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

% **Judgment reserved on :19 September 2023**
Judgment pronounced on :04 October 2023

\+ W.P.(C) 8664/2009

GOVT. OF NCT OF DELHI & ORS. ..... Petitioners
Through: Mr. Satyakam, ASC

versus

M/S INDIAN TRADE PROMOTION ORG. & ORS....Respondents
Through: Mr. P.K. Sahu, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The petitioners invoke the extra ordinary jurisdiction of this Court under Article 226 read with Article 227 of the Constitution of India challenging the impugned order dated 30 November 2007 passed by the Financial Commissioner, Delhi/respondent No.2[1] in appeal case bearing No. 33/01-CA, whereby the FC allowed the appeal filed by the respondent under Section 15(4) of the Delhi Entertainment and Betting Tax Act, 1996[2], setting aside the imposition/levy of entertainment tax by the petitioners.

FACTUAL BACKGROUND:

2. Briefly stated, it is the case of the petitioners that respondent No.1 is an authority organizing Trade Fairs in the area commonly

[1] FC
[2] The Act

known as Pragati Maidan, New Delhi. It is stated that respondent No.1 charges admission fee in the form of ticket to allow people to visit fairs and also levy separate fee for other events such as Fashion Shows, Theatre Shows and Movies conducted within the same complex by individual organizations. The grievance of the petitioners is that respondent No.1 was initially exempted from payment of entertainment tax for several years but a policy decision was taken on 18 November 1996 by the Competent Authority and exemption from payment of entertainment tax was withdrawn. It is stated that on imposition of tax for the year 1996-97, the respondent No.1 filed Civil Writ Petition No. 129/99 titled 'ITPO v. Govt. of NCT of Delhi'. However, since no stay was granted, it deposited a demand draft of Rs. 6,40,233.75/- as part payment.

3. It is stated that for the assessment year 1997-98, 1998-99 and 1999-2000 assessment proceedings were initiated against the respondent for non payment of tax and a tax of Rs 15,03,776/- was payable on various other entertainment activities during the year 1996-97 with interest of Rs 11,98,762/-; that the total demand for the year 1996-97 assessed to Rs 27,02,538/- and for the assessment year 1997-98, tax payable came to Rs 21,19,294/- out of which Rs 13,32,790/- was Entertainment Tax and Rs 7,86,504/- was the interest. Likewise, for the assessment year 1998-99, a sum of Rs 56,50,782/- was payable, which included entertainment tax of Rs 43,16,878/- and interest of Rs 13,33,404/-.

4. Accordingly, a Show Cause Notice dated 23 February 2000 was issued, to which reply was filed by respondent No.1, and a personal

hearing was afforded to its Authorized Representative. Ultimately, three assessment orders were passed for the aforesaid years on 10 March 2000, 13 March 2000 and 16 March 2000 respectively. The appeal was filed by the respondent No. 1, which was dismissed by the Appellate Authority vide order dated 29 December 2000. Respondent No.1 filed a second appeal under Section 15(4) of the Act, in which the main challenge was with regard to the inapplicability of Section 2(i) of the Act that defines the word "entertainment". In order to appreciate the questions of law involved in the instant matter, it would be expedient to reproduce the relevant portion of the impugned order dated 30 November 2007 passed by the FC, which reads as follows:-

> "The impugned order has been challenged on grounds that it has been passed by the Deputy Commissioner who had no authority to exercise powers u/s 15(3) of the Act. The respondent has submitted that the Deputy Commissioner was properly authorised u/r 2, Sub Rule (iii) of the Rules. There is no dispute that the Deputy Commissioner appointed was covered u/s 3 Sub section 2 of the Act. Under this section, officers are appointed by the Government to assist the Commissioner in the execution of his functions under the Act and they are required to exercise such powers as may be conferred and perform such duties as may be required by or under the Act. The respondent claims that the appeal has been heard by the Deputy Commissioner duly appointed u/s 3(2) of the Act and who, under the provisions of Rule 2(iii), was exercising powers and performing functions of the Commissioner u/s 15 of the Act. I do not agree with the counsel for the appellant that powers u/s 15(3) can only be exercised by the Commissioner because there is a specific provision which allows for appointment of Deputy Commissioner for exercising powers and performing functions of the Commissioner under different sections; including u/s 15(3) of the Act and this finds particular mention under Rule 2(iii) of the Act. The appellant has not relied on any document to show that the powers of the Deputy Commissioner, appointed u/s 3(2) of the Act, had been circumscribed to specifically exclude performing functions of the Commissioner u/s 15(3) of the Act. I therefore conclude that the impugned order does not suffer from the infirmity of having been decided by an authority with no

jurisdiction. The amount of tax which has been levied by the Entertainment Tax Officer has not been disputed in the present appeal and will merit no consideration. The important issue under challenge is that the impugned order has assessed the liability of payment of tax of the appellant, without considering the merits and the objectives for which the appellant organization had been set up. On this count, appellant has challenged the imposition of tax on the entry tickets. The case of the appellant is that the organisation had been set up by the Govt. of India as a trade promotion organisation with a mission to develop and promote exports through the medium of holding trade fairs. It is their submission that they assist Indian companies in product development and export development through buyer-seller meets and hence their mission and objective is not to make profit but only organize promotional activities. They have submitted that in the appeal, filed before the Commissioner (ET), they had pleaded that no entertainment tax be levied on the entry fee charged from the visitors coming to the trade fairs. The counsel for the appellant has sought to make a distinction between visitors to the fair and those among them who pay another fee for entry to events of entertainment, being organized within the fair. The counsel has maintained that the activities and the business of the appellant has no relation to entertainment, because the trade fair as a whole cannot be termed as a place of entertainment. In the rulings relied upon by the appellant, he sought to establish that admission fee to a place of entertainment is distinct from the entry fee being charged in order to regulate the visitors inside the trade fair grounds. The counsel has relied on a number of rulings to establish a definition of "entertainment", in the context of the objectives being served by the appellant organisation and the scope of service provided by it. He has relied upon the interpretation of the term given in the Encyclopaedia Britannica, as well as that given in the booklet of the International Trade Centre, to establish that trade fairs and exhibitions are merely glorified market places and the individual exhibitors could be organizing side shows within the trade fairs, with separate admission fee. He has maintained that a trade fair concentrates the purchasers of a product, attracts buyers from all over the world and allows the companies to make product presentation, assess audience interest and buyer reaction and also to assess the competition from other exporters. The counsel has dwelt at length to establish a distinction between entry ticket vis-à-vis the admission charge for fashion shows, film shows etc. which are organised separately. The counsel for the respondent has accepted that the appellant is an authority which conducts trade fairs and that apart from the admission fee paid by people who enter the fair, a separate fee is being charged

for fashion shows, trade shows and movies, being conducted by individual organizations within the same complex. The counsel has relied upon the provisions of section 2(i) to emphasize that any exhibition organized in trade fair, where entry fee is paid, is liable to pay entertainment tax and hence entertainment tax is payable for entry and also whenever special shows with tickets are performed. It has relied upon the test laid down by the Hon'ble Apex Court for a show to fall under the ambit of section 2(3) in the judgement reported in (1983) 4 SCC 202, to show that the admission may be free but if an exhibitor derives monetary benefit with it is deemed to be an entertainment and that it is immaterial whether the payment is made at the time of entry to the fair grounds or later. The counsel has also relied on other judgements also, which however are in the context of holding of video shows/games during bus journeys, holding music shows and of entertainment provided by cable TV operators etc. to press the significance of the activities to determine entertainment. The counsel has submitted that complete tax had not been paid by the appellants, particularly for the assessment year 1996-97, when tax was paid only on the film show tickets and the fashion show tickets. The interesting question is whether the fee paid for entry into the fair would attract entertainment tax; whether entry gained into the fair grounds would squarely fall within the meaning of "entertainment" u/s 2(i) of the Act. The rulings relied upon by the counsel for the respondent are in the context of video games being located in video parlours, entertainment tax on admission of cars entering drive-in theatres and in the context of entry to music shows. One of the rulings relied upon by the counsel for the respondent is of the Hon'ble Bombay High Court where the Hon'ble court had held that payment of admission to a discotheque will be subject to entertainment tax, since both the groups - those who are dancing and those who are looking have submitted themselves to a place of entertainment. This ruling also does not find a parallel in the present situation. Another ruling relied upon by the counsel for the respondent relates to the orders of the Hon'ble Delhi High Court passed in WPC 43/1987 and WP(C) 44/1987 decided on 24.9.04. This ruling is in the context of two hotels where discotheque were being run and the issue is regarding payment made by a person who, having been admitted to one part of entertainment was subsequently admitted to another part thereof. However, in the context of the present case, the appellant has submitted that the entry to the trade fair grounds did not automatically allow admission to all the visitors, to the entertainment shows being organized and for which there was a separate admission fee. **I agree with the argument that the entry tickets were solely for**

the objective of restricting the entry of visitors within the trade fair grounds and that this fee did not automatically permit the visitors to gain entry into individual entertainment centres, providing entertainment through separate admission fee. The impugned order also shows that there was sale of tickets for the fashion shows and film shows, as distinct from the entry fees. I therefore conclude that the impugned order suffers from the infirmity that it has not analysed in detail how entry tickets to the fair grounds attracted entertainment tax as distinct from that leviable on tickets for film shows, fashion shows etc. The impugned order has concluded that in the present case any person gaining entry to the trade fair, was being provided entertainment or amusement on the basis of that entry fee, since the entry fee did not restrict the entry to bonafide purchasers nor adjusted in the fee against any purchases. The impugned order has mentioned that the appellant has been organizing exhibitions, shows, films, fashion shows etc. I conclude that admission to these events would attract the provisions of the Act, as distinct from the entry fee to the trade fair grounds, particularly when such events were allowing admission through a separate paid ticket.

9. The impugned order dt. 29.12.2000 is set aside. The impugned assessment orders dt. 10.3.2000, 13.3.2000 and 16.3.2000, passed by the ETO, are set aside only to the extent of the tax imposed on entry tickets to the trade fair grounds."

{Bold text incorporates the reasons}

LEGAL SUBMISSIONS ADVANCED BY THE LEARNED COUNSELS FOR THE PARTIES:

5. Mr. Satyakam, learned Additional Standing Counsel for the petitioners invited the attention of the Court to Section 6 in Chapter-III of the Act vis-a-vis Section 2(a) defining the expression "admission to an entertainment" and Section 2(i) defining the word "entertainment" and it was vehemently urged that the impugned decision was unsustainable in view of the plenary powers of the assessing authority under Section 15 of the Act. In his submissions reference has been invited to decisions in **Ganpati Ropeways Pvt.**

Ltd. & Anr. v. State of H.P. & Ors.[3]; Gem and Jewellery Export Promotion Council v. State of Maharashtra & Ors.[4]; Commissioner of Excise Entertainment v. M/s. Polo Amusement Park Ltd. & Ors.[5]; M/s. Geeta Enterprises & Ors. v. State of U.P. & Ors.[6]; M/s. Calico Mills Ltd. v. State of MP & Ors.[7]; Maharaja of Jaipur Museum Trusts, City Palace, Jaipur v. State of Rajasthan & Anr.[8]; Hotel Rajdoot (P) Ltd. v. UOI[9]; The East India Hotels Limited v. UOI & Anr.[10]; East India Hotels Ltd. v. State of Maharashtra & Anr.[11]; and State of Gujarat v. Hotel Ratrani[12]; and Markand Saroop Aggarwal v. M.M. Bajaj[13].

6. *Per contra*, Mr. Sahu learned counsel for the respondent urged that section 2(a) of the Act is inapplicable since there is no question of entertainment when the people visit Pragati Maidan Complex, and requirement of payment of admission fee by way of tickets is done to control the crowd. It was vehemently urged that the entry to the Pragati Maidan Complex regulated by respondent No.1 is a business to business facility and does not provide any entertainment. It was urged that the Trade Fairs are organized for promotion of products which are displayed in the exhibitions and the main objective is to promote industry and commerce and the place is one such platform

[3] 2018 SCC OnLine HP 566
[4] 2013 SCC OnLine Bom. 372
[5] 2016 SCC OnLine Del. 2360
[6] (1983) 4 SCC 202
[7] 1960 SCC OnLine MP 101
[8] 1969 SCC OnLine Raj. 8
[9] 2008 SCC OnLine Del. 994
[10] 2004 SC OnLine Del. 782;
[11] 1985 SCC OnLine Bom 25
[12] (1997) 2 SCC 490
[13] (1979) 1 SCC 116

where the buyers and sellers come together for boosting the prospects of trade and commerce. It was urged that the word 'exhibition' appearing in Section 2(1) of the Act includes only those exhibitions where the primary purpose is to provide entertainment to the visitors. Referring to the meaning of Trade Fair as given in the Encyclopaedia Britannica[14] it was vehemently urged that the word 'exhibition' has to be construed under Section 2(i) of the Act keeping in mind the other like expressions viz. 'performance', 'amusement', 'games sports', 'race' 'exhibition of feature films'; and exhibitions in the Trade Fairs are not organized for the purposes of entertainment. Mr. P.K. Sahu, in his submissions, also relied on the same decisions as referred to by the learned Additional Standing Counsel for the petitioners except making a valiant effort to distinguish the same.

DECISION:

7. Having given our thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar and on consideration of the relevant provisions and case law cited at the Bar, we find that the impugned order dated 30 November 2007 passed by the FC cannot be sustained in law. In order to elucidate the reasons, it would be expedient to reproduce the relevant provisions of the Act, which go as follows:-

> **"2.Definitions**
> In this Act, unless the context otherwise require-
> x x x x x
> (a) Admission to an entertainment includes admission to any place in which the entertainment is held, and in case of entertainment through cable service, each connection to a subscriber shall be

[14] Volume 11, 15th Edition

deemed to be an admission for entertainment[15]

"(aa)[16] "admission to an entertainment" includes admission to any place in which the entertainment is held and in case of entertainment through cable service and direct-to-home (DTH) service with or without cable connection, each connection to a subscriber shall be deemed to be an admission for entertainment]

x x x x x

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

x x x x x

(m) "payment for admission" includes—

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

(ii) any payment for cable service;

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

(iv) any payment, by whatever name called for any purpose whatsoever, connected with an entertainment, which a person is required to make in any form as a condition of attending, or continuing to attend the entertainment, either in addition to the payment, if any, for admission to the entertainment or without any such payment for admission;

(v) any payment made by a person who having been admitted to one part of a place of entertainment is subsequently admitted to another part thereof, for admission to which a payment involving tax or more tax is required;

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

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[15] As Section 2(a) stood before amendment in 2010

[16] Amended by Delhi Act (2 of 2010) dated 05.01.2010 w.e.f. 01.02.2010

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

Explanation 2 : Any sponsorship amount paid or value of goods supplied or services rendered or benefits provided to the organizer of an entertainment programme in lieu of advertisement of sponsor's product/brand name or otherwise shall be deemed to be payment for admission;][17]

x x x x x

(t) "tax" means entertainment tax, betting tax or the totalizator tax, as the case may be, and includes surcharge, cess, penalty or any other charge levied under this Act;

x x x x x

6.**Tax on payment for admission to entertainment**

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

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

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

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

(5) Where the admission to a place of entertainment is generally on payment, and if any entertainment is held in lieu of

[17] Both explanations inserted vide amended Delhi Act (12 of 2022) dated 21.09.2012

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

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

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

x x x x x

15. Assessment of tax

(1) Where the assessing authority is satisfied that the proprietor of an entertainment—

(a) has failed to give information or take permission as required under sub-section (1) or, as the case may be, under sub-section (2) of section 8; or

(b) has failed to submit true and full returns in the prescribed form; or

(c) has printed, distributed, possessed, sold or used duplicate tickets; or

(d) has fraudulently evaded or attempted to evade, the payment of tax due in any manner whatsoever,

it shall, after giving the proprietor a reasonable opportunity of being heard, assess to the best of its judgment, the amount of the tax due from the proprietor, and may also impose a penalty not exceeding two times of the tax due.

(2) The amount of tax assessed by the assessing authority shall, together with any penalty that may be directed to be paid, be paid by the proprietor within a period of fifteen days from the date of service of notice of demand issued by the assessing authority.

(3) Any person aggrieved by an order under sub-sections (1) and (2) may, within one month from the date of service of such order, prefer an appeal to the Commissioner in such manner as may be prescribed.

(4) An appeal shall lie from an appellate order of the Commissioner passed under sub-section (3) to the appellate authority within one month from the date of service of such order,

> in such manner as may be prescribed, and the order of the appellate authority shall be final.

8. A careful perusal of the aforesaid provisions would show that Section (6) is the charging Section whereby the government may prescribe a levy of entertainment tax on all "payments for admission to any entertainment", while Section 15 of the Act lays down the procedure for the assessment of tax. A bare perusal of unamended Section 2(a) of the Act, which would be applicable in this case, as it stood prior to the amendment w.e.f. 01 February 2010 would show that it is an inclusive definition defining "admission to any place in which entertainment" subject to the context in which it comes for consideration that may provide otherwise. Further, a bare perusal of the Section 2(i) of the Act would show that the definition of the word "entertainment" is a restricted one to mean any exhibition, performance, amusement, game, sport, or race, further extending the meaning of "entertainment" to cinematographic exhibitions.

9. At the core of the matter is to ascertain the meaning and import of the word "entertainment" (which is neither a scientific nor a technical term) as used in the popular sense or as understood in common parlance. Without further ado, the aforesaid provisions as regards the interpretation of the expression 'admission to an entertainment' as well as the word "entertainment" have come to be interpreted in catena of decisions of the Apex Court as well as this Court and other High Courts. To avoid lengthy jurisprudence on the issues involved, we shall refer to a few.

10. In the case of ***Geeta Enterprises (supra),*** the Supreme Court had an occasion to interpret the word "Entertainment" as used in Section 2(3) of the United Provinces Entertainment and Betting Tax Act, 1937, which defined the word "entertainment" to include any exhibitional, performance, amusement, game or sport to which persons are admitted for payment. The issues arose in the background of the factual matrix where the assessee/petitioner permitted persons to enter the premises without any charge to view a show on the video which consisted mainly of sports, games etc. played on the screen of the video. It was canvassed that the petitioner was not charging any admission fee but the electronic machines imported from Japan having educational value for persons playing the games were meant to provide educational entertainment by showing sea warfare, battle field, space warfare, sports and many other things which were likely to provide both education and entertainment to the viewers, particularly to young children. The mechanism for playing the machine was so designed that a coin of 50 paise was to be inserted into a strong box built within the machine, the keys of which were with the manufacturer. After the show was over a representative of the manufacturing company would come, open the box, collect the money and pay the share of the hirer-petitioner out of the collected sale proceeds. The Supreme Court firstly proceeded to understand the meaning of word "entertainment", which is extracted as follows:

> **"6.** Before explaining the section we would like to ascertain the correct meaning and import of the word 'entertainment' (which is neither a scientific nor a technical term) as used in the popular sense or as understood in common parlance. This was held by this Court in the case of *Porritts & Spencer* (*Asia*) *Ltd*. v. *State of*

Haryana [(1979) 1 SCC 82 : 1979 SCC (Tax) 38 : AIR 1979 SC 300 : (1979) 1 SCR 545 : 1979 Tax LR 1692 : (1978) 42 STC 433] . In *Stroud's Judicial Dictionary* (Fourth Edn., Vol. 2, p. 916) the word 'entertainment' has been defined thus:

> "Entertainment ... for a *public or special occasion*"... is an entertainment in the sense of a gathering of persons for entertainment.
>
> "Entertainment" (Small Lotteries and Gaming Act, 1956) [Clause 45, Section 4(1)] included a tombola drive alone without accompanying festivities.
>
> The monologue or patter of a comedian, even if delivered at an entertainment provided by an institution whose activities are partly educational, was held to be a "variety entertainment" within the meaning of the Section.
>
> Similarly in *Words and Phrases, Judicially Defined* (Vol. 2, pp. 206-07) the word entertainment has been defined thus:
>
> "Entertainment is something connected with the enjoyment of refreshment-rooms, tables, and the like. It is something beyond refreshment; it is the accommodation provided, whether that includes a musical or other amusement or not."
>
> Similarly in *Words and Phrases* (Permanent Edn., Vol. 14-A, p. 353) 'entertainment' has been defined thus:
>
> "An entertainment is a source or means of amusement; a diverting performance, especially a public performance, as a concert, drama, or the like."
>
> 'Entertainment' denotes that which serves for amusement, and 'amusement' is defined as a pleasureable occupation of the senses, or that which furnishes it, as dancing, sports, or music.
>
> Likewise, in *Reader's Digest Family Word Finder* at p. 264, 'entertainment' has been defined thus:
>
> "Entertainment — amusement, diversion, distraction, recreation, fun, play, good time, pastime, novelty, pleasure, enjoyment, satisfaction."
>
> In *Webster's Third New International Dictionary* the word 'entertainment' has been defined at p. 757 thus:
>
> 'Entertainment' — the act of diverting, amusing or causing someone's time to pass agreeably."
>
> "Something that diverts, amuses, or occupies the attention agreeably."
>
> "A public performance designed to divert or amuse."
>
> Similarly in the *Concise English Dictionary* by Hayward and Sparkes the word ' entertainment' has been defined thus:

> "the art of entertaining, amusing or diverting, the pleasure afforded to the mind by *anything interesting*, amusement, other performance intended to amuse."

11. Thus, on a consideration of the legal connotation of the word "entertainment" as defined in various books and other circumstances of the case as also on a true interpretation of the word as defined in Section 2(3) of the Act, the Supreme Court held that the video show was to be subjected to entertainment tax. In holding so, the following tests were laid down for the applicability of the Section:

> "(1) that the show, performance, game or sport, etc. must contain a public colour in that the show should be open to public in a hall, theatre or any other place where members of the public are invited or attend the show;
>
> (2) that the show may provide any kind of amusement whether sport, game or even a performance which requires some amount of skill; in some of the cases, it has been held that even holding of a tombola in a club hall amounts to entertainment although the playing of tombola does, to some extent, involves a little skill;
>
> (3) that even if admission to the hall may be free but if the exhibitor derives some benefit in terms of money it would be deemed to be an entertainment;(4) that the duration of the show or the identity of the person who operates the machine and derives pleasure or entertainment or that the operator who pays himself feels entertained is wholly irrelevant in judging the actual meaning of the word 'entertainment' as used in Section 2(3) of the Act. So also the fact that the income derived from the show is shared by one or more persons who run the show.

12. The aforesaid *dictum* has been consistently followed in various subsequent decisions by this Court as well as other High Courts. In the case of ***Hotel Rajdoot Pvt. Ltd.(supra),*** the question for determination was whether the petitioner was liable to pay entertainment tax on the payment received for admission to "Pussycat Discotheque" in its Hotel under the provision of U.P. Entertainment and Betting Tax Act,

1937, as extended to Union Territory of Delhi in which Section 3(1) was the charging Section. Section 2(3) of the above mentioned Act defined the word "entertainment" to include any exhibition, performance, amusement, game or sport to which persons are admitted for payment. Section 2(6) of the Act defined the expression "payment for admission", as under:

> (6) "payment for admission" includes-
> (i) any payment made by a person who, having been admitted to one part of a place of entertainment is subsequently admitted to another part thereof, for admission to which a payment involving tax or more tax is required;
> (ii) any payment for seats or other accommodation in a place of entertainment;
> (iii) any payment for a programme or synopsis of an entertainment; and
> (iv) any payment for any purpose whatsoever connected with any entertainment which is a person is required to make as a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment."

13. It was held that entertainment tax was leviable on the coverage/fixed entry charges to access to the discotheque, this Court out rightly rejected the plea by the petitioner that the primary object of running the "Pussycat discotheque" was to provide a different menu and atmosphere to the customers. The Court found no merit in the plea that only couples were permitted entry so that there could be an element of privacy. It was held that the petitioner was charging entry fee and the serving of meals and alcohol undoubtedly had an element of amusement as the customers were not only enjoying music but also dancing on the floor. Thus admission to a "discotheque" was held to be a place where an "entertainment" was held as such it clearly fell

within the definition of “entertainment” under Section 2(3) of the Act. The same was held in an earlier decision in the case of ***The East India Hotels Limited (supra.)***

14. Avoiding unnecessary burden in this judgment, we find that the facts of the decision in an earlier case titled ***Maharaja Jaipur Museum Trusts, City Palace, Jaipur (supra)*** are squarely applicable in the instant matter. It was a case where the levy of entertainment tax on the proceeds received by the Trust for allowing admission of the visitors to the museum on payment of certain fees was challenged by the Trust. It was urged that His Highness had a vast collection of various articles of historical, scientific, literary and archaeological importance which came in his possession from several generations and after relinquishing all his rights, title and interest in those articles, his holiness had handed over them to be placed in a museum for which the aforesaid Trust was created, and the museum was founded for the benefit of the public and the visitors who visited the historic city of Jaipur. It was also contended that research scholars, students of history and persons interested in archaeology, architecture, science or arts derive benefit out of this museum which provided an opportunity for further studies and to augment their knowledge in the above subjects. The Court referred to Section 3(2) of the Rajasthan Entertainments Tax Act, 1956 that defined the expression "admission to an entertainment" to include admission to any place in which an entertainment is held. The word “entertainment” was defined. The expression "entertainment" has been defined in Clause (5) as such:

"entertainment" includes any exhibition show performance, amusement. Same or sport to which persons are admitted for payment."

"Payment for admission" has also been defined in Clause (7) in the section" and reads:

"Payment for admission" includes:--

(a) any payment made by a person who, having been admitted to one part of a place of entertainment is subsequently admitted to another part thereof, for admission to which a payment involving a tax or a higher rate of tax is required.

(b) any payment for seats or other accommodation in a place of entertainment.

(c) any payment for a programme or synopsis of an entertainment, and

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

15. In the said case ***Maharaja Jaipur Museum Trusts, City Palace, Jaipur (supra),*** it was held as under:-

"12. I have carefully gone through the decided cases relied on by learned counsel for both the parties and I feel that they do not throw much light on the real controversy that has been raised in the instant case. Where the Act itself provides a definition for the word used therein, the Court should look into the meaning assigned to the term by the Act itself for interpreting that word used in the statute. The Courts are not concerned with the presumed intention of the Legislature. The task of the Court is to get the intention of the Legislature as expressed in the statute itself. I, therefore, propose first to examine the language of the definition and see if the ordinary accepted notion of entertainment fits in squarely and fairly with the language used by the Legislature that defined the expression "entertainment".

13. In the present case, the definitions of "entertainment", "payment for admission" and "admission to an entertainment" are not precise and they are inclusive definitions which undoubtedly enlarge the scope of the expressions used in the statutes. I have, therefore, now to see whether the exhibition of articles put in the museum does fall within the definition of the expression "entertainment" or not.

x x x x x

> 26. It is not disputed that the entry to the museum is not restricted only to the students of history or archaeology etc. but any person whether he is a farmer, pilgrim or a child can visit it after paying the entrance fee levied by the petitioner. The exhibits displayed in the museum are valuable pictures, paintings, portraits, works on art, caskets, silver ware, ivory ware, china ware, glass ware, cut glass, books of arts, ornaments pieces, priceless rugs, armoury antics, curious manuscripts and others. If may be possible that every item exhibited may not provide entertainment to the visitor; but one or the other may provide entertainment even to those who are ignorant about the historical or other educational values of those articles. In such circumstances, I cannot accept the argument of the learned counsel for the petitioner that the museum which is primarily used for education of the people cannot be subjected to entertainment tax."

16. In view of the proposition of law laid down in the above noted cases, reverting back to the instant matter, we are unable to persuade ourselves to sustain the plea advanced by the learned counsel for the respondent that people visit the trade fairs organized at the complex only for business purposes or to derive knowledge about various things in trade and service, which may facilitate imports or exports of goods or services. It was common case during the course of arguments that the entry to the Pragati Maidan is regulated and the visitors are allowed entry on payment of admission fee, and once they are inside the complex, they could visit not only stalls or pavilions with regard to trade and commerce but they could also access movie, exhibitions, plays, fashion shows inside the Complex besides enjoying meals and refreshments which may or may not be free.

17. Although, we are aware that there are regulated hours for the purposes of trade and commerce, where the main purpose apparently is promotion of trade and business, however there is no challenge to

the fact that entry of general public is not restricted, and people of all ages and genders visit the site for a variety of gratification, entertainment or amusement on payment of additional or higher charges/fee. It is pertinent to mention here that the assessee may also be imposed with a levy of entertainment tax wherever people are allowed free of charge inside the complex by virtue of Section 14 of the Act.

18. In view of the foregoing discussion, we find that the impugned order dated 30 November 2007 passed by the FC cannot be sustained in law. Accordingly, the respondent is liable to pay entertainment tax for the assessment years in question. The petitioners shall be at liberty to proceed as per the law.

19. Resultantly, the Writ Petition is allowed. The parties are left to bear their own costs.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

OCTOBER 04, 2023
Sadique