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Taxing Entry to IPL Matches: Delhi HC puts GMR Sports on sticky wicket

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The Indian Entertainment Industry, reeling under the burden of a heavy Entertainment Tax, eagerly awaited favorable tax reforms ahead of 'Acche Din' as Finance Minister Arun Jaitley presented the first full year budget of the NDA Government on 28th February, 2015.

But as his speech progressed, what appeared to be the light at the end of the tunnel was turning out to be the headlight of an oncoming train.

With the proposal of a Service Tax levy at 14.5% on admission to entertainment events and access to amusement facilities, the industry was now exposed to dual taxation by the Centre and the States.

Challenging the Dual Taxation

Against this backdrop, GMR Sports Private Limited ('GMR Sports'), the owner of the Delhi Daredevils franchise in the Indian Premier League ('IPL') challenged the legislative competence of the Centre in levying Service Tax on IPL match tickets contending that tax on entertainment is within the exclusive domain of the State as per Entry 62 of the State List.

However, the franchise owner found itself on a sticky wicket as Delhi High Court passed an interim order directing that Service Tax already collected on the match tickets sold be deposited pending the final outcome. It further directed detailed examination of the agreement between GMR Sports and the Board of Control for Cricket in India in respect of certain percentage of the total tickets that have to be handed over to BCCI as complimentary (free of cost). The Service Tax Department has purportedly demanded Service Tax even on the money value of such complimentary tickets handed over to BCCI, on which the former claims no Service Tax is applicable.

Incidentally, this is not the first instance when legislative competence to levy Service Tax, on a subject matter that already suffers Entertainment Tax levied by the State, has been challenged. In a writ petition before the Kerala High Court in the case of Kanjirapilly Amusement Park and Hotels Pvt. Ltd.[1], the assessee raised a similar contention that the imposition of Service Tax would result in the Union trenching upon the State's exclusive powers to tax Entertainment, a subject under Entry 62 of the State List.

Dismissing the writ petition, Kerala High Court referred to the Aspect Theory and ruled that, *"This Court does not find any trenching of the Union Parliament on the power conferred on the State, in fact or in law, since the respective legislatures tax two different aspects. The incidental overlapping, if at all, is only to be ignored."*

The Aspect Theory, as laid down in numerous landmark judgements, states that when the same transaction involves two or more taxable events in its different aspects, then even if there was overlapping it would not "*detract from the essential distinctiveness of these two aspects*".

Defying the Aspect Theory

Running counter to the 'aspect doctrine' is the 'doctrine of pith & substance' wherein the question arises of determining whether a particular law relates to a particular subject mentioned either in the Union List or the State List. The Court will then look at the substance of the matter to determine whether encroachment is only incidental or it will affect competence of the Union to enact the law in question. In the instant case therefore, what is more relevant to examine than the mere fact whether the Service Tax law trenches on the power of the State Legislature to levy tax on entertainment events is whether the Service Tax law indeed seeks to tax entertainment events in another aspect, completely distinct from the one sought to be taxed under the law of the State for levy of Entertainment Tax.

The Supreme Court in the case of Shilpa Color Lab[2] examined the aspect theory in the light of the landmark decision in the State of Madras v. Gannon Dunkerly & Co. Ltd.[3] and held that "*the aspect theory would not apply to enable value of services to be included in the value of goods sold or price of goods in the value of services provided.*"

It was also held in the same case that, Service Tax is a levy on the service element and, therefore, any attempt to charge Service Tax on cost of materials would amount to taxing the goods, which is a subject-matter of State levy under the Sales Tax Law or VAT Law, as the case may be.

Even in the landmark case of Bharat Sanchar Nigam Ltd. v. Union of India[4], which was the first case that categorically gave a permanent burial to the Aspect Theory, it was ruled that,

"*This (Rejecting the Aspect Theory) does not however allow State to entrench upon the Union List and tax services by including the cost of such service in the value of the goods.*

For the same reason the Centre cannot include the value of SIM cards, if they are found ultimately to be goods, in the cost of the service."

Another ruling, consistent with the BSNL judgement, was pronounced in the case of Gujarat Ambuja Cements Ltd. v. Union of India[5], where the Supreme Court held that,

"*This mutual exclusivity which has been reflected in Article 246(1) means that taxing entries must be construed so as to maintain exclusivity.*"

How does this view of the Supreme Court on the aspect theory help the affected parties?

The above proposition makes it clear, that the Aspect Theory is limited in its application to an overlapping of levy in a single transaction. However, an overlap in the value of such taxable events is not permissible. In other words, while the Centre and the States can levy a tax on the same transaction, in two different aspects, it is however not permissible to tax the same consideration twice unless a certain portion is discernible to one aspect and the balance to the other.

It is however pertinent to note that lack of machinery provision to segregate the value of consideration from a taxable sporting event like IPL into components of service and entertainment goes to the root of this malaise of double taxation. Addressing this pressing issue will prove to be a game changer for the industry until the onset of the GST regime.

Meanwhile, it is the 'Aam Aadmi' who has little choice but to pay for the overpriced entertainment, awaiting his 'Acche Din'.

[1] Kanjirapilly Amusement Park and Hotels Pvt. Ltd. - TS-164-HC-2016(KER)-ST

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[2] Shilpa Color Lab v. CCE - Calicut 2006 TMI 1022

[3] State of Madras v. Gannon Dunkerly & Co. Ltd. - AIR 1958 SC 560

[4] Bharat Sanchar Nigam Ltd. v. Union of India - 2006 TIOL 15 SC CT LB

[5] Gujarat Ambuja Cements Ltd. v. Union of India – 2005 TIOL 53 SC ST

(Views expressed above are strictly personal)

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