Ms. Bharti Telemedia Limited Vs The State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: Jan. 30, 2014

Acts Referred: Andhra Pradesh Electricity Duty Act, 1939 - Section 3
Constitution of India, 1950 - Article 14 19 245 246 246(1)
Finance Act, 1994 - Section 65(105)(2k) 65(105)(zk) 69
Finance Act, 2001 - Section 65 65(15)
Prasar Bharati (Broadcasting Corporation of India) Act, 1990 - Section 2 2(1) 2(c) 2(k) 2(m)
Prize Competitions Act, 1955 - Section 12(1)(c) 18(3) 2(s)(v) 20 4
Telegraph Act, 1885 - Section 4
West Bengal Entertainment-cum-Amusement Tax Act, 1982 - Section 2(m) 4 4A
Wireless Telegraphy Act, 1933 - Section 5

Citation: (2014) 1 JLJR 635 : (2014) 70 VST 126

Hon'ble Judges: R. Banumathi, C.J; Aparesh Kumar Singh, J

Bench: Division Bench

Advocate: Binod Poddar, Mrs. Darshana Poddar, Mr. Piyush Poddar, Ms. Amrita Sinha, in W.P. T Nos. 408 and 3023 of 2013, Mr. Binod Kanth, Mr. Bharat Kumar in W.P. T Nos. 408, 1097 and 3023 of 2013, Mr. Indrajit Sinha and Ms. Suchitra Pandey, in W.P. T No. 909 of 2013, for the Appellant; Anubha Rawat Choudhary, for the Respondent

Judgement

R. Banumathi, C.J. and Aparesh Kumar Singh, J.
In these writ petitions, petitioners who are Direct-to-Home Service Providers (DTH),

seek to declare the provisions of the Jharkhand Entertainment Tax Act, 2012 in general and in particular, Section 3 thereof as ultra vires the

Constitution of India in so far as the impugned Act seeks to impose entertainment tax on Direct-To-Home services (DTH) and to quash the

notification S.O. No. 3 dated 14.05.2012 whereby Jharkhand Entertainment Tax Act, 2012 has been implemented with retrospective effect from

27.04.2012. Petitioners have also impugned the notices calling upon them to deposit entertainment tax and to show cause why action should not

be taken against them. This judgment shall dispose of all the writ petitions as all the petitions involve common question. We refer to the facts in

W.P.(T) No. 909 of 2013 where the writ petitioner is Tata Sky Limited.

2. Averments in the writ petition:-

Petitioner is a company registered under the Companies Act, 1956. It provides DTH broadcasting services to the subscribers across the country.

The Government of India has granted licence to the petitioner u/s 4 of the Indian Telegraph Act, 1885 and u/s 5 of the Indian Wireless Telegraphy

Act, 1933 on the terms and conditions contained in the licence agreement for a period of ten years. The petitioner has paid Rs. 10 crores as

licence fee and has also furnished a bank guarantee of Rs. 40 crores (Rs. 40,00,00,000/-) to the Ministry of Information and Broadcasting as

security which is valid for the entire period of the licence. The terms in the licence further provide for payment of annual fee equivalent to 10% of its

gross revenue as reflected in the audited accounts of the company for that particular financial year within one month from the end of that financial

year. Pursuant to the fulfillment of the eligibility conditions, as per guidelines for uplinking from India notified on 02.12.2005, the petitioner has also

been granted permission on non-exclusive basis for a period of ten years to establish, maintain and operate an uplinking hub.

3. The petitioner launched its services throughout India from August, 2006. The petitioner has established transponders which downlink signals of

various channels and uplink them, the DTH apparatus installed at the subscribers premises cumulatively decode the transmissions and therefore,

lets the end consumer access various channels providing sounds and images without the presence of an intermediary like cable TV operators. The

petitioner has the broadcasting centre at Chhatarpur, Delhi, which downlinks the signals from satellite and then uplinks to the designated

transponders for transmission of signals in Ku-band. These signals are received by the Dish Antenna installed at the subscriber"s premises. The TV

signals transmitted from the broadcasting centre at Chhatarpur are in encrypted format and are then decrypted/decoded by Set Top Box and the

viewing cards inside the Set Top Box for the customers to be able to view the services. The subscribers have to obtain a connection towards

which they pay monthly subscription charges for availing the DTH service at their premises.

4. Case of the petitioners is that when a new connection is given to the premises of a consumer, such consumer/subscriber pays one time charges

applicable for installation of Dish Antenna in the premises of the consumer. After the installation, the subscriber is required to pay monthly

subscription/service charges for the DTH broadcasting services availed by him. The service to be provided thereafter, to the customer is a pre-

paid service wherein the subscriber is required to purchase recharge voucher to top-up his connection balance. The monthly charges vary from Rs.

160/- to Rs. 300/- per month depending on the number of channels subscribed by a customer. On 15th March, 2001, the Government of India

issued guidelines for obtaining licence to provide DTH broadcasting service in India. Direct-to-Home (DTH) service is covered under category of

broadcasting service" and "broadcasting services" were brought within the purview of service tax with effect from 16.06.2005 by the Finance Act,

2005 u/s 65(105)(zk), as amended by the Finance Act, 2001 and the "service tax" at the rate of 12.36% on the gross amount is paid.

5. The Jharkhand Entertainment Tax Act, 2012 (hereinafter referred as the Act) was enacted by the State of Jharkhand in exercise of its power

under Entry 62 of the State List (Seventh Schedule) which provides ""taxes on luxuries, including taxes on entertainments, amusements, betting and

gambling"". Jharkhand Entertainment Tax Act, 2012 was notified in the Jharkhand Gazette on 27.04.2012. Section 1(3) of Jharkhand

Entertainment Tax Act, 2002 stipulates that it shall come into force on such date as the State Government may, by notification, direct. The

notification S.O. No. 3 dated 14.05.2012 has been issued by Commercial Taxes Department, Government of Jharkhand whereby the provisions

of Jharkhand Entertainment Tax Act, 2012 has been implemented with retrospective effect i.e. from the date of publication of the Act in the

Gazette (27.04.2012).

6. According to the petitioners, such levy of entertainment tax was, in substance, levy of service tax referable to Entry 92C of List I of the Seventh

Schedule of the Constitution of India and was thus, beyond the competence of the State Legislature. The case of the petitioners is that the same

does not fall under Entry 62 of List II of the Seventh Schedule providing for the levy of ""entertainment tax"". The activities carried out by the

petitioners are covered by "taxable service" u/s 65(105)(zk) of the Finance Act, 1994, as amended by the Finance Act, 2001, providing for levy

of "service tax" on service rendered by a broadcasting agency in relation to broadcasting. The case of the petitioners is that the levy of

entertainment tax under Jharkhand Entertainment Tax Act, 2012 is in pith and substance, a tax on the provision of ""service"" which is levied by the

Government of India and the Act encroaches upon the power of Union of India to levy ""service tax"" on a provider of DTH signals and is therefore,

unconstitutional and liable to be held as ultra vires the Constitution of India. Writ petitioners are also inter alia challenging the levy of entertainment

tax on DTH at the rate of 10% as discriminatory and also on other grounds.

7. We have heard Sri Binod Kanth and Sri Binod Poddar, learned Senior counsels and Sri Indrajit Sinha, learned counsel appearing for the

petitioners and Mrs. Anubha Rawat Choudhary, learned counsel appearing for the respondents.

8. On behalf of the writ petitioners, the learned Senior counsel Sri Binod Kanth contended that the taxing event is ""Direct-to-Home"" (DTH)

broadcasting service and the aforesaid taxable event is covered under Entry 92C of the Union List. It is therefore contended that levy of

''entertainment tax'' under Entry 62 of the State List contained in the Seventh Schedule of the Constitution of India is an encroachment upon the

subject specifically provided under the Union List and the Jharkhand Entertainment Tax Act, 2012 is liable to be declared as ultra vires the

provisions of the Constitution of India. It was further submitted that even if there is an element of ""entertainment"" in the ""Direct-to-Home"" (DTH)

broadcasting service, it is not open to Jharkhand Legislature to levy tax thereon under Entry 62 of the State List and State Legislature has no right

to levy ""entertainment tax"" on ""Direct-to-Home"" (DTH) broadcasting service. Placing reliance upon Godfrey Phillips India Ltd. and Another Vs.

State of U.P. and Others, , it was submitted that the entries under the three Lists of the Seventh Schedule provide for distinct and separate power

of taxation and avoid overlapping power of taxation between the Union and the States and the levy under the Jharkhand Entertainment Tax Act

encroaches upon the power of Union of India to levy ''service tax'' on provision of DTH Signals which is a broadcasting service. Drawing our

attention to the Principles of Statutory Interpretation by Justice G.P. Singh which was quoted with approval in COMMISSIONER OF INCOME

TAX Vs. KASTURI and SONS LTD., the learned Senior counsel submitted that in the taxing Act, one has to look merely at what is clearly said

and there is no room for any intendment and nothing is to be read in and nothing is to be implied.

9. The learned Senior counsel Sri Binod Poddar reiterated the submissions and contended that Jharkhand Entertainment Tax Act, 2012

transgresses into the subject ""service"" exclusively earmarked for the Parliament under the Union List and therefore, the Jharkhand Entertainment

Tax Act has to be declared ultra vires the Constitution of India to the extent of the levy of entertainment tax on Direct-to-Home (DTH).

10. The learned counsel for the petitioner Mr. Indrajit Sinha also reiterated the same submissions.

11. It is the submission of the learned counsel for the respondents that the Jharkhand Entertainment Tax Act, 2012 does not, in any manner,

transgress into the subject of ""service"" for which service tax is levied under Entry 92C of the Union List. Placing reliance upon number of decisions,

the learned counsel submitted that the ''doctrine of pith and substance'' has to be applied to determine as to which Entry the impugned legislation

relates and that the Court has to look at the substance of the matter. Placing reliance upon various judgments, the learned counsel submitted that

the Jharkhand Entertainment Tax Act, 2012 and the Jharkhand Entertainment Tax Rules, 2013 are constitutionally valid. The learned counsel

submitted that Direct-to-Home (DTH) service has two aspects - one is providing ""service"" and the other is providing ""entertainment"" through

Direct-to-Home (DTH) service and the entertainment tax is levied on the entertainment part which is within the legislative competence of the State

Legislature. It is the submission of the learned counsel for the respondent that the levy of ""Service Tax"" as well as ""Entertainment Tax"" can co-exist

as they are mutually exclusive, taxable events under Entry 92C of the Union List and Entry 62 of the State List of Seventh Schedule of the

Constitution of India. It was submitted that the ""entertainment"" is the main activity and ""broadcasting service"" is only a medium for entertainment. It

was submitted that the ""service tax"" is levied for ""broadcasting services"" and ""entertainment tax"" is levied by the State Act for the taxable event of

entertainment"" and there is no double taxation as contended by the petitioners.

12. We have carefully considered the submissions of the learned counsels and examined the materials on record.

13. On the above submissions, the questions falling for consideration are:-

(i) Whether levy of entertainment tax on ""Direct-to-Home"" (DTH) under Jharkhand Entertainment Tax Act falls under Entry 62 of List II of the

Seventh Schedule of the Constitution of India? or; Whether entertainment tax on ""Direct-to-Home"" (DTH) is the levy on "broadcasting service"

which falls under Entry 92C of List I on which service tax is leviable?

(ii) Whether levy of entertainment tax on ""Direct-to-Home"" (DTH) service under Jharkhand Entertainment Tax Act 13 of 2012 transgresses into

the Union List and whether the Jharkhand Entertainment Tax Act is ultra vires the powers of the State Legislature provided under Entry 62 of List

II?

14. To deal with the above questions it is necessary to refer to some of the provisions of the Constitution of India, statutory provisions of the

Finance Act, 2001, the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 and the [Jharkhand Act 13 of 2012] Jharkhand

Entertainment Tax, 2012 which are relevant. The same are as under:-

Article 245. Extent of laws made by Parliament and by the Legislatures of States.--(1) Subject to the provisions of this Constitution, Parliament

may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the

State.

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

Article 246. - Subject-matter of laws made by Parliament and by the Legislatures of States. (1) Notwithstanding anything in clauses (2) and (3),

Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution

referred to as the ""Union List"").

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the legislature of any State also, have power to make laws with

respect to any of the matters enumerated in List-Ill in the Seventh Schedule (in this Constitution referred to as the ""Concurrent List"").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to

any of the matters enumerated in List II in the Seventh Schedule (in the Constitution referred to as the ''State List").

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

such matter is a matter enumerated in the State List.

Article 248. Residuary powers of legislation. - (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in

the Concurrent List or State List.

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

15. Section 65(15) of Finance Act, 2001 defines ""Broadcasting"" as under:-

Broadcasting"" has the meaning assigned to it in clause (c) of Section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 and

also includes programme selection, scheduling or presentation of sound or visual matter on radio or TV channel i.e. in India for public listening or

viewing as the case may be; and in the case of broadcasting agency or organization, having its head office situated in any place outside India,

includes the activity of selling of time slots or obtaining sponsorships for broadcasting any form of communication or collecting the broadcasting

charges or permitting the rights to receive by transmission of electromagnetic waves through space or through cables, direct to home signals or by

any other means to cable operator including multi-system operator or any other person or behalf of the said agency or organization, by its branch

office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner.

16. Section 65(105)(zk) of the Finance Act, as amended with effect from 16.06.2005, ''the taxable service'' in relation to Broadcasting agency

means as follows:-

Taxable Service"" means any service provided or to be provided to a client, by a broadcasting agency or organization in relation to broadcasting in

any manner and, in the case of a broadcasting agency or organization, having its head office situated in any places outside India, includes service

provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any

manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting

the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all

kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means to cable operator,

including multi-system, operator or any other person on behalf of the said agency or organization.

Explanation: For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and

intended for listening or viewing, as the case may be, by the public, such service shall be taxable service in relation to broadcasting, even if the

encryption of the signals or beaming thereof through the satellite might have taken place outside India;

17. As per Section 2(c) of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, ""Broadcasting"" is defined as under:-

Section 2(c): ''broadcasting'' means the dissemination of any form of communication like signs, signals, uniting, pictures, images and sounds of all

kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or

indirectly through the medium of relay stations and all its grammatical variations and cognate expression shall be construed accordingly.

18. ""DTH Broadcasting Service"" has been described in the Guidelines issued by Government of India on 15.03.2012, which reads as under:-

Direct-To-Home (DTH Broadcasting service) refers to distribution of multi-channel TV programmes in Ku Band by using a satellite system by

providing TV signals direct to subscriber''s premises without passing through an intermediary such as cable operator.

19. In Jharkhand Entertainment Tax Act, 2012 (w.e.f. 27.04.2012), ""Direct to Home (DTH) Service"", ""Direct to Home (DTH) Service provider

and ""Entertainment"" are defined in Section 2(k), 2(1) and 2(m) respectively. Section 2(s) provides for ""Payment for entertainment"".

20. The State of Jharkhand was formed on 15.11.2000 and State of Jharkhand adopted Bihar Entertainment Tax Act, 1948. The Jharkhand

Entertainment Tax Act, 2012 [Jharkhand Act 13 of 2012] has been enacted by Gazette Notification No. 206 dated 27th April, 2012. By the

Jharkhand Act 13 of 2012, the concepts of ""Direct-to-Home (DTH) Service"", ""Direct-to-Home (DTH) Service provider"" and ""subscribers"" have

been introduced. In exercise of the powers conferred u/s 27 of the Jharkhand Entertainment Tax Act, 2012, the Rules were framed and came into

force as per Notification S.O. No. 14 dated 13.07.2013.

21. Principles of Interpretation of Taxing Entries:

Before considering the contentions, we may refer to the settled position of interpretation of scope of taxing Entries. The constitution of India, in

making the distribution of subject matter of laws to be made by parliament and by legislatures of the States, follows the Government of India Act,

1935. It enumerates various items of legislation in three lists of VII Schedule to the Constitution of India: List I-the Union List; List II-the State List;

List III-the Concurrent List. Parliament has exclusive powers of legislation with respect to 97 items in List I. The State Legislatures have exclusive

powers with respect to 66 items enumerated in List II, The powers in respect of 47 items in List III are Concurrent, i.e., both Parliament and the

State Legislatures can make laws in respect of the subjects enumerated in that List. Tax items are included in List I and List II only. They are

separate and independent of other subjects. List III has no tax item. Further, Article 248 of the Constitution of India assigns residuary powers of

legislation exclusively to Parliament Entry 97 of List I, Schedule VII to the Constitution read with Article 246(1) also lays down that Parliament has

exclusive power to make laws with respect to any matter not enumerated in List II or List III, including any tax not mentioned in either of those

Lists.

22. In the present case, the relevant Constitutional entries for consideration by this court are as under:-

Constitutional entries:

List I of the Seventh Schedule

Entry 31. Posts & Telegraphs; telephones, wireless, broadcasting and other like forms of communication.

Entry 92C. Taxes on services

List II of the Seventh Schedule

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

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

23. It is well settled that widest amplitude should be given to the language of the entries, but some of the entries in the different lists may overlap

and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about

harmony between them. Entries of the List I and List II must be read in conjunction with each other and for this purpose over a period of time a

number of doctrines have been evolved with judicial pronouncements to avoid and sort out the conflict if any between the law making bodies like

Doctrine of Harmonious Construction, Pith and Substance, Ancillary Legislation, Colorable Legislation, The Aspect Theory etc.

24. Where the legislative competence of the legislature of any State is questioned on the ground that it encroaches upon the legislative competence

of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in List I or List III. If the State law

relates to any of the entries in List I or List III, then the Parliament''s legislative competence must be upheld. As held by Hon''ble Supreme Court

that where there are three Lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation, the

doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined,

any incidental trenching on the field reserved to the other Legislature is of no consequence.

25. On the scheme of distribution of powers, we may refer to some of the leading judgments on the subject. The principles of interpretation have

been succinctly summarized and enunciated by the Hon''ble Supreme Court in Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and

Others, which are as under:-

It is obvious that Article-246 imposed limitations on the legislative powers of the Union and State Legislature and its ultimate analysis would reveal

the following essentials.

(1) Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I notwithstanding anything contained in clauses

(2) and (3). The non obstante clause in Article 246(1) provides for predominance of supremacy of Union legislature. This power is not

encumbered by anything contained in clauses (2) and (3) for these clauses themselves are expressly limited and made subject to the no obstante

clause in Article 246(1). The combined effect of the different clauses contained in Article 246 is no more and no less than this: that, in respect of

any matter falling with List I, Parliament has exclusive power of legislation.

(2) The State legislature has exclusive power to make taws for such State or any part thereof with respect to any of the matter enumerated in the

list-II of the Seventh Schedule and it also has power to make laws with respect to any of the matter enumerated in list III. The exclusive power of

the State legislature to legislate with respect to any of the matter enumerated in List-II is to be exercised subject to clause-I i.e. the exclusive power

of parliament to legislate with respect to matters enumerated in List-I. As a consequence, if there is conflict between an entry in list-I and entry in

list-II which is not capable of reconciliation the power of parliament to legislate with respect to a matter enumerated in list-II must supersede pro

tanto the exercise of power of the State legislature.

(3) Both Parliament and State legislature have concurrent powers of legislation with respect to any of the matter enumerated in list-III.

(underline supplied to all emphasis and are not part of original text)

41. The words ""notwithstanding anything contained in clauses (2) and (3)"" in Article 246(1) and the words ""subject to clauses (1) and (2)"" in

Article 246(3) lay down the principle of federal supremacy viz. that in case of inevitable conflict between Union and State powers, the Union

power as enumerated in List I shall prevail over the State power as enumerated in Lists II and III, and in case of overlapping between Lists II and

III, the former shall prevail But the principle of federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is

an ""irreconcilable"" conflict between the entries in the Union and State Lists. In the case of a seeming conflict between the entries in the two Lists,

the entries should be read together without giving a narrow and restricted sense to either of them. Secondly, an attempt should be made to see

whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction. It should be considered whether a fair reconciliation can be

achieved by giving to the language of the Union Legislative List a meaning which, if less wide than it might in another context bear, is yet one that

can properly be given to it and equally giving to the language of the State Legislative List a meaning which it can properly bear. The non obstante

clause in Article 246(1) must operate only if such reconciliation should prove impossible. Thirdly, no question of conflict between the two Lists will

arise if the impugned legislation, by the application of the doctrine of pith and substance'' appears to fall exclusively under one list, and the

encroachment upon another list is only incidental.

26. Referring to the principles enunciated in Hoechst Pharmaceuticals Ltd., in para. 31 of the decision rendered in the case of The State of West

Bengal Vs. Kesoram Industries Ltd. and Others, the Hon''ble Supreme Court held as under:-

31. Article 245 of the Constitution is the fountain source of legislative power. It provides--subject to the provisions of this Constitution, Parliament

may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the

State. The legislative field between Parliament and the Legislature of any State is divided by Article 246 of the Constitution. Parliament has

exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule, called the ""Union List"". Subject to

the said power of Parliament, the Legislature of any State has power to make laws with respect to any of the matters enumerated in List III, called

the ""Concurrent List"". Subject to the abovesaid two, the Legislature of any State has exclusive power to make laws with respect to any of the

matters enumerated in List II, called the ""State List"". Under Article 248 the exclusive power of Parliament to make laws extends to any matter not

enumerated in the Concurrent List or State List. The power of making any law imposing a tax not mentioned in the Concurrent List or State List

vests in Parliament. This is what is called the residuary power vesting in Parliament. The principles have been succinctly summarized and restated

by a Bench of three learned Judges of this Court on a review of the available decision in Hoechst Pharmaceuticals Ltd. v. State of Bihar. They are:

(1) The various entries in the three Lists are not ""powers"" of legislation but ""fields"" of legislation. The Constitution effects a complete separation of

the taxing power of the Union and of the States under Article 246. There is no overlapping anywhere in the taxing power and the Constitution gives

independent sources of taxation to the Union and the States.

(2) In spite of the fields of legislation having been demarcated, the question of repugnancy between law made by Parliament and a law made by the

State Legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the

Concurrent List and a direct conflict is seen. If there is a repugnancy due to overlapping found between List II on the one hand and List I and List

III on the other, the State law will be ultra vires and shall have to give way to the Union law.

(3) Taxation is considered to be a distinct matter for purposes of legislative competence. There is a distinction made between general subjects of

legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power of taxation in a separate group. The

power to tax cannot be deduced from a general legislative entry as an ancillary power.

(4) The entries in the lists being merely topics or fields of legislation, they must receive a liberal construction inspired by a broad and generous spirit

and not in a narrow pedantic sense. The words and expressions employed in drafting the entries must be given the widest-possible interpretation.

This is because, to quote V. Ramaswami, J., the allocation of the subjects to the Lists is not by way of scientific or logical definition but by way of

a mere simplex enumeration of broad categories. A power to legislate as to the principal matter specifically mentioned in the entry shall also include

within its expanse the legislations touching incidental and ancillary matters.

(5) Where the legislative competence of the Legislature of any State is questioned on the ground that it encroaches upon the legislative competence

of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in List I or III. If it does, no further

question need be asked and Parliament''s legislative competence must be upheld. Where there are three Lists containing a large number of entries,

there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to

which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other Legislature

is of no consequence. The court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of

ascertaining the true character of legislation. The name given by the legislature to the legislation is immaterial. Regard must be had to the enactment

as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.

[Emphasis added].

(6) The doctrine of occupied field applies only when there is a clash between the Union and the State Lists within an area common to both. There

the doctrine of pith and substance is to be applied and if the impugned legislation substantially falls within the power expressly conferred upon the

Legislature which enacted it, an incidental encroaching in the field assigned to another Legislature is to be ignored. While reading the three Lists,

List I has priority over Lists III and II and List III has priority over List II. However, still, the predominance of the Union List would not prevent

the State Legislature from dealing with any matter within List II though it may incidentally affect any item in List I.

27. In Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others, , the assessees, who were either manufacturers, dealers or sellers of

tobacco and tobacco products, have challenged the imposition and levy of a luxury tax on tobacco and tobacco products by treating them as

luxuries"" within the meaning of the word in Entry 62 of List II. Examining the constitutional validity of various enactments imposing levy of ""luxury

tax"" on tobacco and tobacco products, the Hon''ble Supreme Court considered the question as to whether tobacco can be considered to be an

article of luxury. The argument of the assessees was that the tax leviable under Entry 62 of List II cannot be a tax on goods as that would not only

allow the State to levy sales tax in contravention of Article 286 of the Constitution of India but would permit trespass on to the Union''s Legislative

fields under Entries 83 and 84 of List I. Observing that the State Legislations seek to tax goods describing tobacco and tobacco products as luxury

goods and that they must be declared to be legislatively incompetent, in paragraphs 49, 50 and 93, the Hon''ble Supreme Court held as under:-

49. Under the three lists of the Seventh Schedule to the Indian Constitution a taxation entry in a legislative list may be with respect to an object or

an event or may be with respect to both. Article 246 makes it clear that the exclusive powers conferred on Parliament or the States to legislate on

a particular matter includes the power to legislate with respect to that matter. Hence, where the entry describes an object of tax, all taxable events

pertaining to the object are within that field of legislation unless the event is specifically provided for elsewhere under a different legislative head.

Where there is the possibility of legislative overlap, courts have resolved the issue according to settled principles of construction of entries in the

legislative lists.

50. The first of such settled principles is that legislative entries should be liberally interpreted, that none of the items in the list is to be read in a

narrow or restricted sense and that each general word should be held to extend to ancillary or subsidiary matters which can fairly and reasonably

be said to be comprehended in it (United Provinces v. Atiqa Begam, Western India Theatres Ltd. v. Cantonment Board, SCR at p. 69 and Elel

Hotels & Investments Ltd. v. Union of India).

... ...

93. Given the language of Entry 62 and the legislative history we hold that Entry 62 of List II does not permit the levy of tax on goods or articles.

In our judgment, the word ""luxuries"" in the entry refers to activities of indulgence, enjoyment or pleasure. Inasmuch as none of the impugned

statutes seek to tax any activity and admittedly seek to tax goods described as luxury goods, they must be and are declared to be legislatively

incompetent.

28. The aforesaid principle laid down in Hoechst Pharmaceuticals Ltd.''s case by Hon''ble Supreme Court have been noted with approval by the

Hon''ble Supreme Court of India in several judgments including that of Girnar Traders Vs. State of Maharashtra and Others, by a Constitution

Bench (Paras. 173 to 176):-

Application of doctrine of pith and substance and incidental encroachment to the issue raised in the present case

173. The doctrine of pith and substance can be applied to examine the validity or otherwise of a legislation for want legislative competence as well

as where two legislations are embodied together or achieving the purpose of the principle Act. Keeping in view that we are construing a federal

Constitution, distribution of legislative powers between the Centre and the State is of great significance. Serious attempt was made to convince the

Court that the doctrine of pith and substance has a very restricted application and it applies only to the cases where the Court is called upon to

examine the enactment to be ultra vires on account of legislative incompetence.

174. We are unable to persuade ourselves to accept this proposition. The doctrine of pith and substance finds its origin from the principle that it is

necessary to examine the true nature and character of the legislation to know whether it falls in a forbidden sphere. This doctrine was first applied

in India in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd. The principle has been applied to the cases of alleged repugnancy and we see no

reason why its application cannot be extended even to the cases of present kind which ultimately relates to statutory interpretation founded on

source of legislation.

175. In Union of India v. Shah Goverdhan L. Kabra Teachers" College this Court held that in order to examine the true character of the

enactment, the entire Act, its object and scope is required to be gone into. The question of invasion into the territory of another legislation is to be

determined not by degree but by substance. The doctrine of pith and substance has to be applied not only in cases of conflict between the powers

of two legislatures but also in any case where the question arises whether a legislation is covered by a particular legislative field over which the

power is purported to be exercised. In other words, what is of paramount consideration is that the substance of the legislation should be examined

to arrive at a correct analysis or in examining the validity of law, where two legislations are in conflict or alleged to be repugnant.

176. An apparent repugnancy upon proper examination of substance of the Act may not amount to a repugnancy in law. Determination of true

nature and substance of the laws in question and even taking into consideration the extent to which such provisions can be harmonized, could

resolve such a controversy and permit the laws to operate in their respective fields. The question of repugnancy arises only when both the

legislatures are competent to legislate in the same field i.e. when both, the Union and the State laws, relate to a subject in List III (Hoechst

Pharmaceuticals Ltd. v. State of Bihar).

(underline supplied to add emphasis).

29. It would be appropriate by way of passing reference to indicate herein that Article 254 provides the method of resolving conflict between law

made by the Parliament and Law made by the Legislature of the State with respect to the matter falling under the Concurrent List. The Doctrine of

Repugnancy is, therefore, available to only such laws, which are made by the parliament and the State legislature in respect of matters falling within

the Concurrent List of the VIIth Schedule. This shall not detain us any further, as admittedly the legislations in question do not fall within the entries

of the Concurrent List so as to invite any attention of the principle enumerated in Article 254 concerning Doctrine of Repugnancy. The extent and

control in exercise of legislative powers in respective fields of legislation under List II of the Seventh Schedule are exclusively controlled by the

provisions of Article 246 of the Constitution of India. It is important to mention here that the scheme of distribution in the three Lists of Seventh

Schedule is carefully crafted and the taxing fields are separately provided for.

30. On the question of conflict in entries in the 3 Lists under the Seventh Schedule of the Constitution, the Hon''ble Supreme Court in the case of

Kesoram Industries Ltd. and others (Supra), while referring to the decision of the M.P.V. Sundararamier and Co. Vs. The State of Andhra

Pradesh and Another, and the analysis of decided cases made by the celebrated Jurist H.M. Seervai, held as under:-

73. The analysis of decided cases as made by eminent constitutional jurist H.M. Seervai in his work on Constitutional Law of India (4th/Silver

Jubilee Edn., Vol. 3) is apposite. Vide para. 22.168, he states:

22.168. In Governor General in Council v. Province of Madras the Privy Council laid down important principles for interpreting apparently

conflicting legislative entries in general, and apparently conflicting tax entries in particular. The Privy Council held, first, that though a tax in List I

(e.g. a duty of excise) and a tax in List II (e.g. a tax on the sale of goods) of the Government of India Act, 1935, may overlap, in fact there would

be no overlapping in law, if the taxes were separate and distinct imposts; secondly, that the machinery of tax collection did not affect the real nature

of a tax. Another principle for reconciling apparently conflicting tax entries follows from the fact that a tax has two elements: the person, thing or

activity on which the tax is imposed, and the amount of the tax. The amount may be measured in many ways; but decided cases establish a clear

distinction between the subject-matter of a tax and the standard by which the amount of tax is measured. These two elements are described as the

subject of a tax and the measure of a tax. In D.G. Gose & Co. (Agents) (P.) Ltd. v. State of Kerala which is considered later, the above passage

was quoted with approval by the Supreme Court as stating precisely the two elements involved in almost all tax cases, namely, the subject of a tax

and the measure of a tax.

(emphasis in original)

74. It is necessary to examine the scheme underlying the Seventh Schedule of the Constitution. We are relieved of the need of embarking upon any

maiden voyage in this direction in view of the availability of a Constitution Bench decision in M.P.V. Sundararamier & Co. v. State of A.P. 43

Venkatarama Aiyar, J., speaking for the Constitution Bench, traced the history of legislations preceding the Constitution, analysed the scheme

underlying the division of legislative powers between the Centre and the States and then succinctly summed up the quintessence of the analysis. It

was held, inter alia:

1. 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.

2. In 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. (AIR p. 493, para. 51)

3. 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. Under the scheme of the entries in the lists, taxation is regarded as a distinct matter and is

separately set out. (AIR p. 494, paras 51 & 55)

4. The entries in the legislative lists must be construed broadly and not narrowly or in a pedantic manner. (AIR p. 494, para. 56)

5. The entries in the two lists--Lists I and II--must be construed, if possible, so as to avoid conflict. Faced with a suggested conflict between

entries in List I and List II, what has first to be decided is whether there is any conflict. If there is none, the question of application of the non

obstante clause ""subject to"" does not arise. And, if there be conflict, the correct approach to the question is to see whether it was possible to effect

a reconciliation between the two entries so as to avoid a conflict and overlapping.

6. In the event of a dispute arising it should be determined by applying the doctrine of pith and substance to find out whether between two entries

assigned to two different legislatures the particular subject of the legislation falls within the ambit of the one or the other. Where there is a clear and

irreconcilable conflict of jurisdiction between the Centre and a Provincial Legislature it is the law of the Centre that must prevail. (AIR pp. 494-95,

para. 56)

(italicised by its)

76. The abovesaid principles continue to hold the field and have been followed in cases after cases.

31. From the above decisions of the Hon"ble Supreme Court on the legislative competence of the Union and the State on the taxing entries in the

Union List and the State List, the following principles emerge:-

Ã¯Â¿Â½ The legislative entries should be broadly construed and that items in the three Lists of the Seventh Schedule of the Constitution of India are not

to be read in a narrow or restricted sense and that each general word should be held to extend to ancillary or subsidiary matters.

Ã¯Â¿Â½ Whenever an apparent overlap has occurred, the Legislative Entries should be liberally interpreted and it is the duty of the Court to reconcile

the entries and the competing entries must be read harmoniously. The proper way to avoid a conflict would be to read the entries together and to

interpret the language of one by that of the other.

Ã¯Â¿Â½ There is bound to be overlapping and in all such cases, for deciding the true character and nature of a particular levy, with reference to the

legislative competence, the Court has to look into the pith and substance of the legislation.

Ã¯Â¿Â½ Legislations in the field of taxation and economic activities need special consideration and are to be viewed with larger flexibility in approach.

32. Whether DTH Service provided by the petitioners is only broadcasting services falling under Entry 92C of List I and State Legislature has no

legislative competence to levy entertainment tax under Entry 62 of List II:

Service Tax"" can be imposed by the Parliament under entry 92C of the Union List of the Seventh Schedule of the Constitution of India. The writ

petitioners were granted licence by the Government of India u/s 4 of the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act,

1933 to establish, maintain and operate Direct-to-Home (DTH) platform on the terms and conditions contained in the licence agreement for a

period of ten years. The writ petitioners have obtained a certificate of registration u/s 69 of the Finance Act for ""Service Tax"" (Form ST-2). As per

the certificate of registration, taxable service is ""Broadcasting Service, Cable Operators, Sponsorship Service and Transport of goods by road"".

33. The principal argument on behalf of the petitioner is that the Union Legislature has by enacting the Prasar Bharti (Broadcasting Corporation of

India) Act, 1990 under Entry 31 to List I has intended to regulate the activities of broadcasting carried out by them i.e. providing D.T.H. Service.

At the same time the Union Legislature by incorporating the amendments in the Finance Act, 1994 u/s 65(105)(zk) under Entry 92C of list I (Tax

on Services) has chosen to levy service tax on the activities of service provided by the petitioners. Therefore, when the Union Legislature under its

respective legislative fields in List I subjected the activities of service provided by the D.T.H. service providers through regulation and taxation, the

same activity is no longer open to the State Legislature to be subjected to levy like the entertainment tax under Entry 62 of List II. Similarly the

activity of D.T.H. service cannot be regulated in exercise of the legislative field applicable to the State Legislature under Entry 33 of List II.

34. The respective legislative Entries 31 and 92C in List I and Entry 33 and 62 of List II have been quoted herein above. While under Entry 31

apart from other legislative fields the activity of broadcasting has been made subject of regulation by the Union enactment of Prasar Bharti Act,

under Entry 33, the subject of entertainment is open to the State Legislature to be regulated. Apparently the legislative fields of broadcasting and

entertainment respectively both under List I and II do not appear to be overlapping upon each other. Similarly the legislative field available to the

Union Legislature under Entry 92C i.e. taxes on service do not overlap with the legislative field under Entry 62 relating to taxes on entertainment

applicable to the State Legislature. The judgment rendered in the case of M/s. Hoechst Pharmaceuticals Ltd. & ors. Vrs. State of Bihar(supra) and

the Constitution Bench Judgment in the case of The State of West Bengal Vs. Kesoram Industries Ltd. and Others, make it clear that there is no

overlapping in fields of taxation available under List I and II to the Union and State Legislature. Therefore, it is apparent that while the Union

Legislature has the power under Article 246(1) to make laws in respect of the subject of taxes on service, at the same time the State Legislature

also has power under Entry 62 of the List II to impose tax on entertainment.

35. The contention of the petitioners that by enacting the Prasar Bharti Act and amending Finance Act, 1994, imposing tax on service, the Union

Legislature has occupied the said field, denuding the State Legislature the power to levy tax on the activity of entertainment is without any

substance. However, though there could not be overlapping in law in respect of respective legislative fields available to both the Legislature but

Overlapping or incidental encroachment may result in fact. In order to determine whether the State Legislation has invaded into the territory of

another legislation, the Doctrine of Pith and Substance is to be applied. According to the principle laid down in the case referred earlier in the case

of M/s. Hoechst Pharmaceuticals Ltd. & ors., Kesoram Industries Ltd. and others as also in the case of Girnar Traders Vrs. The State of

Maharashtra (supra), the Doctrine of Pith and Substance has to be applied not only in case of conflict between powers of the two Legislatures but

also in any case where the question arises as to whether the legislation is covered by particular legislative field over which the power is purported

to be exercised. What is of paramount consideration is substance of the legislation which is to be examined to arrive at a correct analysis.

36. In order to determine the Pith and Substance of the State enactment, the following provisions of Jharkhand Entertainment Act, 2012 are

required to be examined. The relevant provisions of Section 2(k)(l)(m)(n)(s-(iv, (v), (y), Section 3, 4 and 5 are quoted herein below:-

(k) ""Direct to Home (DTH) Service"" means a system of distribution of multi channel television programmes by using a Satellite system by providing

television signals through Antenna direct or any other similar devices to the subscriber''s premises hotels/clubs, without passing through an

intermediary such as cable service;

(l) ""Direct to Home (DTH) Service Provider"" means any person or proprietor or agency, who provide Direct to Home (DTH) Service, whether by

means of ""Set top boxes"" or any such antenna or instruments or equipments or any other similar devices and includes the activation or renewal of

such DTH service.

(m) ""Entertainment"" includes any exhibition, performance, amusement, game shows or sports to which persons are admitted for payment, or in the

case of television exhibition with the aid of any type of antenna with a cable network attached to it or cable television network or Direct-to-Home

(DTH) Service, for which persons are required to make payment by way of contribution or subscription or installation or rent or security and

connection charges or by any other charges collected in any manner whatsoever; but does not include magic show and temporary amusement

including games and rides;

For the purposes of this clause-

The expression ""exhibition"" includes any exhibition by cinematograph including video exhibition or television exhibition with the aid of any type of

antenna with a cable network attached to it, or cable television network as provided by the cable operator incidental to cable service(s);

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

The expression ""game"" includes video games which are played with the aid of machine which is operated electronically or mechanically or electro-

mechanically for the purposes of entrainment or otherwise and

The expression ""temporary amusement"" means the amusement rides and games which are not provided on fairly permanent basis like in amusement

park or meals or fair.

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

2(s). Payment of Entertainment (iv) any payment made by a person by way of contribution or subscription or installation or connection charges or

valuable consideration or any other charge collected in any manner whatsoever for television exhibition with the aid of any type of antenna with a

cable network attached to it or cable television network as provided by the cable operation; or

(s)(v) any payment made by a person to the proprietor of a Direct to Home (DTH) service by way of contribution, subscription, installation or rent

or security or activation charges or connection charges, or valuable consideration or any other charges collected in any manner whatsoever for

Direct to Home (DTH) service with the aid of any type of set-top box(s) or any other instrument/equipment of like nature, or any other similar

devices, which connects television set at a residential/hotels/clubs or non-residential place of a connection holder directly to the Satellite.

Explanation-For the purpose or this sub-clause any expenditure incurred by any co-operative housing society, residential complexes as valuable

consideration or by the management of any factory, hotels, lodge, bar, permit room pub, or by a person or group of persons, for the purchase of

any type of antenna or any other apparatus equipments for securing transmission through the cable network of cable television attached to it, for its

members, or for workers or customers or for himself or themselves, as the case may be, shall be deemed to be the payment made under this sub-

clause for the television exhibition with the aid of any type of antenna with cable network attached to it or cable television network an DTH service

provide.

Section 3:- Incidence of entertainment tax-(1) Save as provided in subsection (2), there shall be levied and paid to the State Government by an

assessee: a tax on the entertainment at the rate(s) as specified in the notification issued under this Act.....

Section 4:- Assesses to collect entertainment tax from persons admitted to entertainment:- Save as provided under subsection (2) of Section 3 of

this Act, every assessee shall be entitled to collect, from persons admitted to the entertainments), an amount equal to the entertainment tax payable

in respect to the valuable consideration of tickets or complimentary tickets or the sponsorship amount.

Section 5:- Payment of tax-Subject to the provisions of this Act and such rules as may be prescribed, entertainments tax shall be payable by every

assessee for the following class of entertainments-

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

(ii) for the video exhibition failing under sub-section (2) of Section 3 read with serial number 2 of the schedule, before commencing of the month

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

commencing of the week;

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

(v) for the cable operators, operating cable television network and Direct to Home Service provider, and all other descriptions of entertainment

falling under sub-section (2) of Section 3 read with serial number 4, 5 and 6 of the schedule: by 7th day of the month after the expiry of the

respective month.

37. u/s 2(m) apart from any exhibition, performance, amusement, game show, sport to which persons are admitted for payment, entertainment also

includes television exhibition with the aid of any type of antenna with a cable network attached to it or cable television network or direct to home

(DTH) service, for which persons are required to make payment by way of contribution or subscription and installation or rent or security or

connection charges or any other charges collected in any manner what so ever. The aforesaid definition of ''entertainment'' therefore makes it clear

that the activity of television exhibition with the aid of DTH service has been included within the meaning of entertainment. u/s 2(s)(v) payment of

entertainment includes any payment made by a person to the proprietor of D.T.H. service by way of contribution, subscription, installation or rent

or security or activation charges, connection charges or any other charge collected in any manner what so ever for D.T.H.; service with the aid of

any type of set top box or instrument, equipment of like nature or any other similar device. In the aforesaid meaning of expression ""entertainment

provided under the impugned Act and the definition of payment for entertainment provided u/s 2(s)(v), the issue which requires to be answered is

whether the activity of Television exhibition through DTH service can be said to be falling within the meaning of ""entertainment"" so as to enable the

State Legislature to impose taxes on it.

38. In this regard the ratio rendered in the case of The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others, is

applicable in the present case. In the said case the levy of entertainment tax under the West Bengal Entertainment cum Amusement Tax Act, 1982

on television exhibition through cable T.V. Network was under challenge. The Hon''ble Supreme Court held that performance, film or programme

shown to the viewer through cable T.V. Network comes within the meaning of entertainment and comes within the legislative competence of the

State Legislature under Entry 62 of the list II of the 7th Schedule of the Constitution to make a law for the levy and collection of tax on such

entertainment. It was held that the cable operator has a direct and proximate nexus with the entertainment and amusement provided to the viewers

for the purpose of levy and collection for entertainment tax. The cable operator is a source of entertainment to the individual subscriber. Therefore,

cable operators were held to be taxable persons in respect to their gross receipts u/s 4(a) of the impugned Act. It was further held that tax under

Entry 62 List II can be imposed not only on the person spending on entertainment but also on the act of the person entertaining or subject of

entertainment. The levy may be imposed on person offering or providing entertainment or even on the persons enjoying it. The State Legislature is

free to choose the person from whom the tax levied is to be collected. It was held that under the impugned act there was clear indication of the

character of tax from incidence of such tax or taxable events which takes place on the happening of the event of offering entertainment to the

subscribers. The contention of the cable operators that the Central Legislation i.e. Cable T.V. Network Act which regulate their operation has

occupied the legislative field of the State Legislature was negated. The Hon"ble Supreme Court held that there is no reason to differentiate between

the giver and the receiver of the luxuries, entertainments, or amusements and both may, with equal propriety, be made amenable to the tax. That

existence of means of entertainment would be sufficient to support a law imposing the tax thereon and means of providing entertainment provides

nexus between taxing power and the subject of tax. The impugned legislation in pith and substance was held to be within the legislative field of

Entry 62 List II of the State Legislature and cannot be said to be on the aspect or activity of broadcasting. Para. 35 to 39, 41, 46, 50 and 52 are

containing the opinion of the Hon"ble Apex Court and worthy of being reproduced herein below:-

35. The Cable Television Networks (Regulation) Act, 1995, a Central legislation, has been enacted to regulate the operation of cable television

networks in the country and for matters connected therewith This enactment does not, in our opinion, fetter the legislative power or competence of

the State to levy tax on luxuries including taxes on entertainments, amusements, betting and gambling falling under Entry 62 of List II of the Seventh

Schedule to the Constitution. The power of regulation or control under the said Central enactment is separate and distinct from the power of

taxation by the State Legislature under Entry 62 of List II; being a specific power, the power of taxation cannot be cut down or fettered by the

general power of regulation as exercised by Parliament in enacting the said 1995 Act. Under the legislative field exclusively reserved for the State

Legislature, the levy of tax by more than one statute on different taxable objects and taxable persons is not prohibited by the Constitution. The

Bengal Amusements Tax Act, 1922 and the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 are two statutes

which have been enacted under the same legislative field i.e. Entry 62 of List II of the Seventh Schedule to the Constitution, and the two statutes

apply admittedly to levy of tax on amusements, entertainments and luxuries in their respective area but the area of application of the said 1982 Act

is different as would be evident from the provisions of the 1922 Act and the 1972 Act as aforesaid. The said 1982 Act was, for the first time,

enacted by the State Legislature in 1982 and its area of application was initially confined to levy and collection of tax from the holders of television

set or sets u/s 4 of that Act. Thereafter, u/s 4A of that Act, inserted by the West Bengal Taxation Laws (Second Amendment) Act, 1983, the area

of its application was extended to levy and collection of tax from the holders of video cassette recorder. The purpose of sub-section (4-a) of

Section 4A of the Act is the levy and collection of tax from any person who provides cable service directly to consumers or transmits to a sub-

cable operator through a cable television network and otherwise controls or is responsible for the management and operation of a cable television

network and such person has been defined as ""cable operator"" being a taxable person exclusively for the purpose of levy and collection of

entertainment tax only when a cable operator so defined receives through any electrical, electronic and mechanical device the signal of any

performance, film or any other programme telecast and provides cable service directly to " consumers or transmits signals to a sub-cable operator

through a cable television network and otherwise controls or is responsible for the management and operation of a cable television network. The

person who has been defined as cable operator exclusively for the purpose of levy and collection of entertainment tax has a direct and proximate

nexus with the amusements and entertainments to the viewers at every home or place inasmuch as he is the person directly connected with

presentation of entertainments to the subscribers. A person is also a ""cable operator"" for the purpose of sub-section (4-a) of Section 4A of the

said 1982 Act when he receives the signal of any performance, film, or any other programme telecast and transmits such signal to a sub-cable

operator through cable television network or otherwise controls or is responsible for the management and operation of cable television network

against payment received or receivable by him. Therefore, a cable operator is the source of entertainment to the individual subscribers because, it

is he who receives the signal of performance, film, and any programme which is transmitted or given to a large number of sub-cable operators

(although they call them as cable operator). The viewers enjoy or are entertained by such performance, film, or programme because of receiving

and transmitting video or audio-visual signals through coaxial cable or any other device by the respondents.....

36. Therefore, the respondents as a cable operator have direct and proximate nexus with the entertainments provided by them through their cable

television network and, as such they are the taxable person in respect of their gross receipts in relation to any month for providing entertainments to

the individual viewers.

37. In our view, the respondents as a cable operator, for the purpose of levy and collection of tax under sub-section (4-a) of Section 4A of the

Act have direct and close nexus with the entertainments made available to the viewer through their cable television network. The performance, film

or programmes shown to the viewers through the cable television network come within the meaning of entertainments and therefore within the

legislative competence of the State Legislature under Entry 62 of List II of the Seventh Schedule to the Constitution to make law for the levy and

collection of tax on such entertainments.

38. A tax under Entry 62 of List II of the Seventh Schedule to the Constitution may be imposed not only on the person spending on entertainment

but also on the act of a person entertaining, or the subject of entertainment. It is well settled by this Court that such tax may be levied on the person

offering or providing entertainment or the person enjoying it. The respondents are admittedly engaged in the business of receiving broadcast signals

and then instantaneously sending or transmitting such visual or audio-visual signals by coaxial cable, to subscribers'' homes through their various

franchisees. It has been made possible for the individual subscribers to choose the desired channels on their individual TV sets because of cable

television technology of the respondents and of sending the visual or audio-visual signals to sub-cable operators, and instantly retransmitting such

signals to individual subscribers for entertaining them through their franchisees.....

39. In the tax matters, the State Legislature is free, if it has legislative competence, to choose the persons from whom the tax levied on

entertainments is to be collected. In other words, what are taxed are the entertainments, which is very much within the ambit of Entry 62 of List II

of the Seventh Schedule. It is the respondents who as cable operator for the purpose of the said 1982 Act are engaged in the business of providing

or offering entertainments which include showing of films, various serials, cricket matches and dramatic performances to the subscribers, and the

tax is imposed on the act of offering such entertainments in this way to such subscribers and/or viewers. The entire communication network service

is built up and controlled by the respondents. Whatever amount is received or receivable by the respondent in respect of providing such

entertainments is taxable under sub-section (4-a) of Section 4A of the said 1982 Act which has a direct and sufficient nexus with the

entertainments.

... ...

41. We also see no substance in the submission that the impugned legislation impinges on the field occupied by the Central legislation. The

aforesaid Central legislation has been enacted to regulate the operation of cable television network in the country and matters connected therewith

or incidental thereto whereas the State legislation is for levy of entertainment tax on entertainment within the legislative field exclusively assigned to

the State Legislature under Entry 62 of List II of the Seventh Schedule of the Constitution. Thus the objects sought to be achieved by two different

Acts enacted under two different legislative fields exclusively assigned to the respective legislatures are entirely distinct and separate. The Cable

Television Networks (Regulation) Act, 1995 of the Union Legislature does not denude the State Legislature of the power of levying entertainment

tax on entertainment.

... ...

46. In this context, it is important to refer to the case of Express Hotels (P) Ltd. v. State of Gujarat in which the Constitution Bench had dealt

elaborately with Western India Theatres Ltd. case. In the said case, with reference to Entry 50 in Schedule VII of the Government of India Act,

1935 which is identical to Entry 62, contention was raised that levy with respect to luxuries, entertainments or amusements can be made on a

person"s receiving such luxuries or entertainment and that there can be no levy of tax on those who are givers or providers of such luxuries,

entertainments, etc. While rejecting such a contention that it is only the receivers who can be taxed and not the giver, the learned Judges observed

(SCR p. 69) that there can be no reason to ""differentiate between the giver and the receiver of the luxuries, entertainments, or amusements and

both may with equal propriety, be made amenable to the tax"".

50. Therefore, there is no substance in the contention that taxable event is entertainment and there can be no tax if there is no entertainment. As

held by the Constitution Bench, existence of means of providing entertainment would be sufficient to support a law imposing tax thereon and that

means of providing entertainment provides the nexus between the taxing power and the subject of tax.

52. The arguments advanced by learned Senior Counsel for the respondents with reference to Entry 31 of List I is misplaced since the impugned

legislation cannot by any stretch of imagination be said to be one in pith and substance relating to broadcasting. If levy of tax upon the sub-cable

operator treating him as provider of entertainment admittedly falls under Entry 62 making cable operator liable it can by no means take it out of the

purview of Entry 62.

[underlining added]

39. As would appear there is no difference in the service provided by the D.T.H. service provider with that of Cable Operator. Both provide

vehicle to transfer the content which provides entertainment. The tax is on entertainment and not the manner it reaches the consumer. The subject

matter of tax is entertainment provided through the content that flows through D.T.H. service provider system i.e. the subject matter of tax and not

the service enabling the flow of content through the D.T.H. system.

40. There is no substance in the petitioners" contention that the petitioners are providing only "broadcasting service" and the State Legislature is

denuded of its power to levy any tax on such service. To fortify our conclusion, it is necessary to understand the techniques of DTH and the two

aspects of DTH - one is providing "broadcasting service" which is a value addition on account of activity of transmission of signals and the other -

providing "entertainment" through DTH.

41. Techniques of Direct-to-Home (DTH):

Direct-to-Home (DTH) is a technology wherein television channels are directly delivered at the subscribers premises through satellite in a digital

form. There are five major components involved in a Direct-to-Home (DTH) - (i) the programming source, (ii) the broadcast center, (iii) the

satellite, (iv) the dish antenna and (v) the receiver. We deem it appropriate to give a graphic of the five major components involved in Direct-to-

Home (DTH) Service:-

Ã¯Â¿Â½ Programming sources are simply the channels that provide programming for broadcast. The DTH provider does not create original

programming itself, it pays other companies for the right to broadcast their content via satellite. DTH providers get programming from two major

sources: International turnaround channels (such as HBO, CNN, STAR TV etc.) and various local channels (Sahara TV, Doordarshan etc.)

Turnaround channels usually have a distribution center that beams their programming to a geostationary satellite. The broadcast center uses large

satellite dishes to pick up these.

Ã¯Â¿Â½ The broadcast center is the Central hub of the system. At the broadcast center, the TV provider receives signals from various programming

sources and beams a broadcast signal to the satellites in geosynchronous orbit. The broadcast center downlinks the signals from the satellite and

converts all of this programming into a high quality uncompressed digital stream and then uplinks to the designated transponders for transmission of

signals in Ku-Band.

Ã¯Â¿Â½ The satellites receive the signals from the broadcast station and rebroadcast them to Earth. That is once the signal is compressed and

encrypted, the broadcast center beams it directly to one of its satellite. The satellite picks up that signal, amplifies it and beams it back to Earth

where viewers can pick it up.

Ã¯Â¿Â½ Dish picks up the signal from the satellite and passes it on to the receiver in the viewer"s house. A satellite dish is just a special type of antenna

which consists of a parabolic (bowl-shaped) surface and a central feed horn. The dish on the receiving end cannot transmit information, it can only

receive it.

Ã¯Â¿Â½ The receiver/set top box processes the signal and passes it on to a standard TV. The end component in the entire satellite TV system is the

receiver/set top box. The received signals are decoded by the set top boxes with the help of the viewing card inside the set top box for the

customers to be able to view the service. The terms of the licence agreement obligates the DTH service provider to ensure that the set top box has

technical compatibility and has such specification as laid down by the Government from time to time.

42. Direct-to-Home (DTH) service has two parts. The first part is the ""broadcast center"" where the broadcast center converts all the programming

into a high quality and compressed digital stream and then uplinks to the designated transponders for transmission of signals in Ku-Band. The

designated transponder picks up the signals, amplifies it and beams it back to earth where the viewers can pick it up through the dish antenna and

are converted through set top boxes and passes it on to the television. As per Article 7.5 of the licence agreement of the petitioner, all content

provided by the DTH platform to the subscribers, irrespective of its source, shall pass through the encryption and conditional access system,

located within the Earth Station, situated on Indian soil.

43. As pointed out earlier, the ""service tax"" registration is obtained by the writ petitioners for the ''broadcasting service'', ''cable operators'',

''sponsorship service'' and ''transport of goods by road''. The writ petitioners have paid charges and deposits including guarantees as well as fee

under the regulatory provisions contained in the Indian Telegraph Act and Indian Wireless Telegraphy Act as per the terms and the conditions of

the licence agreement. The writ petitioners/DTH Service providers operating broadcasting center where signals are compressed and then uplinked

to the designated transponders for transmission of signals in Ku-Band. The taxable event for levying of ""service tax"" on the petitioner is the

incidence of operating broadcasting center and uplinking signals to the designated transponders for transmission of signals in Ku-Band.

44. In case of Direct-to-Home (DTH) broadcasting, service is on account of activity of transmission of signals which is received by the dish

antenna for which ''service tax'' is levied. As per the terms and conditions of the licence agreement to establish, maintain and operate Direct-to-

Home platform, that it involves host of services which is a value addition to the actual entertainment for which the writ petitioners are paying the

service tax"". The ""service tax"" paid under Entry 92C of List I of the Seventh Schedule of the Constitution of India is only for those services

involved in the DTH platform. In order to examine the true character of the enactment, the entire Act, its object, scope and effect is required to be

gone into. If on such examination is found that the legislation is in substance on a matter assigned to the legislature, then it must be held to be valid

in its entirety, even though it might incidentally trench upon matters beyond its competence.

45. The activity of Television Exhibition through DTH Service falls within the meaning of entertainment as defined in Section 2(m) of the Act. The

taxable event for levying ""entertainment tax"" is the actual entertainment provided to the viewers on the television set which is based on contracts

executed by the petitioners with the customers to whom they provide entertainment by collecting subscription. State Legislature has the legislative

competence under Entry 62 of List II to levy tax on such entertainment. There is no merit in the contention of the petitioners that the State

Legislature has no legislative competence to levy tax on the ""entertainment"" provided by the Direct-to-Home (DTH) service providers under Entry

62 of List II of the Seventh Schedule of the Constitution of India.

46. Whether the Direct-to-Home Service is a composite transaction as contended by the writ petitioners or whether ''aspect theory'' is applicable

to the transaction enabling the State Legislature to levy entertainment tax on the aspect of entertainment and Union of India levying service tax for

the broadcasting service?:

Learned Senior Counsel for the petitioners, Mr. Binod Kanth, submitted that providing Direct-to-Home (DTH) service and entertainment are a

composite whole and that part of the service cannot be segregated as entertainment to levy entertainment tax. Learned Senior Counsel submitted

that u/s 65 of the Finance Act, service tax is chargeable on any taxable service with reference to its value and u/s 65(105)(zk) of the Finance Act,

DTH operators are within the field of service tax, for which service tax is chargeable. Learned Senior Counsel further submitted that so far as DTH

operators are concerned, right from connecting the cable with the antenna then taking it to the Set top box and from Set top box decrypting it by

taking it to the television set for the purpose of exhibition are the composite one and charges taken together and the petitioners are paying service

tax for the whole transaction which is a composite one, entertainment aspect cannot be segregated to levy entertainment tax by the State

Legislature.

47. On behalf of the petitioners, it was submitted that the Government of India had granted licence under Central Legislation (which falls under

Entry 31 of the Union List of Seventh Schedule of the Constitution of India) and the State of Jharkhand, by defining the same service as

entertainment, cannot impose entertainment tax thereon. It was further submitted that predominant element in the licence granted to the petitioners

u/s 4 of the Indian Telegraph Act, 1885 is one of service and not entertainment and taxing ""Direct-to-Home"" (DTH) broadcasting services as

entertainment is ultra vires the competence of the State Legislature. It was also contended that the transaction of providing ""Direct-to-Home"" is one

of the service and the other ""entertainment"" and since the service is a common component, it is not open to the State Legislature to separate a

composite whole and segregate a part of it, describing that part to be entertainment, to levy tax thereon.

48. Mr. Poddar, learned Senior Counsel for the petitioners, placing reliance on the decision rendered in the case of Bharat Sanchar Nigam Ltd.

and Another Vs. Union of India (UOI) and Others, and submitted that considering the aspect of the licence given to the DTH providers, it is clear

that it is one for providing ""broadcasting service"" and not for ""entertainment"" and integrity of such licence cannot be broken into pieces so as to levy

entertainment tax by the State Legislature.

49. Mrs. Anubha Rawat Choudhary, the learned counsel appearing for the respondents, submitted that for determining whether there is

transgression, substance of the Legislation is to be looked into and the substance of the Jharkhand Entertainment Tax Act, 2012 is only to levy tax

on the entertainment part. Learned counsel submitted that the transaction has two aspects - one is broadcasting service, for which service tax is

levied by the Union of India - and the other part is entertainment, for which entertainment tax is levied by the State Legislature under Entry 62 of

the State List. Learned counsel submitted that downloading the signals from Satellite and then uplinking to designated Transponder system for

transmission of signals in Ku-Band and then receiving signals by Dish Antennas and then decrypting it by the Set Top boxes are two divisible parts

and for actual entertainment part, subscription is collected from the customers and the State of Jharkhand levies entertainment tax and the

transaction cannot be said to be a composite one.

50. Whether a given transaction falls under one or other category is essentially a question of fact to be determined under the terms and rules

governing the transaction. To determine whether it is a "sale" or "service" or one is the incidental to the other, the essence of the transaction is also

to be examined - whether the transaction is a separable one or a composite of service of supply, and whether it would be possible to treat them

separately and levy service tax and the State Legislature is competent to levy sales tax. The aspect or the point of view of the legislature in

legislating the object, purpose and scope of legislation, one thing that has always to be kept in mind is that there may be more than one aspect with

regard to a particular matter. As discussed earlier, Direct-to-Home (DTH) has two distinct aspects/spheres of activities, i.e. broadcasting service

on the one hand and entertainment on the other hand.

51. In the case of The State of West Bengal Vs. Kesoram Industries Ltd. and Others, , the Hon''ble Supreme Court referred to the aspect theory

and pointed out that the transaction may involve two or more taxable events in its different aspects. Merely because they overlap, the same does

not detract from the distinctiveness of the aspects. Thus, there could be no question of a conflict solely on account of two aspects of the same

transaction being made a subject matter of legislation by two legislatures falling within two fields of legislation respectively available to them. So

long as the essential character of the levy is not departed from within the four corners of the particular Entry, the measure of tax or the manner of

levying the tax would not have any vitiating effect.

52. In the case of Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, the stand of the Central

Government that ''expenditure aspect'' was different from luxury aspect'' and that expenditure aspect could be held to be excluded from luxury

aspect was upheld in the said case. The appellants were engaged in Hotel Industry and subjected to a tax at the rate of 10% ad valorem on

''chargeable expenditure'' under the Expenditure Tax Act, 1987. The said tax was levied by the Parliament by treating this aspect from Entry 97 of

the Union List. The appellants challenged the levy of tax contending that the levy of expenditure tax was in the nature of a tax on ""luxury

contemplated under Entry 62 of the State List and while so, the Parliament cannot levy tax invoking the residuary power under Article 248 read

with Entry 97 of the Union List. In the case of Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others,

the Hon''ble Supreme Court has held that the same transaction may involve two or more taxable events in its different aspect but the fact that there

is overlapping does not detract from distinctiveness of the aspect. The Apex Court proceeded to determine the question whether the object of

legislation is ""expenditure"" or ""luxury"". It arrived at a conclusion that while enacting the Expenditure Tax Act, 1987, ""Tax on expenditure"" can be

held to be a valid piece of legislation at the hands of Parliament. In para. 26 and in para. 88, Hon''ble Supreme Court held as under:-

26. ... Wherever legislative powers are distributed between the Union and the States, situations may arise where the two legislative fields might

apparently overlap. It is the duty of the courts, however difficult it may be, to ascertain to what degree and to what extent, the authority to deal

with matters falling within these classes of subjects exists in each legislature and to define, in the particular case before them, the limits of the

respective powers. It could not have been the intention that a conflict should exist; and, in order to prevent such a result the two provisions must be

read together, and the language of one interpreted, and, where necessary modified by that of the other.

88. ... ... I think that the learned Attorney General is right in urging that, merely because the 1987 Act as well as the State Acts levy taxes which

have ultimate impact on persons who enjoy certain luxuries, the pith and substance of both cannot be considered to be the same. The object of a

tax on luxury is to impose a tax on the enjoyment of certain types of benefits, facilities and advantages on which the legislature wishes to impose a

curb. The idea is to encourage society'' to cater better to the needs of those who cannot afford them.

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The fact that there will be some overlapping then or that here there is a good deal of such overlapping, because the States have chosen to tax only

some types of luxuries and the Centre to tax, at least for the time being, only expenditure which results in such luxuries, should not be allowed to

draw a curtain over the basic difference between the two categories of imposts. For instance, if the conflict alleged had been between the present

State Acts and an Act of Parliament taxing expenditure incurred in the construction of theatres or the maintenance of race horse establishments or

the like, there would have been no overlapping at all and the pith and substance of the central tax could well be described as ""expenditure"" and not

luxuries"". This distinction is not obliterated merely because of the circumstance that both legislatures have chosen to attack the same area of

vulnerability, one with a view to keep a check on ''luxuries'' and the other with a view to curb undesirable ''expenditure''.

53. In the present case the question which is required to be determined is whether the levy of tax by the State Legislature was on the service

aspect or the entertainment aspect. As has been held in the case of Federation of Hotels (supra) by the Hon''ble Apex Court, if the same

transaction involved two or more taxable events in its different aspects, the fact that there is an overlapping does not detract from the

distinctiveness of the aspect which can be subjected to legislation under different legislative power of the Union and the State Legislature.

54. The distinction between the two aspects/spheres/profession on the one hand and service on the other hand, was considered by the Hon''ble

Supreme Court in the All All India Federation of Tax Practitioners and Others Vs. Union of India (UOI) and Others, In the said case, the

legislative competence of the Parliament in levying tax on service rendered by practising Chartered Accountants, Cost Accountants and Architects

was questioned contending that the tax on ""profession"" ""trade"" ""calling"" and ""employment"" were within the exclusive domain of the State Legislature

under Entry 60 of the State List (tax on profession towards calling and employment). The appellant thereon contended that when professional tax

could be levied by the State Legislature under Entry 60 of the State List, the source of power could not be traced to Entry 97 of the Union List so

as to enable the Parliament to levy tax on ""profession"" by treating it as ""service"". In other words, it was contended that the tax on ""profession

under Entry 60 of the State List would include tax on ""service"". Holding that the activity undertaken by the chartered accountant/cost

account/architect has two aspects - that activity undertaken based on professional skill and the other aspect service provided, in para. 34, Hon''ble

Supreme Court held as under:-

34. As stated above, Entry 60, List II refers to taxes on professions, etc. It is the tax on the individual person/firm or company. It is the tax on the

status. A chartered accountant or a cost accountant obtains a licence or a privilege from the competent body to practise. On that privilege as such

the State is competent to levy a tax under Entry 60. However, as stated above, Entry 60 is not a general entry. It cannot be read to include every

activity undertaken by a chartered accountant/cost accountant/architect for consideration. Service tax is a tax on each activity undertaken by a

chartered accountant/cost accountant or an architect. The cost accountant/chartered accountant/architect charges his client for advice or for

auditing of accounts. Similarly, a cost accountant charges his client for advice as well as doing the work of costing. For each transaction or

contract, the chartered accountant/cost accountant renders profession based services. The activity undertaken by the chartered accountant or the

cost accountant or an architect has two aspects. From the point of view of the chartered accountant/cost accountant it is an activity undertaken by

him based on his performance and skill. But from the point of view of his client, the chartered accountant/cost accountant is his service-provider. It

is a tax on ""services"". The activity undertaken by the chartered accountant or cost accountant is similar to saleable or marketable commodities

produced by the assessee and cleared by the assessee for home consumption under the Central Excise Act

Hon"ble Supreme Court drew distinction between the two aspects/spheres, i.e. profession on the one hand and service on the other hand and

upheld the levy of service tax on Chartered Accountants or Cost Accounts.

55. The validity of the levy of entertainment tax on DTH providers by the State of Uttarakhand was challenged before the High Court of

Uttarakhand. Referring to the distinction drawn by the Apex Court between the two aspects/spheres, i.e. profession on one hand and service on

the other hand in All India Federation of Tax Practitioners & Ors., and treating the similar distinction between the two aspects/spheres on DTH

broadcasting service, i.e. service on the one hand and entertainment on the other hand, the Uttarakhand High Court held as under:-

38. Based on the judgments referred to hereinabove, there can hardly be any dispute, that it was the aspect of ""entertainment"" which prompted the

Uttarakhand Legislature to levy tax on ""Direct-to-Home"" (DTH) broadcasting services. And that, the legislative competence for the same emerged

from entry 62 of the State List, contained in the Seventh Schedule of the Constitution of India. ""Service tax"" levied on ""Direct-to-Home"" (DTH)

broadcasting services under the different Finance Acts (referred to above) was based on a totally distinct aspect, namely, ""services"". And the

legislative competence for the same emerged from entry 92C of the Union List, contained in the Seventh Schedule of the Constitution of India. The

aforesaid determination at our hands, while negating the contention of the petitioners under the aspect theory, also negates the contention of the

petitioners, that ""tax"" has been levied on the same aspect by the Parliament, as also, the State legislature. We, therefore, find no justification in the

contention advanced, that tax was being levied on the same aspect/sphere of activity by the Parliament, as also, by the State Legislature. In view of

the above, we find no merit even in the third contention advanced by the learned counsel for the petitioners.

56. We fully agree with the view taken by the Uttarakhand High Court and we hold that there are two different aspects/spheres of ''Direct-to-

Home'' (DTH). One is broadcasting service, for which service tax is levied and another one entertainment, for which entertainment tax is levied by

the State of Jharkhand.

57. Applying the doctrine of ''Aspect Theory'' in a similar case reported as Tata Sky Limited Vs. State of Punjab and Another, , the Punjab and

Haryana High Court held that levy of service tax on the providing of service vide Entry 97 read with Entry 92-C of List I and levy of entertainment

tax covered by Entry 62 List II of Seventh Schedule to the Constitution of India can co-exist and can be harmonized on being different aspects.

The transaction of providing broadcasting services and entertainment cannot be treated as an indivisible contract so as to include the aspect of

entertainment by holding that the predominant transaction is broadcasting and not entertainment. It further observed that only when the transaction

is treated as a composite one, the need for splitting up entertainment from broadcasting would arise. Referring to the aspect theory, the High Court

held that tax is on entertainment aspect and the levy of service tax is on the providing of the service.

58. In Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, the question involved was whether SIM card (subscribers''

identity module) provided to customers by Mobile Cellular Telephone Companies was a ""sale"" or a ""service"" or ""both"". Hon''ble Supreme Court

held that although tax could be levied as a ""service"" on Mobile Cellular Telephone Company for providing SIM card to customers, the question

whether the sales tax also could be levied by the State Government, was a question of fact depending on whether a SIM card was a separate

subject of ""sale"" and in case, the answer to the above factual aspect is in affirmative, then ""sales tax"" can be levied by the State Government. In

para. 87 of the aforesaid decision, Hon''ble Supreme Court held as under:-

87. It is not possible for this Court to opine finally on the issue. What a SIM card represents is ultimately a question of fact, as has been correctly

submitted by the States. In determining the issue, however the Assessing Authorities will have to keep in mind the following principles: if the SIM

Card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be

charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a

separate object of sale, it would be open to the Sales Tax Authorities to levy sales tax thereon. There is insufficient material on the basis of which

we can reach a decision. However we emphasize that if the sale of a SIM card is merely incidental to the service being provided and only

facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax. In our opinion the High Court

ought not to have finally determined the issue. In any event, the High Court erred in including the cost of the service in the value of the SIM card by

relying on the ""aspects"" doctrine. That doctrine merely deals with legislative competence. As has been succinctly stated in Federation of Hotel &

Restaurant Assn. of India v. Union of India (SCC pp. 652-53, paras 30-31)

''... subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose

fall within another legislative power''.

* * * *

There might be overlapping; but the overlapping must be in law. The same transaction may involve two or more taxable events in its different

aspects. But the fact that there is overlapping does not detract from the distinctiveness of the aspects.

59. In so far as Bharat Sanchar Nigam Ltd. case was concerned, as pointed out earlier, the question involved was whether sales tax could be

levied on SIM card provided by the Mobile Cellular Telephone Companies. In Bharat Sanchar Nigam Ltd. case, Hon''ble Supreme Court held

that the sale of SIM card is merely incidental to the service being provided for mobile connection and that SIM card facilitates the identification of

the subscriber. Hon''ble Supreme Court found that sale of SIM card being incidental to providing mobile connection and the sale being integral

part, the State cannot levy sales tax.

60. Levy of tax on the entertainment provided by the DTH Providers:

Jharkhand Entertainment Tax Act, 2012 has been enacted to levy tax on entertainment including entertainment through Cable T.V. DTH network

etc in the State of Jharkhand. The levy of service tax on ''broadcasting'' is separate and distinct from the power of taxing by the State Legislature

under Entry 62 of the State List being specific power to levy the tax on entertainment. Jharkhand Act 13 of 2012 levies tax on entertainment part,

whereas service tax is levied by the Union on the ''broadcasting service''.

61. Petitioners have contended further that the exhibition of television in a private place by a subscriber where no member of the public are

admitted, does not come within the meaning of entertainment to be subjected to tax by the State Legislature. The aforesaid contention of the

petitioner has however been squarely answered in the case of Geeta Enterprises and Others Vs. State of U.P. and Others, by the Hon''ble

Supreme Court. In the said case, the question which fell for consideration before the Hon''ble Supreme Court was, whether Video show enjoyed

by the persons operating a machine on payment of a fixed charge without any admission fee, could be held to be excisable to entertainment tax.

Further question which was raised and answered in the said case was, whether the educative nature of the show could be held to be coming within

the definition of entertainment and is excisable to tax by the State Legislature. The Hon''ble Supreme Court after ascertaining the correct meaning

and import of the word ''entertainment'' (which is neither a scientific nor technical) as used in the popular sense, held that the word ''entertainment''

has been used in a very wide sense so as to include within its ambit the entertainment of any kind including one which may be purely educative.

Referring to the judgment of Allahabad High Court in the case of Gopal Krishna Mukherjee vs. State of Uttar Pradesh, the Hon"ble Supreme

Court expressed complete agreement with the observations made therein that the money charged for use of video machine is an admission to

entertainment and the payment made by the person who used the machine, is payment for admission. The Apex Court fully approved the view that

if the payment was connected with the entertainment which the person is required to make as a condition of attending the entertainment it would

come within the meaning of the expression "payment for admission" as with the advancement of civilization and scientific development, new forms

of entertainment has come into existence. It was held that mere fact that the payment is not made at the time of entering the premises, is irrelevant.

Payment made at a later stage by inserting coin is nonetheless for admission to a place of entertainment. This fee being charged in a different

manner at a different stage, is in any case for providing entertainment.

62. The payment of subscription by a subscriber for viewing television exhibition through DTH broadcasting service in the confines of the

consumer"s residence or place therefore, is, no different payment made by a person for admission to entertainment in a different place like theater

and cinema hall. The fact that the subscriber is able to view the content provided by the DTH service provider upon payment of subscription, is

enough to conclude that the activity provided by the DTH provider and enjoyed by the subscriber is an entertainment which is amenable to tax by

the State Legislature.

63. As discussed above, in the case of Purvi Communication (P) Ltd., the Hon"ble Supreme Court held that the performance, film or programmes

shown to the viewers through cable television network (cable service) as falling within the meaning of ""entertainments"" and therefore, within the

legislative competence of the State Legislature under Entry 62 of List II of the Seventh Schedule to make law for the levy and collection of tax on

such entertainments. The writ petitioners are offering entertainments to the subscribers and/or viewers and are very much directly involved in the

act of offering or providing entertainments to subscribers who are on record.

64. What is taxed under Jharkhand Entertainment Tax Act is the "entertainment" which is within the ambit of Entry 62 of List II. The petitioners,

who are DTH providers, are engaged in the business of providing "entertainment" for which connections are given and subscription and connection

charges are collected from the subscribers. Dish antenna and Set top box are set up by the DTH providers/writ petitioners and controlled by them.

The entertainment tax is payable on whatever subscription amount and connection charges are received by the DTH providers for providing the

''entertainment''.

65. Re: Contention that the decision in Purvi Communication (P) Ltd. is not applicable:

Learned Senior Counsel for the petitioners, Mr. Binod Kanth, submitted that Entry 92C was inserted in the Constitution of India (Eighty-eighth

Amendment) Act, 2003 with effect from 19.2.2004. Learned Senior Counsel submitted that the decision in Purvi Communication (P) Ltd. & Ors.

was prior to introduction of Entry 92C, ""taxes on services"", service tax was levied under residuary class Entry 97. Under Entry 97, blanket power

was given to the Parliament to levy service tax. Learned Senior Counsel further submitted that Section 65(105)(2k) of the Finance Act was

incorporated with effect from 16th June, 2005 and the date of judgment of Purvi Communication (P) Ltd. & Ors. was 16th March, 2005 and issue

involved in Purvi Communication (P) Ltd. & Ors. was with respect to the tax imposed on cable operators pursuant to the Entry 62 of the State

List vis-a-vis Entry 31 of the Union List and Hon''ble Supreme Court, while disposing of the same in March, 2005, held that the Entry 31 of the

List I did not come in the way. Therefore, the submission of the petitioners is that the Entry 92C of the Union List gives exclusivity to the

Parliament to levy Service tax and exercise of powers under Entry 92C and u/s 65(105)(zk) was incorporated with effect from 16.6.2005 and

therefore, the decision in Purvi Communication (P) Ltd. & Ors. is not applicable to the present case of DTH operators. Learned Senior Counsel

further submitted that the moment the writ petitioners are registered under the Service Tax for the service being provided, for which service tax is

levied u/s 65(105)(zk) and the State of Jharkhand cannot segregate the entertainment part and levy the entertainment tax.

66. We find no merit in the above contention. We have already held that there is fine distinction between the service aspect and broadcasting

service and actual entertainment and the tax is imposed on the act of providing entertainment. What is being taxed by the State Legislature is only

entertainment. The writ petitioners being the source of entertainment to the viewers are providing entertainment. They are directly connected with

the entertainment provided to the viewers. As such the petitioners are the taxable persons in relation to the entertainment provided by them in

respect of the gross receipts.

67. Whether charging Section and other provisions of the Jharkhand Entertainment Tax Act, 2012 are vague?:

Section 2(d) defines an ''assessee''. Learned Senior Counsel, '' on behalf of the writ petitioners, contended that so far as DTH operators are

concerned, they are not assessees within the meaning of Section 2(d), since Section 2(d) does not say anything about providing DTH services.

Drawing our attention to Section 2(k), learned Senior Counsel for the petitioners submitted that Section 2(k) - Direct-to-Home (DTH) service -

does not speak about subscription being charged or other service being charged and that Section 2(k) speaks exclusively only about service. It

was further contended that the petitioners being assessed to pay entertainment tax for providing entertainment in lieu of certain charges but Section

2(m), which defines ""entertainment"", does not say anything about ""charges collected for entertainment"". It was also contended that as per Section

2(m) and Section 2(s)(v), any payment made by a person to the proprietor of Direct-to-Home (DTH) service but does not say that subscription

made for the purpose of ""entertainment"" provided through DTH and in the absence of specific words, the Court cannot add or substitute words

and there is no equity about tax. In this regard, learned Senior Counsel, Mr. Binod Kanth, relied upon the following passage of the Principles of

Statutory Interpretation by Justice G.P. Singh, page 826, 13th Edition.

.....On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however

apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an

equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute"".

Viscount Simon quoted with approval a passage from Rowlatt, J. expressing the principle in the following words: ""In a taxing Act one has to look

merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to

be read in, nothing is to be implied. One can only look fairly at the language used."" Relying upon this passage Lord Upjohn said: ""Fiscal measures

are not built upon any theory of taxation.

68. The above passage was also quoted by Hon''ble Supreme Court in the decision rendered in the case of COMMISSIONER OF INCOME

TAX Vs. KASTURI and SONS LTD.,

69. Drawing our attention to page 826 of the ''Principles of Statutory Interpretation'' by Justice G.P. Singh, 13th Edition, learned Senior Counsel

submitted that there is no presumption as to tax and nothing is to be read in, nothing is to be implied and one can only look fairly at the language

used.

70. Taking us through various provisions of the Act, learned counsel for the respondents contended that the definition ""entertainment"" in Section

2(m) includes definition of ''television exhibition through DTH service'' and Section 2(a) clearly defines the assessee, which means a person who

receives payment for entertainment(s) from any person or subscribers. Sub-Sections (a), (m), (s(v) of Section 2 are clear and unambiguous

defining Direct-to-Home (DTH) within the meaning of entertainment. Learned counsel for the respondents places reliance, contending that the

provisions of the Act to be liberally construed, upon the decision rendered in the case of Geeta Enterprises and Others Vs. State of U.P. and

Others,

71. It is imperative on the part of the Legislature to give definition as to what kind of entertainment they are going to levy tax. An analysis of

Section 2(m) - ""Entertainment"" - reveals that it contains two parts - first part is ""entertainment"" which includes any exhibition, performance, game

shows or sports 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 network or Direct-to-Home (DTH) Service, for which persons are required to make payment and

second part deals with the payment by way of contribution or subscription or rent or security and connection charges or by any other charges

collected in any manner whatsoever.

72. By a careful reading of Section 2(m), it is seen that the exhibition, performance, television exhibition with the aids of any type of antenna

attached to it or cable television network or Direct-to-Home service is entertainment. Section 2(m) is an inclusive provision, which includes

exhibition, performance, cable television network and also television exhibition through Direct-to-Home service.

73. As per Section 2(s)(v), ''payment for entertainment'' includes any payment made by a person to the proprietor of DTH service by way of

contribution, subscription, installation or rent or security or connection charges or valuable consideration or any other charges collected in any

manner whatsoever for DTH service. The contention of the petitioners is that in Section 2(s)(v), the word, ""entertainment"" is not mentioned,

whereas what is stated is only DTH service and therefore, no entertainment tax can be levied upon the DTH service providers. The above

contention as stated only to be rejected. Section 2(s)(v) has to be read along with other provisions - Section 2(k) ""DTH service"", Section 2(m) -

entertainment"" and Section 2(y). Section 2(s)(v) cannot be read in isolation and has to be read along with Section 2(m), which brings within the

fold of entertainment through cable television network, Direct-to-Home (DTH) service for which persons are required to make payment by way of

contribution or subscription or installation, rent, security and connection charges or other charges collected in any manner whatsoever.

74. A combined reading of Section 2(k), 2(1), 2(m) and 2(s)(v), we find that DTH service is the source of entertainment to the individual

subscribers, who make payment. Disc Antenna installed by DTH provider is the one who receives signals and the same is decrypted/decoded by

the Set Top box to create visual image to entertain viewers. Viewers enjoy such performance, film or programmes offered by the DTH providers.

Entertainment is not possible unless the encrypted format in the satellite is received by the dish antenna and decrypted by the set top box to create

visual images and audio. Thus, DTH service providers have direct proximity and nexus with the entertainment provided by them and DTH

operators are collecting subscription and other charges and thus fall within the meaning of ""entertainment"" within Section 2(m). The entertainment

made available to viewers through DTH falls within the meaning of Section 2(m), ''entertainment'' and whatever amount is received or receivable by

the writ petitioners in respect of providing such entertainment fall within the ambit of Section 2(s)(v) and is taxable. The definitions of Sections 2(k),

2(1) and 2(m) are clear and unambiguous that DTH Service Providers are the Providers of the entertainment.

75. Charging Section - Section 3 of the Jharkhand Entertainment Tax Act 2012, whether defective:-

The learned Senior counsel for the petitioner submitted that charging Section, Section 3 read with Section 2(s)(v) of the Jharkhand Entertainment

Tax Act, 2012 does not contain the word ""entertainment"" through DTH and without such express words in the charging Section 3, there cannot be

levy of ""entertainment tax"" through DTH. The learned Senior counsel submitted that Section 3 (Charging Section) is defective as to who is to be

levied ""entertainment tax"" and Section 3 does not clearly stipulate DTH provider who collects subscription/payment towards DTH service and

there is no intendment in the charging Section to levy ""entertainment tax"". In support of the contention, the learned Senior counsel placed reliance

upon para. 12 of the decision in the case of Mathuram Agrawal Vs. State of Madhya Pradesh, in which the Hon''ble Supreme Court held as

under:-

12. ... ... The intention of the Legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is

plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the

plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally

impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or

substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and

unambiguously convey the three components of the tax law i.e., the subject of the tax, the person who is liable to pay the tax and the rate at which

the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the

legislature to do the needful in the matter.

76. Placing reliance upon the passage in page 826 of the Principles of Statutory Interpretation by Justice G.P. Singh, it was submitted that when

there is no intendment in the charging Section, there can be no presumption as to tax and in fiscal legislation a transaction cannot be taxed on the

doctrine of substance of the matter.

77. The learned counsel for the respondents submitted that all the requirements of a charging Section viz., (i) taxable event, (ii) person who is to

pay the tax, and (iii) rate at which the tax shall be levied, are present in the charging Section and it is not necessary that all the ingredients are to be

found in the same Section. Taking us through the various provisions of the Act, the learned counsel submitted that there is no ambiguity in Section 3

of the Act. Referring to the components which enter into the concept of the tax, the learned counsel placed reliance upon the decision rendered in

the case of Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others, in which the Hon''ble Supreme Court has held as under:-

6. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which

prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to

pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing

the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any

uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.

78. As per the above decision in M/s. Govind Saran Ganga Saran''s case, the charging Section must contain the ingredients - (i) subject of tax, (ii)

who is liable to pay the tax, and (iii) the rate at which the tax is payable.

79. Section 3 of Jharkhand Act 13 of 2012 reads as under:-

3. Incidence of entertainment tax - (1) Save as provided in sub-section (2), there shall be levied and paid to the State Government by an assessee:

a tax on the entertainment at the rate(s) as specified in the notification issued under this Act.

Provided that the State Government may specify different rate or rates of entertainment tax in respect to different categories of the entertainments

for the different specified periods and for different specified areas.

Provided further that the rate of entertainment tax shall not exceed thirty percent of the value of gross collection/admission

charge(s)/subscription(s)/contribution(s) rent/security/sponsorship/activation charges or by any other valuable considerations) received or

receivable for providing entertainment(s).

(2) Notwithstanding anything contained in sub-section (1), entertainment tax shall be levied in relation to cinematograph exhibition on the proprietor

of an entertainment at compounded rate(s) as specified in the schedule.

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

periods.

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

their respective sitting capacity.

80. By a careful reading of Section 3, it is seen that the taxable event is the ""entertainment"" [Section 2(m)]. The person who is liable to pay the tax

is the ""assessee"" within the meaning of Section 2(d). DTH service providers, who provide entertainment through the transmission of signals

received by Dish Antenna and Set Top Box, are the taxable persons in respect of their gross receipts for providing entertainment(s). Rate of tax

levied on the ""entertainment"" is specified in the Schedule of the Act. Section 3 contains the essential components which enter into the concept of

tax. There is no force in the contention that the charging Section (Section 3) of the Jharkhand Entertainment Tax Act, 2012, is defective and

ambiguous.

81. As discussed earlier, in the case of The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others, the Hon''ble

Supreme Court upheld the levy of ""entertainment tax"" on cable television by the State of West Bengal. Ratio of the decision in Purvi

Communication (P) Ltd. and Others upholding the levy of entertainment tax on cable operators by the West Bengal Legislature is squarely

applicable.

82. At this juncture, it is pertinent to refer to the levy of ""entertainment tax"" at the rate of 40% by the State of Tamil Nadu which was upheld by the

Hon''ble Supreme Court in the case of A. Suresh, etc. etc. Vs. State of Tamil Nadu and Another, etc. etc.,

83. Whether the ""entertainment"" provided by Direct-to-Home (DTH) providers has no territorial nexus to levy entertainment tax under the

Jharkhand Entertainment Tax Act?:-

On behalf of the writ petitioners, the learned Senior counsel Mr. Binod Poddar submitted that there is no production house within the State of

Jharkhand who is producing the entertainment programme and every programme is being produced either at Mumbai, Delhi and Madras or

elsewhere and not within the State of Jharkhand. It was further submitted that the programmes which are being developed within the State of

Jharkhand and/or viewed on local channels might come within the purview of ""entertainment tax"" and in the case of Direct-to-Home (DTH)

providers, the signals of entertainment are being transmitted from outside the State and the petitioners are only conduit of the transmission of signals

and such transmission of signals are only inter-State movement of signals for which the State of Jharkhand cannot levy ""entertainment tax"". It was

also submitted that as per the decision in Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, electromagnetic waves

are not ''goods'' and therefore, cannot be held to be a source of ""entertainment"" in the State of Jharkhand to levy ""entertainment tax"" by Jharkhand

State Legislature. Reliance was placed upon the decision rendered in the case of National Thermal Power Corporation Ltd. Vs. State of Andhra

Pradesh and Others,

84. Refuting the contentions, the learned counsel for the respondents submitted that as per the Regulation under the Act, the writ petitioners are

supposed to undertake certain activities within the State of Jharkhand and the writ petitioners'' contention that the entire activity is extra territorial,

is factually incorrect. The learned counsel further submitted that the writ petitioners are conduits and bound to have a business office in the State of

Jharkhand as per the provisions of the Act itself and the dish antenna and set top boxes are installed for the subscribers within the State of

Jharkhand and when the writ petitioners are carrying on the business activities in the State of Jharkhand, they cannot contend that there is no

territorial nexus.

85. As pointed out earlier, for the taxable service of ""broadcasting service and cable operators'', the petitioners have obtained Certificate of

Registration u/s 69 of the Finance Act (in Form ST-2). In the said certificate of registration [in W.P.(T) No. 408 of 2013, Annexure-2], the

address of business premises of the writ petitioner in W.P.(T) No. 408 of 2013 is stated as Floor No. 8, Tower-B, Unitech World Cyber Park,

Sector-39, Gurgaon, Haryana. The other business premises are situated in various States including Jharkhand. In the State of Jharkhand, address

of the business premises is stated as opposite to Income Tax Building, Peppy Compound Main Road, Ranchi, Jharkhand. Similar is the case in

respect of the other writ petitioners.

86. As rightly pointed out by the learned counsel for the respondents, the writ petitioners are having their business activities within the State of

Jharkhand. The TV signals transmitted from the broadcasting centers in the encrypted format are received by the dish antenna installed in the house

of various subscribers in the State of Jharkhand and are decrypted/decoded by the Set Top Box installed therein. The modes of carrying the

entertainment"" to the customers are - (i) to receive the signals through Dish Antenna, and (ii) to decode the signals by the Set Top Box which

contains the viewer card. The Dish Antenna and Set Top Box are installed in the house of the customers who are in the State of Jharkhand. The

Set Top Box contains viewer card and upon payment of subscription and other charges, the writ petitioners enable the viewer to disseminate the

information from Ku-Band. The ""entertainment"" is decoded so that the television is able to receive and display it. Upon payment of subscription,

the Direct-to-Home (DTH) service providers disseminate the ""entertainment"" to the viewers in the State of Jharkhand. The subscription is paid by

the customers within the State of Jharkhand. The writ petitioners are stated to be having their own call centers to enable the subscribers to make

payment of their subscription.

87. Under Article 245 of the Constitution of India, subject to the provisions of the Constitution, Parliament may make laws for the whole or any

part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. Since the business activities of the

writ petitioners are happening within the State of Jharkhand and the subscription is also collected within the State of Jharkhand, there is sufficient

territorial nexus justifying levy of tax by the State of Jharkhand.

88. In this regard, the learned counsel for the respondents relied upon the case of The State of Bombay Vs. R.M.D. Chamarbaugwala, In the said

case Bombay Lotteries and Prize Competitions Control and Tax Act, 1939 covered the betting and gambling prize competitions within the State of

Bombay. The 1939 Act was replaced by Bombay Lotteries and Prize Competitions Control and Tax Act (Bombay Act 54 of 1949) in and by

which the applicability of the Act was enlarged and extended so as to cover prize competition contained in newspapers printed and published

outside the State of Bombay. The validity of the amended Act was challenged contending that the Legislature of State can only make a law for the

State or any part thereof and Bombay Legislature overstepped the limits of its legislative field by the impugned Act which purported to affect the

men residing and carrying on business outside the State of Bombay. It was submitted that there was no territorial nexus between the State and the

activities of the petitioners thereon are not within the State of Bombay. Observing that whether in a given case there is sufficient territorial nexus is

essentially one of fact, the Hon''ble Supreme Court held as under:-

(24) ... ... The doctrine of territorial nexus is well established and there is no dispute as to the principles. As enunciated by learned counsel for the

petitioners, if there is a territorial nexus between the person sought to be charged and the State seeking to tax him the taxing statute may be upheld.

Sufficiency of the territorial connection invoices a consideration of two elements, namely, (a) the connection must be real and not illusory and (b)

the liability sought to be imposed must be pertinent to that connection.

It is conceded that it is of no importance on the question of validity that the liability imposed is or may be altogether disproportionate to the

territorial connection. In other words, if the connection is sufficient in the sense mentioned above, the extent of such connection affects merely the

policy and not the validity of the legislation. ... ...

89. Keeping the above principles in mind when we examine the transaction of providing ""entertainment"" through Direct-to-Home (DTH), as

elaborated earlier, there is sufficient territorial nexus, to entitle the Jharkhand Legislature to levy ""entertainment tax"". Petitioners are duty bound to

maintain their office in the State for the purpose of providing connection, installation, repairs and carrying out the services through the antenna and

set top box to the subscriber by Ku-Band upon payment of subscription by the viewer for dissemination of encrypted information on a television

set. There is sufficient territorial nexus for levying tax on the entertainment by the State of Jharkhand. Even if some of the activity may be happening

outside the State, that would not denude the State from its power to legislate.

90. Whether the transmission of signals has occasioned inter-State movement of signals and whether the State Legislature of Jharkhand is

incompetent to levy ""entertainment tax"" under Entry 62 of List II?

Contending that the transmission of signals from the sources of programming is taking place outside the State of Jharkhand and down linking of

signals from the Satellite are also taking place outside the State and those signals are received in Dish Antenna and there is any inter-State

movement of signals, learned Senior Counsel, Mr. Poddar, submitted that since the transaction is inter-State movement of signals, the State of

Jharkhand is not competent to levy tax on such movement of signals. In support of his contention, much reliance was placed upon the decision

rendered in the case of State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, In the said case, NTPC Ltd. generated electricity

in one of its super thermal power station in the State of Andhra Pradesh and electricity was fed into the southern grid and was made available to

Electricity Boards of Karnataka, Kerala, Tamil Nadu and the State of Goa. The State of Andhra Pradesh levied duty u/s 3 of A.P. Electricity Duty

Act, treating such sale as intra-State or inter-State sale. The A.P. High Court held that levy of duty on such sale of electricity effected in pursuance

of contracts of sales occasioning in inter-State movement of electricity was incompetent and outside the power of the State Legislature. The

judgment of A.P. High Court was challenged before Hon''ble Supreme Court. Upholding the judgment of A.P. High Court, Hon''ble Supreme

Court held that no State legislation, nor any stipulation in any contract can fix the sites of sale within the State or artificially define the completion of

sale in such a way as to convert an inter-State sale into an intra-State sale or create a territorial nexus to tax an inter-State sale, unless permitted by

an appropriate central legislation.

91. Much reliance was placed upon the above judgment to contend that the State of Jharkhand cannot levy ""entertainment tax"" on the transmission

of signals originating from other States and down linking of signals in Broadcasting Centres situated outside the State and also uplinking the signals

to the designated transponders and while so, the State of Jharkhand cannot presume the transaction is completed in the State of Jharkhand so as to

levy ""entertainment tax"".

92. Reference to the judgment in the case of National Thermal Power Corporation Ltd. & Ors. is misconceived. In N.T.P.C. Case, except that

the electricity was generated in the super thermal power station situated in the State of A.P., no other activity was carried out by NTPC Ltd. in the

State of A.P. Sale of electricity was completed in other State. In the light of the contracts entered into between the parties to the transaction,

Hon''ble Supreme Court held that inter-State movement of electricity was pursuant to the contract of sale and such sale can be held only as inter-

State sale and that the State of Andhra Pradesh cannot treat the same as intra-State sale and levy sales tax.

93. In the instant case, the activity of entertainment occurs within the confines of the subscribers residence or such other place like hotels, clubs,

etc. within the territorial jurisdiction of the State. As elaborated earlier, the writ petitioners/DTH service providers carry on many activities. They

have installed Dish Antenna, Set Top Boxes in the subscribers'' houses/at non-residential premises, signals are uplinked to the designated

transponders and Dish Antenna takes up the signals from the Satellite and passes it to the viewers'' houses. Receiving of signals and decrypting the

received signals by the Set Top Boxes are done in the houses of viewers, where the Set Top Boxes are installed and the same is converted into

visual media and Audio. The end result of entertainment being in the State of Jharkhand, the viewer, who is entertained, being in the State of

Jharkhand, the Jharkhand State Legislature is competent to levy entertainment tax under Entry 62 of the State List. The taxable event is not the

transmission of the signals, but the entertainment through the Direct-to-Home (DTH).

94. Retrospective operation of Jharkhand Entertainment Tax Act, 2012 with effect from 27.04.2012 which was notified on 14.05.2012-

The learned counsel for the petitioner Mr. Indrajit Sinha submitted that the same was published in the Gazette of 27th April, 2012 and the Act was

notified on 14.05.2012 with retrospective effect from 27.04.2012 and the delegated legislation did not have the power to give retrospective effect

unless specifically empowered to do so. The learned counsel further submitted that the provisions of the Act are vitiated on account of said

retrospective effect given and the demand notice is liable to be quashed.

95. The Jharkhand Entertainment Tax Act, 2012 was enacted and published in the Gazette on 27th April, 2012 and the same was notified on

14.05.2012. Section 1(3) of the Act stipulates that the Act shall come into force on such date as the State Government may, by notification, direct.

The Act itself has not been made to commence from a date prior to the passing of the Act. On the other hand, the Act was given retrospective

effect from the date of enactment i.e. 27th April, 2012. Such retrospectively of the Act given is well within the competence of the Legislature. In

the case of A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, Travancore Taxation on Income (Investigation Commission) Act

came into force on 22.07.1949. The notification was issued on 26.07.1949. Section 1(3) of the said Act contained similar provision as that of

Jharkhand Act 13 of 2012 that the Act shall come into force on such date as the Government may, by notification, direct. In the said case it was

urged that the notification issued on 26.07.1949 was bad in view of the fact that it purported to bring the Act into operation as from 22.07.1949.

In para. 39 of the said case, the Hon''ble Supreme Court held that Section 1(3) authorizes the Government to bring the Act into force on such date

as it may, by notification, appoint. In exercise of the power conferred by the said Section, the Government surely had the power to issue the

notification bringing the Act into force on any date subsequent to the passing of the Act and that there can be no objection to the notification fixing

the commencement of the Act from 22.07.1949 which was a date subsequent to 22.07.1949. The ratio of the above decision is squarely

applicable to the case on hand. It is true that the date of commencement as fixed in the notification is anterior to the date of notification

(14.05.2012), but said retrospective effect is in exercise of the power conferred by Section 1(3) and the State Legislature surely had the power to

issue the notification bringing the Act into force with the anterior date and in this case from the date of Gazette publication i.e. 27.04.2012. That

apart, the period for which retrospective effect is given is only a short period for which the petitioners could have no grievance. As rightly

contended by the learned counsel for the respondents, there is also no pleading as to how the writ petitioners are prejudiced by giving

retrospective effect of the Act for such a short period.

96. Whether entertainment tax cannot be levied for the period from 27.4.2012 to 13.07.2013. since the Jharkhand Entertainment Tax Rules were

framed only on 13.7.2013?

Section 6 of the Jharkhand Entertainment Tax Act mandates that an assessee must be registered in the prescribed manner. Section 20 of the Act

provides that no assessee/proprietor, who does not hold certificate of registration granted u/s 6(3), shall collect from any person any amount by

whatever name or description it may be called towards purporting to be taxed on admission to an entertainment. Section 27(2) of the Act

empowers the State Government to frame rules providing for fees payable in respect of any application to be made, forms to be supplied etc.

Section 28 of the Act expressly repeals the Bihar Entertainment Tax Act, 1948 and the Rules made thereunder. However, second proviso to

Section 28(1) is the saving clause. Section 28(2) seeks to save the rules made, notifications published, powers conferred or other things done

under the repealed Act, in so far as it is not inconsistent with the impugned Act.

97. In exercise of the powers u/s 27(2), the State of Jharkhand framed Rules, which were notified by S.O. 14 dated 13th July, 2013. Learned

counsel appearing in W.P.(T) No. 909/2013, Mr. Indrajit Sinha, submitted that since the Rules came into force only on 13.07.2013, the

assessee/writ petitioner was not in a position to get itself registered and collect tax and hence, cannot be made liable to pay tax. It was further

submitted that the repealed Act did not cover or provide for DTH service providers and special provisions with respect to the DTH service

providers have been made in the Jharkhand Entertainment Tax Rules, 2013 and since DTH service providers were not covered under the Act

repealed, the Rules made thereunder would not cover the DTH service providers and in that view of the matter, the impugned demand notices are

liable to be quashed.

98. Taking us through the various provisions and also the Bihar Entertainment Tax Rules, learned counsel for the respondents submitted that though

the Jharkhand Entertainment Tax Rules, 2013 was framed in July, 2013, and in view of Section 16, second proviso to Section 28 and Section

29(2)(c), the provisions of the Jharkhand Entertainment Tax Act, 2012 is fully workable. It was also submitted that the writ petitioners themselves

got registered and also submitted their returns admitting their liability to pay entertainment tax and therefore, cannot challenge the demand notices.

99. Section 28 repeals the Bihar Entertainment Tax Act, 1948 and the rules made thereunder and notifications issued thereunder as adopted in the

State of Jharkhand from the date of commencement of the Act, (27.04.2012). Second proviso to Section 28 is the saving clause. Even though the

Bihar Entertainment Tax Act was repealed, second proviso to Section 28 provides that all rules made, notifications published, powers conferred

and other things done under the said Act and in force on the commencement of the Jharkhand Entertainment Tax Act shall, so far as they are not

inconsistent with the Act, be deemed to have been respectfully made, published, conferred or done under the Jharkhand Entertainment Tax Act,

2012. Section 29 deals with validation and exemption. Section 29(2)(c) provides that all prescribed forms under the repealed Act or the rules

made thereunder and continuing in force on the day immediately before the appointed day shall, with effect from such appointed day, continue in

force and shall be used mutatis mutandis for the purpose for which they were being used before such appointed day until the State Government

directs by notification, the discontinuance of the use of such forms till such time as the State Government may, by notification, specify in this behalf.

Thus, as per Section 29(2)(c), all the prescribed forms under the repealed Act and rules made thereunder shall continue to be in force until

discontinuance is made by notification. In the absence of Rules framed under 2012 Act, the Bihar Entertainment Tax Rules 1948 shall continue to

be in force so far as it is not inconsistent with 2012 Act.

100. As per Section 5 of the Act, entertainment tax shall be payable by every assessee subject to the provisions of the Act and such rules as may

be prescribed, DTH Service Providers have to pay the entertainment tax by the 7th of the month. Section 3 deals with incidence of entertainment

tax. As per Section 3(1), subject to subsection (2), entertainment tax shall be levied and paid to the State Government by an assessee - a tax on

entertainment at the rate(s) as specified in the notification issued under the Act. Schedule of the Act contains description of the entertainment and

the rate of entertainment tax to be levied. For entertainment falling under Direct-to-Home (DTH) or any other similar service is 10% of the total

gross collection. As per Section 16, the provisions of the Jharkhand Value Added Tax Act, 2005 and the rules made thereunder are made

applicable to collect and enforce the payment of tax, levy, interest and penalty under the Jharkhand Entertainment Tax Act. The authorities

empowered under the Jharkhand Value Added Tax Act, 2005 and rules made thereunder are empowered to assess, reassess, collect and enforce

payment of tax, interest, penalty payable by the assessee under the Jharkhand Entertainment Tax Act. For the purpose of assessment,

reassessment, collection and enforcement of payment of tax, interest, penalty, the provisions of the Jharkhand Value Added Tax Act, 2005 shall

mutatis mutandis apply.

101. In view of second proviso to Section 28 and Section 29(2)(c), the Bihar Entertainment Tax Rules, 1948 had been put in place for the

assessee under the Jharkhand Entertainment Tax Act. As elaborated earlier, rates of tax are also prescribed for various classes and description of

entertainments. As per Section 16 of the Act, the authority empowered to assess, reassess, collect, enforce payment of tax, interest and penalty

had also been prescribed. Having regard to the various provisions of the Act, the petitioners cannot contend that in view of non-framing of rules,

the petitioners could not get themselves registered and pay entertainment tax.

102. It is also pertinent to note that the petitioners have also obtained registration under the provisions of the Act. In the counter-affidavit filed in

W.P.(T) No. 408/2013, it is stated that the writ petitioner M/s. Bharti Telemedia Limited, obtained registration on 12.12.2012 being registration

No. RNE-01/ENT/2012 under the provisions of the Act after notice. While so, there is no merit in the contention of the petitioners that since rules

have not been framed for payment of entertainment tax in connection with Direct-to-Home (DTH), the petitioners are not liable to pay the

entertainment tax.

103. Whether levy of entertainment tax at the rate of 10% for Direct-to-Home is discriminatory?

In regard to levy of entertainment tax at the rate of 10% of the total gross collection for the class of entertainments falling under Direct-to-Home

(DTH) service vis-a-vis 7.5% of the total gross collection for the class of entertainments falling under Cable Television Network, the contention of

the petitioners is that different rates of taxation between the Cable Television Network and Direct-to-Home (DTH) is artificial, arbitrary, without

any reasonable basis and violates Article 14 of the Constitution of India, as it is giving undue advantage to the Cable Television Network against

the Direct-to-Home (DTH) service. According to the petitioners, the service provided under the Cable Television Network and Direct-to-Home

(DTH) service is the same, i.e. transmission of channels and Jharkhand Entertainment Tax Act also considers both equally as a source of

entertainment and while so, to levy a higher rate of entertainment tax of 10% on DTH is discriminatory. All the writ petitioners heavily placed

reliance on the decision rendered in the case of Tata Sky Limited & Ors. Vs. The State of Tamil Nadu & Ors. (W.P. Nos. 25721/2011 and

connected cases) and in support of their contention, all the writ petitions in extenso referred/extracted the judgment of the Madras High Court.

104. In Tamil Nadu Entertainments Tax Act, 1939, Section 4-I is to tax Direct-to-Home (DTH) service. Madras High Court found that Section

4-I, charging Section, is defective and that there was no tax levied on Cable T.V. Network, whereas 40% tax was levied to Direct-to-Home

(DTH) service. In that context, Madras High Court held that classification made within the same classes is discriminatory.

105. In para. (216) of the aforesaid judgment, Madras High Court, observing that there is no qualitative difference between the Cable T.V. and

DTH, held as under:-

216. Thus on a reading of the provision relating to Section 4-E and Section 4-I of the Act, the only difference that one can see between cable TV

and DTH is that while television exhibition goes through transmission of television signals by wire, where the subscriber''s television sets are linked

with metallic coaxial cable or optical fibre cable to a central System, DTH, as its name suggests, goes by a direct to home delivery with the aid of

an antenna, through which the signals are decoded and encrypted for the viewer to enjoy the entertainment. Except for the technology difference,

one does not find any qualitative difference between the cable TV and DTH. Given the fact that the object of the Tamil Nadu Entertainments Tax

Act is to levy tax on entertainment, when the content of entertainment does not undergo any change, except for the medium through a technique of

receiving signals through the satellite and that both are treated alike in the service tax levy, we have no hesitation in holding that the classification is

arbitrary insofar as the differential tax treatment meted to DTH as a separate class distinct from Section 4-E and hence, offends Article 14 of the

Constitution of India.

106. Having regard to the qualitative difference between cable T.V. and DTH, we do not agree with the view taken by the Madras High Court.

Direct-to-Home (DTH) provides better picture, audio and sound quality than that of the Cable T.V. Network. It is because Cable T.V. Network

in India makes the use of analog signals, while DTH uses digital signals that are directly transmitted from satellite to homes. In the counter-affidavit

filed in W.P.(T) No. 1097/2013 and other counter affidavits, the respondents have given a chart to demonstrate as to how the nature, content and

scope of entertainment through DTH and through Cable T.V. Network is different. The gist of the same reads as under:-

107. It appears that the above vital difference between the Cable T.V. Network and DTH were not placed before the Madras High Court. Since

the vital difference between the Cable T.V. Network and DTH being not placed before the Madras High Court and taking into consideration the

fact that 40% tax was levied on DTH and no tax was levied on Cable T.V. Network and also the charging Section 4-1 was defective, the Madras

High Court held that the classification between the same class is not permissible and that it violates Article 14 of the Constitution of India.

108. There is fine distinction between the Cable T.V. Network and Direct-to-Home (DTH) and therefore, we do not agree with the view taken by

the Madras High Court. The Cable T.V. Network operates locally, whereas the area of operation of DTH is manifold and uncomparable. DTH

service is defined as next generation technology and differs in many aspects. DTH offers many channels and Cable T.V. Network has limitation of

transmitting only selected number of channels. Therefore, levy of entertainment tax at the rate of 10% on entertainment falling under Direct-to-

Home (DTH) service and 7.5% on entertainment falling under Cable T.V. Network cannot be said to be arbitrary or unreasonable.

109. Whether the rate of tax levied on entertainment through DTH is confiscatory?

Section 3 of the Jharkhand Entertainment Tax Act, 2012 deals with the incidence of ""entertainment tax"". As per the second proviso to Section 3,

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

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

110. Yet another contention was advanced that as per Second proviso to Section 3, levy of entertainment tax shall not exceed 30% of the value of

gross collection, admission charges. It was submitted that ceiling limit fixed at the rate of 30% is confiscatory in nature.

111. The above contention does not merit acceptance. The maximum ceiling of 30% on gross amount is neither confiscatory, nor violative of

Article 19 of the Constitution of India. As per the adopted Bihar Entertainment Tax Act, 1948, which was applicable to the State of Jharkhand till

2012, the maximum ceiling of entertainment tax was 110%, which was subsequently reduced to 60% by the State of Jharkhand. As rightly

contended by the respondents, Jharkhand Entertainment Tax Act is more beneficial to the public at large as the ceiling has been reduced to 30%.

112. Whether Set Top Box or any other similar instrument/device can be included in the gross collection to levy entertainment tax on it?

As per Section 3, tax on entertainment and rate(s) as specified in the notification - tax is payable at the rate specified in the notification issued under

the Act. As per the Schedule, for entertainment, for entertainment falling under ""'Direct-to-Home"" (DTH) service, tax is payable at the rate of 10%

of gross collection for valuable consideration per month. u/s 5, which deals with payment of tax for the DTH Providers/Cable Operators operating

television network, the entertainment tax falling u/s 3(2) read with relevant entry of the Schedule is payable by the 7th day of the month after expiry

of respective month.

113. Valuable consideration is defined in Section 2(aj) as under:-

2(aj) ""Valuable consideration"" means any cash or deferred payment and includes payment for entertainment-

(i) made by a person by way of contribution or subscription or rent or security 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 television network attached to it or cable service.

(ii) made by a person to the proprietor of a Direct to Home (DTH) Broadcasting service by way of contribution, subscription, installation or rent or

security or activation charges or connection charges, or any other charges collected in any manner whatsoever for Direct to Home (DTH)

Broadcasting service with the aid of any type of set top box or any other instrument of like nature, which connects television set at a residential or

non-residential place of a connection holder directly to the Satellite.

Provided that any person liable to pay tax under this Act, shall maintain a register showing the number of connections provided, names and

addresses of subscribers, amount of payment made by subscribers every month, number of channels exhibited to subscribers and connection

charges collected in any manner.

114. The contention of the petitioners is that the value of Set Top Box or other equipments cannot be included in valuable consideration and gross

collection. The learned Senior counsel for the petitioner urged to segregate the cost of Set Top Box or other equipments and other instruments of

like nature from valuable consideration received by the assessee and from gross collection. By reading of Section 2(aj), we do not think that the

value of Set Top Box is included as valuable consideration. What is stated as valuable consideration in Section 2(aj)(ii) in respect to Direct-to-

Home (DTH) Broadcasting service means any cash, deferred payment by way of contribution, subscription, installation or rent or security or

activation charges or connection charges or any other charges collected in any manner whatsoever for Direct-to-Home (DTH) Broadcasting

service with the aid of any type of Set Top Box or any other instrument of like nature at a residential or non-residential place. We are of the view

that the connection charges are integral part of ""entertainment"" and have to be taken into account for the valuable consideration received by the

assessee for calculating the gross collection.

115. However, while considering the relevant aspect of the impugned Act, it is also evident that the expression ''entertainment'' as contained in

section 2(m) includes within its compass in the case of television exhibition through DTH service, payments made by way of contribution or

subscription or installation or rent or security or connection charges or any other charges collected in any manner whatsoever. However, the

payment made for the set top box by the subscriber is evidently not conceived in the definition of Entertainment. At the same time, section 2(s)(v)

includes payment made by any person to the proprietor of DTH service by way of contribution, subscription, installation or rent or security or

activation charges or connection charges or valuable consideration or any other charges collected in any manner whatsoever for DTH service with

the aid of any type of set top box or any other instrument or equipment of like nature or any other similar devise which activate the television set at

the residence/hotels/clubs or non-residential place of connection holder directly through satellite. On the other hand, the provisions as contained in

section 2(s) which provide the definition of payment for entertainment, under explanation to sub-clause (V) includes the expenditure incurred on

purchase of any type of antenna or other apparatus, equipment for securing transmission. It therefore appears that while the activity of

entertainment as defined u/s 2(m) does not conceive of payment for the set top box, the same has been included in the explanation to section 2(s)

(V) in respect of payment of entertainment. However, the definition section of entertainment only provides for payment by way of contribution or

subscription or installation or collection charges etc. for television exhibition through DTH service. Therefore, the payment for entertainment u/s

2(s)(V) cannot be intended to include the payment made for set top box as it does not come within the meaning of payment made by a person in

the manner indicated in section 2(m) for availing the activity of entertainment through television exhibition by direct to home service. The payment

for set top box therefore cannot be said to be coming within the meaning of the activity of entertainment which is subject to tax under Entry-62

under the impugned legislation. The State Legislature by making such provision in the explanation to section 2(s)(V) as also section 3 which relates

to incidence of entertainment tax, has chosen to levy entertainment tax on the component for payment of set top box made by the subscriber which

is beyond the scheme and object of the Act and admissible under the relevant legislative field of tax on entertainment available to the State,

Legislature under Entry-62 of the List-II of the VIIth Schedule. Provisions of section 3 second proviso would also indicate that the rates of

entertainment tax should not exceed 30% of the value of the gross collection/admission

charge/subscription/contribution/rent/security/sponsorship/activation charges or any other valuable consideration receivable or received for

providing entertainment. The subscriber obviously pays for content of the entertainment by making subscription and by paying any subscription and

other allied charges for the activation of the equipment, etc., but payment for the set top box which may be by way of sale or hire purchase or even

on rent, as per the regulation laid down by the Telecom Regulatory Authority of India on the aforesaid subject, cannot be brought within the

meaning of entertainment or payment for it. The aforesaid provisions u/s 2(s) clause (V) explanation which seeks to include payment for the

equipment/charges such as set top box as payment for entertainment is beyond the purview of the State Legislature to be charged under the

Entertainment tax under the impugned legislation.

116. However, by relying upon the doctrines of severability for upholding the validity of the impugned legislation, the relevant provisions under

explanation to section 2(s)(V) so far it includes payment for Set Top Box or any other similar equipment as within the meaning of payment can be

read down as being beyond the legislative competence of the Legislature so far as levy of entertainment tax, while upholding the validity of the

impugned legislation. The Hon''ble Supreme Court of India in the case of R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), , by a

constitution bench judgment invoked the doctrine of severability to uphold the validity of a legislation by reading down certain offending provisions

of the impugned Act in question. The Hon''ble Supreme Court held that the doctrine of severability applies not only when the legislation-is in the

excess of competence of the legislation qua its subject matter but also when it infringes some constitutional prohibitions. The subject matter of

challenge in the said case was relating to the constitutionality of Sections 4 and 5 of the Prize Competition Act, (42 of 1955) and Rules 11 & 12

framed u/s 20 of the Act. The question that fell for consideration before the Hon''ble Supreme Court was whether Prize Competition in which

success depended to a substantial degree on skill and competition and those in which it does not so depend, form distinct and separate categories.

The impugned Act and the Rules had chosen to impose restrictions on both the categories of such prize competitions. The Hon''ble Supreme Court

proceeded to employ the doctrine of severability to hold that the impugned provisions should be held severable in their application to the two

distinct and separate categories of competitions and consequently, could not be void as regards gambling competitions. After discussing the ratio of

a number of earlier judgments Venkatarama Aiyar, J. speaking on behalf of the court summarized the positions which are as follows: (Page 950-

951 of the report)-

1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the

determining factor. The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was

invalid. Vide Corpus Juris Secundum, Vol. 82, p. 156; Sutherland on Statutory Construction, Vol. 2, pp. 176-177.

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion

must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what

remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. Vide

Cooley''s Constitutional Limitations, Vol. 1 at pp. 360-361; Crawford on Statutory Construction, pp. 217-218.

3. Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is

intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. Vide Crawford on Statutory

Construction, pp. 218-219.

4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid

portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in

its entirety.

5. The reparability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different

sections; (Vide Cooley''s Constitutional Limitations, Vol. 1, pp. 361-362); it is not the form, but the substance of the matter that is material, and

that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.

6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein,

then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation. Vide Sutherland on Statutory Constriction, Vol.

2, p. 194.

7. In determining the legislative intent on the question of reparability, it unit be legitimate, to take into account the history of the legislation, its

object, the title and the preamble to it. Vide Sutherland on Statutory Construction, Vol. 2, pp. 177-178.

117. These principles have also been relied by Hon''ble Supreme Court of India in a judgment relating to the challenge to the validity of the Right to

Education Act, 2009 delivered by a Bench presided over by Hon''ble the Chief Justice of India S.H. Kapadia, J. on 12th April, 2012 in Writ

Petition(C) No. 95 of 2010 in the case of Society for Un-aided Private Schools of Rajasthan Vs. Union of India (UOI) and Another, The Hon''ble

Supreme Court of India in the aforesaid case has applied the principle of severability and held that Sections 12(1)(c) and Section 18(3) infringes

the fundamental freedom guaranteed to Unaided Minority Schools under Article 30(1) and shall not apply to such schools.

118. The doctrine of reading down is now a well settled tool to uphold the vires of statute or a subordinate legislation by reading down the

provisions which are either ultra vires the legislative competence of the legislature in question or are ultra vires the Parent Act under which the rules

have been framed or do offend the other provisions of the constitution and the fundamental right guaranteed under the Constitution of India.

119. This Court therefore by relying upon the principle of severability, declares that the provisions of the impugned Act shall not apply so far as the

subject of levy relates to payment for set top box or any other instrument/device of like nature or any other similar device u/s 2(s)(v) while

upholding the vires of the impugned Act of 2012 on other grounds of challenge.

120. The writ petitioners have also challenged the demand notices issued u/s 5 of the Act. As pointed out earlier, as per Section 5 of the Act, the

DTH Service Providers to pay entertainment tax on the total gross collection for valuable consideration by 7th of the month after expiry of the

respective month. Since the writ petitioners have not paid the tax within the stipulated time, because of non-payment of tax, notices were issued to

the petitioners calling upon them to pay the tax also interest and penalty. The impugned notices issued are in consonance with the provisions of the

Act and the prayer sought for by the petitioner challenging the impugned notices are liable to be rejected.

121. The levy of entertainment tax has been the subject matter of legislation of different State and the State Legislature such as State of

Uttrakhand, State of Punjab, State of Delhi, State of Orissa and also the State of Uttar Pradesh as well. The impugned levy of the different State

Legislatures have been upheld by the various judgments rendered by the respective High Court which have been relied upon by the respondent

State such as in the case of Tata Sky Limited Vs. State of Punjab and Another, Bharti Telemedia Ltd. Vs. Government of Nct of Delhi and

Another, and M/s. Tata Sky Ltd. v. State of Orissa and others. The grounds of challenge raised by the petitioners herein were the subject matter

of consideration in more or less similar terms before the different High Courts which have negatived the contention raised by the DTH service

provider upon consideration of judgment rendered by the Hon''ble Supreme Court and also interpreting the provisions of the individual State

Legislation vis-a-vis legislative entry available under Entry-62 and 31 of List-II compared with Entry-33 and 92-C of List-1 of Seventh Schedule

of the Constitution of India. Even in the judgment rendered by the Madras High Court, legislative competence of the State Legislature to impose

levy has been upheld in no uncertain terms. However, on the question of ambiguity in the charging section and on the grounds of unreasonable

classification of the levy between the cable provider and DTH provider, the said levy was struck down by the Madras High Court. In the aforesaid

aspect of the matter, it is therefore not open to the petitioners to contend that the State Legislature is denuded of its power to impose levy of

entertainment tax on the activity of entertainment provided through television exhibition by the DTH service provider through set top box on

payment of subscription and other charges for the same.

122. We summarize our conclusion as under:-

Ã¯Â¿Â½ Jharkhand Entertainment Tax Act, 2012 levying tax on ""entertainment"" through Direct-to-Home (DTH) in pith and substance, is on

entertainment which falls under Entry 62 of List II of the Seventh Schedule. The levy of ""entertainment tax"" is different from the levy of tax on

broadcasting service"" which falls under Entry 92C of List I of the Seventh Schedule of the Constitution of India.

Ã¯Â¿Â½ Entry 62 of State List and Entry 92C of the Union List operate in two different spheres. There is no transgression or encroachment upon the

field of Union Legislation and the levy of tax on ""entertainment"" through Direct-to-Home (DTH) by the State Legislature is not ultra vires the power

of the State Legislature provided under Entry 62 of List II of the Seventh Schedule of the Constitution of India.

Ã¯Â¿Â½ ""Entertainment"" as defined in Section 2(m) of the Jharkhand Entertainment Tax Act, 2012 read with Section 2(k) ""Direct to Home (DTH)

Service"" and 2(1) ""Direct to Home (DTH) Service provider"", is not broadcasting service but only entertainment and State Legislature is competent

to levy tax on the entertainment.

Ã¯Â¿Â½ In the charging Section - Section 3 - of the Jharkhand Entertainment Tax Act, 2012, there is clear intendment of levy of ""entertainment tax"" on

the ""entertainment"" provided by Direct-to-Home (DTH).

Ã¯Â¿Â½ In view of the saving clause and the second proviso to Section 28 and Section 29(2) of the Jharkhand Entertainment Tax Act, 2012 and the

mechanism to assess, collect and impose penalty provided u/s 16, framing of Rules on 13th July, 2013 would not affect the liability of the

petitioners to pay the ""entertainment tax

Ã¯Â¿Â½ In view of the fine distinction between Direct-to-Home service and cable T.V., levy of ""entertainment tax"" at the rate of 10% on Direct-to-

Home (DTH) service vis-a-vis 7.5% on the ""entertainment"" through cable TV, is not discriminatory.

Ã¯Â¿Â½ Applying the R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), the principle of severability, Section 2(s)(v) read with Section 2(aj)(ii)

of Jharkhand Entertainment Tax Act shall not include the cost of Set Top Box or any other instrument or equipment of like nature to levy

entertainment tax.

Ã¯Â¿Â½ The impugned demand notices issued to the writ petitioners are in consonance with the provisions of the Jharkhand Entertainment Tax Act,

2012, the prayer sought for by the petitioners to quash the impugned notices is liable to be rejected.

In view of the foregoing discussions, all the writ petitions are dismissed. Consequently, all the Interlocutory Applications are also dismissed. The

interim orders granted on 30.01.2013 (in W.P. (T) No. 408 of 2013), 20.02.2013 (in W.P. (T) Nos. 909 and 1043 of 2013) and 13.03.2013 (in

W.P. (T) No. 1097 of 2013) are vacated.