Conversely, the act of entertainment involving films or movies is taxed by the State. When calculating the duty under the MED Act, the convenience fees paid are considered as part of "payment of admission" as defined under Section 2(b)(iv), which serves as the measure of tax on which the rate of duty is levied under Section 3 of the MED Act. The Union taxes services, while the State taxes entertainment. A key element in determining the entertainment duty is the charges levied for online ticket booking, but the State does not treat the act of online booking itself as entertainment. Merely because charges for online booking are included in the tax measure does not imply that the State has encroached upon the Union List. Therefore, there is no transgression by the State regarding the Union List, and both authorities are separate entities with the power to tax under their respective lists.

113. Therefore, in our view, the petitioners are not justified in claiming that the activity of online ticket booking is a separate activity intended to be taxed under Entry 62 of List II of the Seventh Schedule to the Constitution, and since this activity is already subject to service tax by the Union of India,

the impugned proviso is *ultra vires.* First, what the impugned proviso seeks to do is to exclude convenience fee charges up to Rs.10/- from the definition of payment of admission, while any amount charged above Rs.10/- is to be regarded as payment of admission. This inclusion and exclusion, without such proviso, would have resulted in the entire amount being included under Section 2(b)(iv) of the MED Act. The matter of levying tax relates to entertainment, and the basis of the duty is a certain rate applied to the payment of admission. It is this measure that has a direct connection with entertainment, which is sought to be amended by granting an exemption up to Rs.10/-. Therefore, in our opinion, the State has the authority to enact the impugned proviso under Entry 62, List II of the Seventh Schedule to the Constitution.

114. The idea of uniform charges is not supported by any of the provisions of the Act. In any case, individuals booking tickets online form a distinct category, and therefore, the principle of uniformity is satisfied concerning this category. When a theatre owner decides how much to charge for a ticket, he considers all the costs he is required to incur for showing the film, which includes the cost of technology for online ticket booking. However, it is difficult to determine the exact amount spent on technology per ticket. Therefore, by the impugned proviso, the legislature, in its wisdom, has estimated Rs.10/- per ticket for this and excluded the said amount from the definition of “payment of admission.” Thus,

in our view, there is no unreasonableness in excluding this sum, and any amount above Rs.10/- should be included in the definition of "payment of admission."

115. The test required for judging the legislative competency of a State to enact a law has recently been enunciated by a nine-judge bench of the Supreme Court in the case of ***Mineral Area Development Authority and Anr. vs. Steel Authority of India and Anr.***[37] The issue before the Supreme Court was validity of law made by the State on mineral-bearing lands pursuant to Entry 49 of List II and on mineral rights under Entry 50 of List II of Seventh Schedule when royalty is already imposed by virtue of Section 9 of the Mines and Minerals Development Regulation Act, 1957, a legislation passed by the Union by virtue of Entry 54 List I. The Supreme Court held that though the royalty is taken as a measure of tax for the purpose of levy by the State, the State does not encroach upon the Union List since tax on mineral-bearing land is a subject matter of the State List.

116. The following paragraphs of the Supreme Court are relevant and which are reproduced hereunder :-

> *"192. Conceptually, a tax has four elements-*
> *(i) the nature of the tax which prescribes the taxable event attracting the levy;*
> *(ii) the person who is liable to pay tax;*
> *(iii) the rate at which the tax is paid; and*
> *(iv) the measure or value to which the rate will be applied for computing the liability.*

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37 (2014) 10 SCC 1

199. The measure of tax is a matter of legislative policy. The legislature can select any measure of tax to compute liability, as long as it has a reasonable nexus with the nature of the tax. Hence, it is for the legislature to devise an appropriate measure of tax to compute the tax liability, provided the measure has a nexus with the nature of levy, that is a tax on mineral rights.

308. The discussion above indicates that the nexus between the measure and levy of tax need not be "direct and immediate". The nexus has to be "reasonable" and must have some relationship with the nature of levy. The reasonability of the nexus will largely depend upon the nature of the tax and the means available with the legislature to design the measure of the tax. Since the measure of the levy is a matter of legislative policy and convenience, the reasonability of the nexus between the measure and tax has to be determined by the courts on a case-to-case basis. While doing so, the Court will bear in mind the fundamental principle that the legislature possesses a broad discretion in matters of fiscal levies.

312. The measure for taxing land may bear a reasonable relationship to the actual or potential productivity of land. Measures such as annual value or market value provide a proximate basis to measure the income derived from land. If the State Legislature utilises the income derived from the land as a measure to quantify a tax on land, it does not trench upon the legislative domain of Union to tax income. The income merely serves as the measure to calculate the levy of taxes on land.

364. In view of the above discussion, we conclude that mineral value or mineral produce could be used as a measure of the tax on land under List II Entry 49. The fact that List II Entry 50 pertains to taxes on mineral rights would not preclude the State Legislature to use the measure of mineral value or mineral produce under List II Entry 49. The State Legislature has legislative discretion to determine the appropriate measure for the purposes of quantifying taxes, so

> *long as there is a reasonable nexus between the measure and the nature of the tax. The measure does not determine the nature of the tax. The words "lands" under List II Entry 49 includes mineral-bearing land. The mineral produce is the yield from a mineral-bearing land. Since royalty is determined on the basis of the mineral produce, royalty can also be used as a measure to determine the tax on royalty. The fact that the State Legislature uses mineral produce or royalty as a measure does not overlap with List II Entry 50."*

117. The guidelines laid down by the nine-Judge bench of the Supreme Court, if applied to the facts before us, lead us to have no hesitation in holding that the State has the legislative competence to enact the impugned proviso. The impugned proviso merely seeks to exclude or include certain sums within the definition of "payment of admission," and such payments are a form of tax for the levy of entertainment duty. It is also noteworthy that only one of the tax measures is sought to be amended by the impugned proviso. The convenience fees paid for online ticket booking for entertainment purposes have a direct and immediate connection with the subject of the levy, which is entertainment. What is being taxed is not the activity of online ticket booking—on which the petitioners have already paid service tax under the Finance Act, 1994—but rather the act of entertainment itself, with the duty amount determined by considering measures of tax, including convenience fees. Therefore, in our view, the State does not encroach upon the Union List so as to render the impugned proviso *ultra vires.*

118. Given the above analysis, we hold that the State has the legislative competency to enact the impugned proviso under Entry 62 of List II of the Seventh Schedule to the Constitution of India.

119. We have upheld the legislative competency of the State to enact the impugned proviso and merely because in the Statement of Objects and Reasons [SOR], it is stated that the amendment is to curb practice of charging excessive convenience fees would not make the impugned proviso a colourable legislation by exercising the power of the State under Article 246 (3) read with Entry 62 List II of Seventh Schedule to the Constitution of India. Once the impugned proviso is held to be constitutionally valid and has a direct nexus with the subject matter of tax, the legislature should be given a free hand to determine the measure of tax. The SOR states explicitly that the amendment is sought to be made in Section 2(b) of the MED Act, which defines "payment of admission." In any event, by making it difficult for the proprietors to charge an additional amount for admission to a place of entertainment by simply styling such a charge as a convenience fee, if the legislature felt that the tendency of overcharging might incidentally be curbed, such an expression in the SOR does not spell out any colourable exercise.

120. In ***K. C. Gajapati Narayan Deo vs. State of Orissa***[38],

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38 (1953) 2 to SCC 178

the Hon'ble Apex Court held that the doctrine of colourable legislation does not involve any question of *bona fides* or *mala fides* on the part of the legislature. The whole doctrine resolves itself into the question of the competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all.

121. His Lordship Krishna Iyer (J), in ***R.S Joshi vs. Ajit Mills Ltd. & Anr.***[39]***,*** on behalf of the bench concerning colourable exercise observed as under: -

> *"Certainly, this is a malignant expression and when flung with fatal effect at a representative instrumentality like the Legislature, deserves serious reflection. If forgetting comity, the Legislative wing charges the Judicative wing with 'colourable' judgments, it will be intolerably subversive of the rule of law. Therefore, we too must restrain ourselves from making this charge except in absolutely plain cases and pause to understand the import of the doctrine of colourable exercise of public power, especially legislative power. In this branch of law, 'colourable' is not 'tainted with bad faith or evil motive'; it is not or crooked. Conceptually, pejorative 'colourability' is bound up with incompetency. 'Colour', according to Black's Legal Dictionary, is 'an appearance, semblance or simulacrum, as distinguished from that which is real…… a deceptive appearance…... a lack of reality'. A thing is colourable which is in appearance only and not in reality, what it purports to be. In Indian terms, it is maya. In the jurisprudence of power, colourable exercise of or fraud on legislative power or more frightfully, fraud on the Constitution, are expressions which merely mean that the*

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39 AIR 1977 Supreme Court 2279

legislature is incompetent to enact a particular law although the label of competency is stuck on it, and then it is colourable legislation. It is very important to notice that if the legislature is competent to pass the particular law, the motives which impel it to pass the law are really irrelevant."

122. The Hon'ble Supreme Court in the case of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors.***[40]***,*** in paragraph 114 observed that bad faith, in the sense of improper motives, cannot be ascribed to a legislature making laws and this is settled law ever since the celebrated judgments in the cases of ***K.C. Gajapati Narayan Deo (supra)*** and ***R.S. Joshi vs. Ajit Mills Ltd. (supra).***

123. The legislature has the power to make the impugned proviso. Entry 62, List II of the Seventh Schedule, deals with taxation on entertainment and matters incidental thereto. Making of law for determining the measure of tax is a power within the competence of the State under Entry 62 List II of Seventh Schedule to the Constitution.

124. Therefore, in the light of the above decisions, we do not approve the submission made by the learned counsel appearing in Writ Petition No.1689 of 2015 that the impugned proviso is a colourable exercise of power by merely relying upon certain sentences of Statement of Objects and Reasons since we have upheld the competency of the State to enact the impugned proviso.

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40 (2020) 8 SSC 531

125. Insofar as the challenge to the two Circulars dated 31 January 2015 (Exhibit 'G') and 27 February 2015 (Exhibit 'H') is concerned, no arguments were advanced by the petitioners on this prayer. However, on a perusal of the impugned Circulars, it only seeks to call for details pursuant to the impugned amendment and since we have upheld the impugned proviso, in our view, no fault can be found in the issuance of the impugned Circulars.

126. We now propose to deal with the case laws cited by the learned counsel Mr. Thacker for the petitioners in Writ Petition No.1813 of 2016.

127. *Tata Sky Limited Vs. State of Madhya Pradesh and Ors. (2013) 4 SCC 656.*

In our view, this decision is distinguishable on facts and not applicable to the case of the petitioners. The issue before the Hon'ble Supreme Court was whether a new form of entertainment, i.e. Direct-to-home (DTH), can be taxed under the Entertainment Duty Act without there being a corresponding amendment in all the relevant Sections to cover this form of entertainment within its ambit. It was on these facts that the Supreme Court observed that unless a new form of entertainment is included within the definition of entertainment, charging section, etc. there can be no levy. In the case before us, there is no levy of entertainment duty on

new forms of entertainment but by virtue of the impugned amendment, the form of entertainment which was already subject matter of duty prior to amendment continued to be exigible under the MED Act and what was sought by the impugned proviso was to make changes in the measure of tax by not including sum up to Rs.10/- towards online booking charges in calculating the payment for admission and to include the sum charged more than Rs.10/- in arriving at the payment for admission. Therefore, since no new form of entertainment is sought to be taxed, but only changes are made in the definition measuring the tax in respect of entertainment, which was already a subject matter of the duty, the decision of the Supreme Court in *Tata Sky Limited (supra)* which was further referred to in *State of Kerala & Anr. Vs. Asianet Satellite Communications Ltd. & Ors. (supra)* cannot come to the rescue of the petitioners.

128. The next decision on which the petitioners rely heavily is the ruling of the Madras High Court in the case of ***PVR Limited Vs. Commercial Tax Officer, (supra),*** which the Supreme Court dismissed in the SLP. This decision is not applicable for several reasons. First, the issue of constitutional validity, which is challenged in the present petition, was not the matter before the Madras High Court. Second, the definition of "payment of admission" in the Tamil Nadu Entertainment Duty Act differs from that under the MED Act. Under the MED Act, the definition includes phrases such as

"……. by whatever name called ……. in any form ……. without any such payment for admission," which do not appear in the Tamil Nadu Entertainment Duty Act. Furthermore, the proviso impugned in this petition is not found in the Tamil Nadu Entertainment Duty Act. We have also referred to various other provisos in Section 2(b) of the MED Act, which are not present in the Tamil Nadu Entertainment Duty Act. The decision of the Supreme Court in the case of ***Markand Saroop Aggarwal and Ors. v. M.M. Bajaj and Anr. (supra),*** which interpreted a similar provision and specifically the phrase "condition," was not brought to the notice of the Hon'ble Madras High Court.

Thirdly, in our view, on a conjoint reading of Section 4 with Section 2(b), payment of a convenience fee for buying a ticket online is a condition for attending the entertainment. To this extent, we respectfully disagree with the decision of the Madras High Court.

129. The fact that the SLP against the Madras High Court decision was dismissed in limine does not constitute any merger. It is a settled position that a mere dismissal of an SLP by the Hon'ble Supreme Court would not amount to a precedent under Article 141 of the Constitution of India. This position of the effect of the dismissal of an SLP has been reiterated by the latest decision of the Supreme Court in the case of ***State of U.P. vs. Virendra Bahadur Katheria& Ors.***[41] in

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41 2024 SCC OnLine SC 1712

paragraphs 42 and 43.

130. Therefore, for all the above reasons, the decision relied upon by the learned counsel for the petitioners in the case of ***PVR Ltd. (supra)*** does not apply to the facts of our case. In any case, we, with respect, do not agree with the opinions expressed by the Madras High Court.

131. The petitioners have also relied upon the decision of the Gujarat High Court in the case of ***Ramanlal B. Jariwala. Vs. Dist. Magistrate, Surat (supra).*** The issue before the Gujarat High Court was whether lift charges for reaching the theatre, which was on the first floor, can be treated as payment for admission. The facts of the present case before us are whether convenience fees paid to buy a ticket online for watching a movie can be treated as payment for admission under the MED Act. As we observed above, unless the convenience fee is paid, a person who wishes to buy the ticket online cannot buy the same and therefore, consequently, he would not be permitted to enter the place of entertainment to entertain himself. There is a direct connection between the convenience fee paid and the ticket that a person will buy to entertain themselves. Therefore, on the facts of the present case, the decision of the Gujarat High Court is not applicable.

132. The next decision relied upon is the decision of the Coordinate Bench of this Court in the case of ***Royal Western***

India Turf Club Limited (supra). The issue before the Coordinate Bench was whether charges required to be paid to the turf club for taking the mobile phone inside the racecourse can be treated as payment for admission. The Coordinate Bench held that charges required to be paid for carrying a mobile phone cannot be called as payment connected with entertainment and the same is not a condition for attending the entertainment and therefore, no entertainment tax is payable on such amount. In our case, payment of a convenience fee is for buying a ticket online for watching a movie/film and therefore, it is not only connected with entertainment but also, as analysed by us above, is a condition for attending the entertainment and therefore, on facts, the said decision is distinguishable.

133. The next decision is a decision of the Delhi High Court in the case of ***Fashion Design Council of India (supra).*** The issue before the Delhi High Court was insertion of Explanation to Section 2(m) of the Delhi Entertainment and Betting Tax Act with retrospective effect. The Explanation brought to tax sponsorship amount paid in lieu of advertisement by deeming it to be payment for admission. The Delhi High Court held that the amount was paid for business promotion event and not for entertainment and therefore struck down the Explanation. Under the MED Act, sponsorship amount is included explicitly by way of sub-clause (viii) to Section 2(b) of the Act and not by way of Explanation.

Furthermore, in the facts before us, we are concerned with convenience fees paid for buying a ticket online for watching a movie/film which as observed above is directly covered by the definition of payment of admission under Section 2(b)(iv) of the MED Act and no new form of entertainment is introduced. Therefore, the facts before the Delhi High Court being different than the facts of the present case, the said decision cannot be of any assistance.

134. The Delhi High Court also held that there is no amendment to the charging provision or any mechanism to collect such levy and therefore quashed the amendment. In the present case before us, no new form of entertainment is sought to be taxed, but the impugned proviso seeks to change the measure of tax and therefore, even on this count, the decision of the Delhi High Court cannot come to the rescue of the petitioners. There is a complete machinery provided under the Act for charging, administering and recovery of entertainment duty and therefore, even on this count the decision of Delhi High Court cannot be of any assistance. On the contrary, the Delhi High Court disagreed with the view of the Coordinate Bench of this Court in the case of ***Gems and Jewellery Export Promotion Council Vs. State of Maharashtra & Ors.***[42]**.** For all the above reasons, even this decision cannot be of any assistance to the petitioners for the issue which is before us and for the view which we have taken.

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42 2013 SCC OnLine Bom 372

135. The learned counsel relied upon the decision in the case of ***CIT Vs. Shakuntala (supra)*** and ***Vodafone International Holdings BV Vs. Union of India (supra)*** and submitted that deeming fiction cannot be used to travel beyond the plain terms of language. On a query being raised, we were not shown as to how or why the proviso is a deeming fiction. In any case, the proviso, as we read it, only excludes a sum of Rs . 10/- from the amount to be treated as payment for admission under Section 2(b)(iv) of the MED Act and to treat any payment above Rs . 10/- as payment for admission. Therefore, neither there is a deeming provision nor does the proviso act as a separate independent provision but it only carves out as an exception from what is included in Section 2(b)(iv) of the MED Act.

136. Mr. Thacker relied upon the decision in the case of ***State of Rajasthan vs. Rajasthan Chemists Association***[43]***, Tata Sky Ltd. (supra)*** and ***Veer Service Station v. Government of NCT Delhi***[44] and submitted that there has to be a nexus between the charging provision and measure of tax and the subject matter of levy and the same is absent in the present case and therefore, the provision is *ultra vires.* In our view, as analyzed above the subject matter of tax is entertainment, the tax is imposed on the proprietor, the measure of tax is defined in Section 2(b)(iv) read with the proviso and the impugned

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43 (2006) 6 SCC 773

44 2015 SCC OnLine Del 10812

proviso when applied to the facts of the present case, in our view, the convenience fee for online booking ticket has a connection and also constitutes a condition with the form of entertainment of exhibiting the film and movie and consequently there is a direct nexus between the charging provision, measure of tax and subject matter of levy. Therefore, the test sought to be canvassed by the petitioners as absent, in our view, squarely gets satisfied in the present case before us.

137. Mr. Thacker also relied upon the decisions in the case of ***Dwarka Prasad v. Dwarka Das Saraf (supra)***, ***Mangala Woman Karandikar vs. Prakash Damodar Ranade (supra), Ambalal Sarabhai Enterprises Ltd. vs. Amrit Lal& Co. (supra)*** and ***Thomas T.V. vs. Jt. Secretary (supra)*** and contended that the proviso cannot be used to enlarge the enacting clause. In our view, the said decisions are not applicable to the facts of the present case as observed by us above since the proviso is not enlarging the enacting clause, but the proviso seeks to exclude online booking charges up to Rs.10/- and to include any sum above Rs.10/- as payment for admission. In the absence of the proviso, the whole of the amount would have been included under Section 2(b)(iv) which defines “payment of admission”. Therefore, these decisions are not applicable to the facts of the present case.

138. Lastly, Mr. Thacker relied upon the decision in the

case of ***CIT Vs. B.C. Srinivasa Setty***[45]and ***Fashion Design Council of India (supra)*** and contended that there is no separate machinery provided to assess and collect tax on online booking of tickets and therefore, the impugned proviso is required to be struck down. In our view, this is not correct. The impugned proviso only excludes sum charged up to Rs.10/- for online booking ticket charges from the definition of payment for admission. By the impugned proviso, the Legislature is not trying to rope in a new form of entertainment by treating online booking of tickets as an entertainment which would require amendment in the charging section. The form of entertainment is already in existence and on which the petitioners are paying entertainment duty. It is only the measure of tax which is sought to be changed by excluding Rs.10/- and including sum charged more than Rs.10/- in the definition of payment for admission. Therefore, the machinery provided to assess and collect tax prior to the impugned proviso is sufficient to recover the duty since it is only the measure of tax which is sought to be changed and not the introduction of new form of entertainment. Therefore, the decisions relied are not applicable to the facts of the present case.

139. We now propose to deal with the case laws relied upon by Mr. Rajadhyaksha.

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45 (1981) 2 SCC 460

140. The decisions in the case of ***Union of India vs. Shah Goverdhan. L. Kabra Teachers' College (supra), A Manjula Bhashini & Ors. vs. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Limited &Anr. (supra),*** and ***Jaora Sugar Mills (P) Ltd. vs. State of Madhya Pradesh (supra)*** are sought to be relied upon on the premise that the Statement of Objects and Reasons indicates that what is sought to be taxed is a new form of entertainment which is online ticket booking since the Statement of Objects and Reasons states that the organizers of the events are charging exorbitant charges for online ticket booking and therefore, the amendment is made to levy entertainment duty on exorbitant charges. In our view, firstly, the Statement of Objects and Reasons cannot be considered for testing the legislative competence when the provision as amended is plain and clear. Secondly, the Statement of Objects and Reasons categorically states that the amendment is made in Section 2(b) of the MED Act by providing that the sum charged up to Rs.10/- for online ticket booking will not be treated as payment for admission and anything above that would be treated as payment for admission.

141. In ***Bhaiji vs. Sub Divisional Officer, Thandla***[46], the Hon'ble Supreme Court observed as under :-

> *"Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in*

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46 (2003) 1 SCC 692

> *relation to the statute and the evil which the statute sought to remedy. The weight of judicial authority leans in favour of the view that Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the legislature in drafting a statute and excluding from its operation such transactions which it plainly covers."*

142. This position is reiterated by the Supreme Court in ***Om Prakash Aggarwal and Ors. vs. Vishan Dayal, Rajpoot and Ors.***[47], where the Supreme Court has reiterated that Statement of Objects and Reasons cannot be utilised for purpose of restricting and controlling the plain meaning of language employed by the Legislature in drafting a statute.

143. In our view, the Statement of Objects and Reasons, when it states that excessive charges are sought to be curbed, it has to be read in the context of how much amount should be permitted to be excluded from the definition of "payment of admission" and it is in that context that the Statement of Objects and Reasons, if at all is to be considered, has to be read.

144. We have already observed that section 2(b)(iv) is a measure of tax and by this proviso what is sought is exclusion of Rs.10/- and inclusion of more than Rs.10/-,as payment of admission, in the absence of which everything would have been treated as a measure of tax on which rate of duty specified in Section 3 would be applied. In our view, the

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47 (2019) 14 SCC 526

petitioners are not justified in submitting that what is sought to be taxed is a separate activity of online ticket booking. This is not borne out from the plain language of the section but on the contrary the Statement of Objects and Reasons states that what is sought to be achieved is to limit the amount which is to be treated as payment for admission for the purposes of the charging section. Therefore, in our view, the submission on colourable device to challenge the impugned proviso cannot be accepted.

145. We have already distinguished the decision in the case of ***PVR Limited (Madras High Court) and Ramanlal Jariwala (Gujarat High Court)*** above while dealing with the decisions relied upon by Mr. Thacker and therefore, we do not propose to repeat the same. Similarly, the decision of ***J.K. Industries Ltd. (supra)*** on the function of a proviso would not be applicable to the facts of the present case since in our view the online booking charges would be included in Section 2(b)(iv) of the MED Act and the proviso only seeks to exclude sum charged up to Rs.10/- for arriving at the payment for admission and therefore, the proviso is an exception or carves out what is sought to be included in Section 2(b)(iv) of the Act.

146. Mr. Rajadhyaksha also relied on paragraph 26 of the decision in the case of ***Federation of Hotel and Restaurant Association of India (supra)*** and submitted that what cannot

be done directly cannot be done indirectly. He submitted that the activity of online booking could not be taxed under Entry 62 of List II since it is not a form of entertainment and same cannot be achieved by making an amendment to the measure of tax. In our view, this is not the correct way of applying paragraph 26 of the said decision to the facts of the present case. We have already observed that online ticket booking charges would squarely fall within Section 2(b)(iv) of the MED Act and Section 2(b) provides a measure of tax for the purposes of applying the rate of duty specified in Section 3. The online ticket booking charges, in our view, would squarely fall within the provisions of Section 2(b)(iv) and therefore, there is no justification in submitting that the State Legislature does not have the competence to insert the impugned proviso.

147. Reliance is placed on paragraph 13 in the case of ***Drive-In Enterprises (supra)*** by Mr. Rajadhyaksha for submitting that uniformity has to be within the place of entertainment and when a person sits in his motor car and watches the film, he has a higher level of comfort for enjoying the entertainment. In our view, this distinction is without any basis and in any case is not applicable to the facts of our case.

In our case, the online ticket booking charges are directly connected with buying a ticket for entertainment without which a person cannot enter the theatre. The distinction sought to be made within the entertainment area

and outside the entertainment area is superfluous. We have already observed above as to how online ticket booking falls within Section 2(b)(iv) and what is sought to be excluded by the proviso. Therefore, the reliance placed on paragraph 13 would not be applicable. In any case, the decision of the Supreme Court in the case of ***Drive-In Enterprises (supra)*** was on the vires of the section and not on the merits of the case.

Therefore, none of the decisions relied upon deal with the fact situation posed for our consideration and therefore are not applicable.

148. For the reasons stated above we pass the following order:-

Order in Writ Petition 1813 of 2016

(i) Insofar as prayer (a) is concerned, the impugned proviso inserted by Maharashtra Act XLII of 2014 amending the Maharashtra Entertainment Duty Act is held to be *intra vires* and not unconstitutional or beyond the State's legislative competence.

(ii) Prayer for quashing of Circulars dated 31 January 2015 (Exhibit 'G') and 27 February 2015 (Exhibit 'H') is rejected.

(iii) Insofar as prayer clauses (b) and (c) are concerned, none of the parties have advanced any

submissions on whether the impugned proviso is prospective or retrospective and therefore, no relief can be granted in terms of prayer clauses (b) and (c).

(iv) Interim reliefs granted earlier stand vacated. Respondents are free to take appropriate action in accordance with the law for the recovery of entertainment duty.

(v) Notice of motion does not survive and therefore, disposed of.

Order in Writ Petition No.1689 of 2015

(i) Insofar as prayer clause (a) is concerned, given the state of pleadings or the lack of them, we cannot grant the omnibus declaration prayed for. We therefore reject this prayer.

(ii) Insofar as prayer clause (b) is concerned, we have already upheld the vires of the impugned proviso for the reasons mentioned in Writ Petition No.1813 of 2016.

(iii) Interim orders stand vacated.

149. Although we are dismissing these petitions, the interim orders operating therein are extended by four weeks from today.

150. For all the above reasons, the petitions are dismissed, and Rule is discharged with no order as to costs.

(Jitendra Jain, J) (M.S. Sonak, J)