

(2012) 02 GAU CK 0084

Gauhati High Court

Case No: None

Tata Sky Ltd., A company
incorporated under the
provisions of the Companies Act,
1956 and having its registered
office at 3rd Floor, Bombay
Dyeing A.O. Building, Pandurang
Budhkar Marg, Worli, Mumbai
and having its branch office at
Dihang Arcade, 3rd Floor,
G.S. Road, near Rajeeb Bhawan,
Opposite Pallavi Motors,
Guwahati-781005, Assam
through its authorised
representative/ signatory Samar
J. Bordoloi.

APPELLANT

Vs

State of Assam, Represented by
Principal Secretary (Finance
Department, Tax Division) to the
Government of Assam, Dispur,
Guwahati-6.

RESPONDENT

Date of Decision: Feb. 22, 2012

Hon'ble Judges: A.K. Goel, C.J. and C.R. Sarma, J

Bench: Division Bench

Advocate: By Advocates : Dr. Ashok Saraf, Sr. Advocate, Mr. A. Goyal, Advocate. By
Advocate: Mr. R. Dubey, Standing Counsel, Finance., Advocates appearing for Parties

Judgement

A. K. Goel, C.J.

1. This petition seeks a declaration that provisions of Section 2(3CC), 2(4), 2(10) and Section 3C of the Assam Amusement and Betting Tax Act, 1939 (Assam Act VI of

1939) and Rules 9A and 9 of the Rules framed thereunder imposing entertainment tax on "direct to home" (DTH) broadcasting services are ultra vires the Constitution being beyond the legislative competence of the State of Assam and for consequential relief of quashing the notices for assessment and recovery of tax.

2. Case of the petitioner is that it is providing DTH satellite TV services all over India including the State of Assam. It has a licence under Section 4 of the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933. It has also obtained wireless operational licence from the Ministry of Communication and Information Technology. The broadcasting service is covered by the service tax liability under the Finance Act, 1994 as amended by Finance Act, 2001 and thus the field for taxing the said activity is covered by Entry 92C read with Entry 97 of List I of the Seventh Schedule to the Constitution of India. This being the position, the State Act levying entertainment duty could not cover the field of broadcasting service which was covered by List I.

3. Reply has been filed on behalf of the State of Assam stating that the State law was valid, covered by Entry 62 of List II and was not in conflict with the entries in List I providing for levy of service tax as entertainment was a different "aspect" from broadcasting.

4. We have heard Dr. Ashok Saraf, learned Senior Counsel, appearing for the petitioner and Mr. R. Dubey, learned counsel for the respondents.

5. Learned counsel for the petitioner submitted that there was no other "aspect" in the activity of broadcasting and thus the levy of entertainment tax by the State was entrenchment upon the legislative field reserved under List I for the Central legislature. Learned counsel relied upon judgment of Delhi High Court in *Star India Ltd. Another vs. TRAI & others*, 146(2008) DLT 455 and judgments of the Hon'ble Supreme Court in *Star TV India Pvt. Ltd. Vs. Sea TV*, AIR 2007 SC 1538 and *Godfrey Phillips(I) Ltd. & anr vs. The State of U.P. & ors*, (2005)2 SCC 515 : AIR 2005 SC 1103 in support of his submission about principles for interpretation of legislative entries.

6. Learned counsel for the State submits that the whole issue has been duly considered in the case of the petitioner itself by a Division Bench of the Uttarakhand High Court in *Writ Petition(M/B) No.4 of 2010 (Tata Sky Limited vs. The State of Uttarakhand and others)*, decided on 26.07.2010, and by a Division Bench of Punjab and Haryana High Court in *TATA SKY LIMITED V. STATE OF PUNJAB AND ANOTHER*, [2011]37 VST 1 (P & H), to which one of us (the Chief Justice) was a party.

7. After due consideration of the rival submissions, we are of the view that all the issues raised by the petitioner stand concluded by the orders in the aforesaid two judgments. We are not persuaded to take a different view. Accordingly, the impugned provisions cannot be declared ultra vires the Constitution.

8. The writ petition is dismissed.