
(1980) 07 GUJ CK 0018
In the Gujarat High Court

Cama Hotels Ltd.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 23-07-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 276

Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977 — Section 2(e), 3, 3(3)

Citation : (1980) 21 GLR 913

Hon'ble Judges : M.P. Thakkar, J;A.N. Surti, J

Bench : Division Bench

Judgement

M.P. Thakkar, J.—Litigation may or not be a luxury for some. This litigation is in any case about "luxuries". The constitutional validity of a tax on luxuries provided in a hotel such as air-conditioning, television, channel music, personal telephone etc. is challenged by hotel owners who have to collect the tax from their customers availing of such luxuries.

2. A Public Limited Company engaged in the business of running Hotels at Ahmedabad - Cama Hotels Ltd., petitioner in Special Civil Application No. 1263/78, and three Private Limited Companies engaged in the same business at Baroda, have instituted four allied petitions under Article 226 of the Constitution of India in order to challenge the constitutional validity of the Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977 mainly on the ground that the State Legislature has no legal competence to enact the legislation in question under Entry 62 of List II of Schedule VII to the Constitution of India and on some other grounds.

3. The State Legislature (as declared in the preamble) has enacted the aforesaid Act in order to provide for the levy and collection of a tax on luxuries provided in hotels and lodging houses. It has come into force with effect from August 10, 1977. The expression "luxury provided in a hotel" has been defined to mean accommodation for lodging provided in a hotel, the rate of charges for which (including charges for air -conditioning, telephone, television, radio, music or

extra beds and the like but excluding charges for food, drink and other amenities) is not less than thirty five rupees per person per day. The charging section imposing the levy provides that a tax known as "luxury tax" shall be levied and collected from every person in respect of any luxury provided to him in a hotel at different rates. The Act also provides that the tax payable under the relevant provisions shall be collected in the prescribed manner by the proprietor of the hotel providing such luxuries and shall be paid into a Government Treasury within the prescribed time. As per the statements annexed by the respective petitioners to their petitions, the impact of the tax is as under:

----- Name of the hotel Approximate monthly collections during the last 3 months- -----			
Cama Hotels Limited (Petitioner in Spl. Civil Application No. 1236/78)	Rs.	22,998-15	Hotel Utsav (Pvt) Ltd., Baroda. (Petitioner in Spl. Civil Application No. 403/79).
Rs 4,056-53	Hotels Express Pvt. Ltd. Baroda. (Petitioner in Spl. Civil Application No. 405/79).	Rs.	12,670-83

4. As disclosed by the respective petitioners the charges for lodging including air-conditioning, telephone etc. which prevail in the hotels are as under:

----- Name of					
the	hotel	Charges	for	Luxuries	provided

a single room Cama Hotels Ltd., (Petitioner in Spl. C. A. No. 1263/78) Rs. 90/- Centrally air Conditioned, Telephones, channel music, 24 hours hot & cold water.					
Hotel Express (Pvt.) Rs. 78/- Centrally air- Ltd. conditioned, telephone in each room, channel music, hot and cold water for 24 hours.					
Hingorani Hotels (Pvt.) Ltd. Baroda. Rs. 90/- Telephone, centrally air-conditioned channel music, hot and cold water for 24 hours.					
Hotel Express (Pvt.) Ltd. Baroda. Rs. 90/- Centrally air-conditioned, telephone in each room, channel music, attached bath, hot and cold water for 24 hours.					

5. It is, thus, not in dispute that the charges for a single room per day range between Rs. 78/- to Rs. 90/- and that each of the hotels provides the luxuries which are covered by the definition contained in Section 2(e) inasmuch as the charges for lodging per person are in excess of Rs. 35/- per day which is the test devised by the Act and that the petitioners are governed by the provisions of the Act and the proprietors thereof have to collect the tax from the persons to whom accommodation is provided in the hotel along with the aforesaid luxuries. That is why they have approached this Court by way of the present petition and have

challenged the levy.

6. The constitutional validity of the aforesaid tax is challenged on the following grounds:

(1) The tax in question does not fall within the amplitude and ambit of Entry 62 of List II of Schedule VII of the Constitution of India which authorises a levy of taxes on luxuries including taxes on entertainments, amusements, betting and gambling. It is contended that Entry 62 contemplates a tax merely on "articles of luxury" and not on luxurious services provided to citizens.

(2) The levy is not valid inasmuch as it is not a tax on luxuries in the wider sense even assuming that the expression "luxuries" applies to services provided, and not only to articles supplied, because it is collected on accommodation provided to a citizen irrespective of whether luxurious services are provided or not.

(3) Though apparently it is a tax on luxuries provided in a hotel, in truth it is a tax on expenditure incurred by a citizen in connection with residential accommodation availed of in a hotel. It would, therefore, fall under the residuary Entry i.e. Entry No. 97 of List I (Union List).

(4) In truth and reality it is a tax on the income of a hotel which falls under Entry 82 of List I (Union List) of Schedule VII of the Constitution of India and the State Legislature has no legal competence to legislate on the subject-matter.

(5) In any view of the matter it is a tax on the business of a hotelier within the meaning of Article 276 of the Constitution of India and, therefore, it is not competent to the State Legislature to impose such a tax.

7. The principal argument urged in support of the constitutional challenge turns on the meaning and content of Entry No. 62 of List II of Schedule VII of the Constitution of India which runs:

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

Counsel argues that taxes on luxuries mean taxes on "articles" of luxuries and not "services" which provide luxuries. In order to accept the view canvassed by counsel for the petitioners words will have to be read into the Entry and it will have to read as under:

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

The italicized words will have to be injected in the exact wording of the Entry contained in the Constitutional Document. Courts would be slow and reluctant to add words in a statutory provision, for refashioning a provision by adding words is an exercise partaking of the character of legislating whilst engaged in interpreting. Reading words into a statute is the last thing the Court would do and not the first thing. It cannot be done for the mere asking. It is a device of

last recourse to be resorted to if compulsions exist. Compulsions, such as, in order to pre-empt the provision from being rendered otiose or meaningless or absurd or self-defeating or in such pressing situations. If this device cannot be resorted to except under pressing circumstances in respect of even ordinary legislation, how can recourse be made to it when dealing with the basic law, the paramount law, the law which commands obeisance of all laws viz. the Constitution? The Entry cannot be impoverished by cutting down its scope under the guise of interpretation for the expression "luxuries" is rich enough to accommodate services catering to luxuries as also to articles catering to luxuries or falling within the sweep of the expression. Yet another consideration enters into the equation. In dealing with the scope of Entries in a State list in a Constitution which partakes of a federal character, caution with a capital C must be administered to oneself. A finely balanced approach requires to be made lest the Court robs the State of the power to legislate or tax in the course of interpreting the meaning and context of the Entry. Courts might well be taking away what the founding fathers intended to confer. This might give rise to an unseemly tussle between the State and the Centre to the chagrin of the ideal of National unity, National integration and National good. And pray for what noble cause are we asked to do so? So that hotels which charge Rs. 70/- to Rs. 90/- (more than Rs. 35/-) per day for providing luxuries like air-conditioning, television, channel music, personal telephone, to its lodgers who want luxuries and do not mind paying for the same? (In parenthesis it may be stated that not the consumers who have to pay but the hoteliers who have not to pay from themselves but have to collect from the consumers and pay from their (consumer's) pockets albeit with their hands- have raised this constitutional challenge).

8. If one takes into consideration the fact that Entry No. 62 also takes within its sweep any taxes on entertainments, amusements, betting and gambling by making the definition of luxuries inclusive of such taxes, the expression "luxuries" cannot be read in a truncated fashion so as to apply to only articles of luxuries. If the Entry is read as suggested by counsel, it will read as taxes on particles of luxuries including a tax on entertainments, amusements etc. so that it will become meaningless and will lead to absurd results for it cannot be said that entertainments and amusements are articles of luxuries. Counsel for the petitioner laid stress on the fact that the expression "luxuries" has been used in plural instead of using the expression "luxury" in singular. Having regard to the provisions contained in the General Clauses Act, plural will include singular and vice versa. Besides, we do not see how the user of the expression "luxuries" in plural leads to the interpretation suggested by (counsel that luxuries mean articles of luxuries. Learned Assistant Government Pleader has sought support from *Spences Hotel v. State of West Bengal* 1975 T L R 1890. The Calcutta High Court in the said case was confronted with the question as regards the import of the expression "luxuries" within the meaning of Entry No. 62 in the context of the argument that it would be confined to articles or objects of luxuries and not

to services of luxurious nature. Says the Calcutta High Court:

The word "luxuries" would include "luxury" as well. Both "luxuries" and "luxury" can be taxed under Entry 62. "Luxuries" in Entry 62 should not be confined to articles or objects of luxury alone. In view of the social and economic structure of our country, an air-conditioned space whether in a hotel or in a restaurant is a luxury by itself. People enter into these spaces for enjoyment of a luxury. A tax levied under Entry 62 cannot be restricted to certain articles only but may also be extended to things incorporeal. The comfort that a person derives in a hot summer day in an air-conditioned space is a luxury particularly in the context of the conditions in which the masses live in India today. Assuming that "luxuries" in Entry 62 are to be confined to objects or articles of luxury, W.B Act 21 of 1972 is a legislation with respect to air-conditioners within the meaning of Clause (3) of Article 246 of the Constitution. The State Legislature is competent to impose a tax on this luxury.

Learned Assistant Government Pleader has also sought support from A.B. Abdul Kadir and Others Vs. State of Kerala, . The meaning and content of the expression "taxes on luxuries" as employed in Entry 62 of List II of Schedule VII of the Constitution of India squarely came up for consideration⁴ before the Supreme Court in the aforesaid case. In paragraph 12 of the judgment Khanna J. speaking for the Court has observed as under:

The next argument which has been advanced on behalf of the appellants is that the tax on the vending and stocking of tobacco cannot be considered to be luxury tax, as contemplated by Entry 62 of List II of the Seventh schedule to the Constitution. According to that entry, the State Legislatures can make laws in respect of "taxes on luxuries, including taxes on entertainments, amusements, better gard gambling." Question, therefore, arises as to whether tobacco can be considered to be an article of luxury. The word "luxury" in the above context has not been used in the sense of something pertaining to the exclusive preserve of the rich. The fact that the use of an article is popular among the poor sections of the population would not detract from its description or nature of being an article of luxury. The connotation of the word "luxury" is something which conduces enjoyment over and above the necessities of life. It denotes something which is superfluous and not indispensable and to which we take with a view to enjoy, amuse or entertain ourselves. An expenditure on something which is in excess of what is required for economic and personal well-being would be expenditure on luxury although the expenditure may be of a nature which is incurred by a large number of people, including those not economically well off. According to Encyclopaedia Britannica, luxury tax is "a tax on commodities or services that are considered to be luxuries, rather than necessities. Modern examples are taxes levied on the purchase of jewellery, perfume and tobacco.

It has further been said.

In the 19th and 20th centuries increased taxes have been placed on private

expenditure upon alcohol, tobacco, entertainment and automobiles. Such expenditure is superfluous in the sense that a large part of it may be said to be in excess of what is required for economic efficiency and personal well-being, although the expenditure affects large numbers of people.

In the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act. AIR 1939 1 (Federal Court) Gwyer C.J. while dealing with excise duty described spirits, beer and tobacco as articles of luxuries.

It will be observed that a passage from the Encyclopaedia Britannica has been relied upon with approval in support of the view that a luxury tax is a tax on commodities or services that are considered to be luxuries rather than necessities. No doubt the Supreme Court was dealing with the question in the context of an article viz. tobacco. The question whether or not the services of luxurious nature provided to a citizen would fall within the sweep of the expression "luxuries" was not before the Court. In that sense the observations made by the (sic) said to be obiter dicta. But then the law is now well settled that the obiter dicta of the Supreme Court must be treated as binding to the High Courts. The earliest decision on the point is Mohandas Issardas and Others Vs. A.N. Sattanathan and Others, . Chagla C.J. in paragraph 5 of the judgment has expressed the view that the Supreme Court having taken the place of the Privy Council, the Courts were required to show the same respect for the "obiter dicta" of the Supreme Court that the Courts did for the Privy Council, it being the highest judicial tribunal in India, and it being as much necessary in the interests of judicial uniformity and judicial discipline, that all the High Courts should accept as binding the "obiter dicta" of the Supreme Court in the same spirit as the High Courts accepted the "obiter dicta" of the Privy Council. Some years thereafter the Supreme Court had an occasion to deal with the same question in Commissioner of Income Tax, Hyderabad-deccan Vs. Vazir Sultan and Sons, , wherein N.H. Bhagwati J. has observed that the obiter dicta of the Supreme Court are entitled to considerable weight. The Supreme Court had also an occasion to deal with the same question in Municipal Committee, Amritsar Vs. Hazara Singh, , Krishna Iyer J. speaking for the Court has declared that even obiter dictum of the Supreme Court should be accepted as binding (see paragraph 4). Under the circumstances, there is no escape from the conclusion that the obiter dicta of the Supreme Court that even services of luxurious nature would fall within the meaning of expression "luxuries" in Entry No. 62, as reflected in the reference made in paragraph 12 wherein the passage from the Encyclopaedia Britannica has been quoted with approval, must be treated as binding. We may at this juncture quote the relevant passage from Volume 14 of the Encyclopaedia Britannica, 1972 Edition:

Luxury. The word luxury implies a relatively large consumption of wealth for non-essential pleasures. But there is no absolute definition of luxury, for the conception is relative to both time and person. It is a common place of history that the luxuries of one generation may become the necessities of a later period;

no hard and fast line can be drawn between luxuries, comforts and necessities. The private bath was one of the greatest luxuries of the Roman empire; in the 19th century its use was largely confined to the wealthy; today it may be ranked amongst the necessities of civilized life. Looked at from one important standpoint, luxury might be defined as any expenditure in excess of the normal and customary standard of living of the class to which the individual belongs. The problem of luxury involves economic, social and ethical considerations.

It would also be advantageous to quote the passage relating to evaluation of Luxury tax from the same volume:

Luxury Tax refers to levies on commodities or "services" that are considered to be "luxuries" rather than "necessities"- that is, ones not necessary for a minimum standard of living. Consumption of them is therefore regarded as a measure of tax-paying ability. A series of luxury taxes may be a substitute for an income tax as a means of providing progression in the tax structure. Luxury taxes usually take the form of excises on the production or sale of the community, but they may take the form of annual levies on the ownership of particular objects. The former type is much easier to enforce than the latter. The use of higher rates on luxury goods " under a sales tax--a policy followed in many countries--is similar in effect to a series " of luxury excise taxes on the goods. The traditional levies on liquor and tobacco are not usually classified as luxury excises, in part because of the heavy burden they place on the poor. In the United States, taxes on motor fuel are regarded as " benefit-related user charges on road users; in many countries, however, those taxes are classified as luxury taxes.

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We must mention that the founding fathers who engraved Constitution of India were presumably aware of the existing luxury taxes prevailing in the Western countries even in early times and the evaluation of such taxes in the context of the conditions prevailing in India. It would be unreasonable and unfair to assume that in framing Entry No. 62 of List II the framers of the Constitution were unaware of this dimension and intended to authorise a levy merely on "articles" of luxury and not on "luxurious services." The Architects of the Constitution were sculpturing it with the and in view to remove and discourage wide and monstrous disparities obtaining in the economic sphere. Egalitarian ethos had commanded itself to them as it evident from the Chapter relating to Directive principles enshrined in the Constitution. Would they not have then aimed at taxing luxurious services in order to discourage ostentatious living? If the authors of the Encyclopaedia Britannica and political thinkers of Britain were aware of this dimension (as evident from the following passage):

On the whole, the case for luxury taxes is strongest in a country in which income taxation is not effectively progressive for political or administrative reasons and the higher income groups indulge in substantial luxury consumption from which

they can be discouraged by high taxes on the preferred items. It is weak in a country with an effective income tax system and a tendency towards unemployment.

We cannot but presume that They were very much aware of this ramification. We are, therefore, unable to accede to this argument urged by petitioners" counsel. Counsel has, however, argued "that in view of a decision rendered by a Division Bench of the High Court of Bombay as it then was, we should refer the matter to a Full Bench instead of deciding it ourselves. Reliance was placed in this connection on State of Bombay Vs. R.M.D. Chamarbaugwalia and Others, . The question before the Bombay High Court was as regards a tax levied on crossword puzzles which was sought to be justified under Entry No. 34 of List II of Schedule VII which authorises a levy on betting and gambling. The Court came to the conclusion that the impugned legislation dealt with lotteries covered by the topic "betting and gambling" falling within the purview of Entry No. 34 of List II. The Court under the circumstances was of the opinion that it was unnecessary to consider the alternative submission made by the learned Advocate General that if the Court came to the conclusion that it would not fall within Entry 34 relating to betting and gambling, in any view of the matter it would fall within Entry No. 62 pertaining to entertainment or amusement or luxuries. Even so, incidentally, perhaps, in order to make the judgment complete, the Division Bench referred to this aspect and while incidentally dealing with the question made the following observations:

With regard to luxuries it is significant to note that the plural and not the singular is used, and the luxuries in respect of which a tax can be imposed under entry 62 is a tax on goods or articles which constitute luxuries, and it is again significant to note that the topic of luxuries only is to be found in entry 62 in the taxation power and not in either entry 33 or 34. That clearly shows that, what was contemplated was a tax on certain articles or goods constituting luxuries and not legislation controlling an activity which may not be a necessary activity but may be necessary and in that sense a luxury.

Drawing inspiration from the aforesaid passage, counsel argues that since the Division Bench of the Bombay High Court has taken the aforesaid view, we are bound by the said view and that a reference should be made to a larger Bench. If we were of the opinion that the ratio decide-endi of the aforesaid case was that luxuries provided in a hotel were not luxuries within the meaning of Entry 62 and that the obiter dicta of the Supreme Court decision notwithstanding, we were bound by it, we would have had no hesitation in referring the matter to a Larger Bench in conformity with the principle laid down by the Supreme Court. We are, however, of the opinion that such is not the ratio of Chamarbaugwala 's case (supra). In the first place, it must be realised that the Division Bench itself was of the view that it would be unnecessary to consider the alternative submission as is evident from the following passage from paragraph 24:

In this view of the case perhaps it would be unnecessary to consider the

alternative submissions made by Mr. Seervai that even if the topic of legislation was not betting and gambling, it was entertainment or amusement or in the further alternative luxuries. If we are wrong in the view that we take that this legislation deals with the topic of betting and gambling, then we are not prepared to accept the contention of Mr. Seervai that this legislation deals with entertainment and amusement or with luxuries.

Since the Division Bench had rested its decision on the principal submission, obviously it was not necessary to consider the alternative submission. The substratum of the decision was built on the submission that Entry No. 34 was attracted. That argument was upheld by the Division Bench. Therefore, as pointed out by the Division Bench itself, it was unnecessary to consider the alternative submission. In this view of the matter, the view expressed in regard to alternative submission would constitute obiter dicta. Besides, the question as to whether or not the services of luxurious nature provided to a person would fall within the expression "Luxuries" in Entry No. 62, was not before the Court at all. No such question had arisen directly before the Court. If such a question had arisen and the Court had taken such a view, it would have been a different matter. What the Court has in fact not decided cannot be said to be ratio decidendi of the decision. Moreover, as we have observed, the obiter dicta of the Supreme Court appears to be to the effect that not only "articles" but "services" rendered to persons would fall within the expression "luxuries" in Entry No. 62 of List II of Schedule VII of the Constitution of India. We, therefore, do not consider it necessary to refer the matter to a Larger Bench for it would result in considerable time of the Court being expended unnecessarily. The time invested in the hearing in this Court would have been wasted to no purpose and the time of a larger Bench would have been unnecessarily consumed when it is not incumbent to make a reference to a larger Bench having regard to the circumstances of the case. We can ill afford to do so for the public time of the Court is of considerable value to the litigants for whose benefit the institution has come into existence more particularly in the present days when there is a mountain of arrears awaiting clearance and the Courts are scarcely in a position to solve the problem in foreseeable future. Under the circumstances we do not think we would be justified in refusing to decide the matter ourselves and in referring the matter to a larger Bench.

9. This brings us to the consideration of the second submission viz. that the impugned tax is not a tax on luxuries even if the expression is interpreted in a wider sense so as to cover luxurious services and not restricted to articles of luxury inasmuch as it is a tax merely on accommodation provided to a person irrespective of whether or not it is accompanied with luxuries. It must be made clear that it is not the case of any of the petitioners that they do not provide luxurious services within the meaning of the expression "luxury provided in a hotel" defined by Section 2(e) which reads as under:

2(e) "Luxury provided in a hotel" means accommodation for lodging provided in

a hotel, the rate of charges for which (including charges for airconditioning, telephone, television, radio music or extra beds and the like but excluding charges for food, drink and other amenities) is not less than thirty five rupees per person per day.

All the petitioners provide channel music. All of them provide a telephone in every room. All the petitioners provide centrally airconditioned accommodation in each room. The charges in the case of each petitioner exceed Rs. 70/- as against the dividing line of Rs. 35/- envisaged by Section 3 of the Act. It is not the case of any of the petitioners that they provide bare accommodation in a room and do not provide luxurious services such as air-conditioning, telephone, channel music etc. All the same it is argued by them that the Act may be construed as being applicable to hotels which provide bare lodging accommodation without being accompanied by any of the luxurious services contemplated by the Act. In our opinion, there is no substance in this contention. The charging section, Section 3, in terms provides that with effect from the date of the enforcement of the Act, a tax shall be levied and collected from every person in respect of any luxury provided to him in a hotel. There is, therefore, no escape from the conclusion that the tax is only levied on luxuries provided in a hotel and is to be collected from every person to whom such a luxury is provided. There is no question of levying the tax or collecting it from a person who is not provided with any such service as would fall within the expression luxuries provided in a hotel. The definition of the "luxury provided in a hotel" contained in Section 2(e) leaves no room for doubt on this score. The definition in terms refers to accommodation for lodging provided in a hotel the charges of which include charges for air-conditioning, telephone, radio music etc. The definition postulates the rendering of such luxurious services as air-conditioning, telephone, television, radio, music etc. The argument urged on behalf of the petitioners, therefore, flows from misconception regarding the true nature of the levy. In our opinion, it is not capable of being so construed as to authorise a levy and collection from a person who is not provided with any such luxuries by a hotelier. We are, therefore, unable to accede to the argument that the levy is bad by reason of the fact that it is authorised and imposed on bare accommodation in a room irrespective of the rendering of luxurious services by the hotelier concerned.

10. It is now time to deal with the third submission viz. that the impugned tax is in essence a tax in the nature of an expenditure tax in respect of accommodation and would, therefore, fall within the purview of the residuary Entry viz. Entry No. 97 falling in List I (Union List). Recourse to a residuary Entry can be made only provided there is no specific Entry which would govern the subject. In the present case as we have discussed earlier, a luxury tax is a tax levied on luxurious services and it prevails in the western countries since long. Since it squarely falls under Entry No. 62 of the State List, it is futile to contend that it is not covered by any Entry in the State List. We, therefore, see no substance in this contention either.

11. It is then argued that whatever be the apparent nature of the tax to truth it is a tax on the income of the hotel and it would, therefore, fall within the scope of Entry No. 82 of List I (Union List) which authorises a levy of tax on income other than agricultural income. Section 3 of the Act in terms provides that the tax shall be levied and collected from a person in respect of luxury provided to him in a hotel. The tax, therefore, falls on the shoulders of the customers of the" petitioners and not on the petitioners themselves. The petitioners are merely collecting agents as authorised by Sub-section (3) of Section 3 which provides that a tax payable under this section shall be collected by the proprietor and shall be paid in a Government Treasury within the time and" manner provided in the Act. When the Act squarely provides that it is an impost on a customer to whom the hoteliers in question provide luxuries in their hotels, and when the proprietors of the hotels are constituted as mere collecting agents, it is difficult to comprehend as to how it can be seriously contended that the tax is a tax on the income of the hotels. The income of the hotels in question remains intact. What they pay by way of taxes is what they collect from the customers over and above the charges which they collect for the accommodation and services. The learned Assistant Govt. Pleader has called our attention to *The State of Bombay Vs. R.M.D. Chamarbaugwala*, . In the course of the judgment, in paragraph 23, it has been stated that the tax imposed on the crossword puzzles is a percentage of the aggregate of the entry fees. On ultimate analysis it is a tax on each entry fee received from each individual competitor who remits it from the State of Bombay and that the provisions for collecting the tax from the promoters after the entry fees come into their hands is nothing but a convenient method of collecting the tax. The learned Assistant Govt. Pleader rightly contends that similarly the provision made for collecting the tax from the proprietors who are required to collect it from the customers is likewise a mere convenient method of collecting the tax. It can never be construed as a tax on their income. Neither is their revenue affected, nor are they persons taxed. The persons taxed are the customers and they are merely the collecting agents. This argument is, therefore, equally devoid of substance.

12. Lastly it was argued that the tax in substance was a tax on the business of carrying on a hotel and was, therefore, covered by Article 276 of the Constitution of India. The argument has merely to be stated to be rejected. It is not a tax on a privilege to run the business of hotel at all. The foregoing discussion clearly establishes that the, tax is collected or levied from the persons to whom luxuries are provided in the hotel. It is a tax on luxuries and it is imposed on persons to whom luxuries are provided in a hotel. It is not at all possible to characterise it as a tax on the business of running a hotel. In our opinion, it is a specious argument and must meet with the same fate as the earlier submissions.

13. The occasion demands venting of a few thoughts before the curtain is drawn. When an impost is calculated to throw the burden on one who cannot bear it, one can understand the grumbling. When it casts some burden on those who can easily carry it, it is difficult to comprehend the drawing of legalistic battle lines.

Be it realised that when an impost casting a burden on shoulders which can bear it is invalidated, it indirectly adds to the burden on the shoulders of those who cannot carry one additional iota of burden. It must be realised that the Constitution cannot countenance with equanimity the shifting of a load from the shoulders of an able bodied man to the shoulders of an emaciated man who can scarcely stand on his feet. Wisdom demands that the well-to-do refrain from invoking constitutional provisions in such matters as a measure of self-imposed discipline, for, they are expected to remove the cataract from their social eye and cultivate a social vision in order that the have nots do not become cynics and view the Constitution as a road-block. It is presumably the lack of this perspective which has emboldened the owners of posh hotels to challenge this petty load falling not on their own shoulders but on the shoulders of those who can spend for mere accommodation for one day what an average citizen of India (where more than 300 million live below the poverty line) does not earn for his whole family per month. Had this nuance been realised, the petitions may not have been filed at all. Be that as it may, since there is no merit in the challenge, the petitions cannot succeed.

14. In the result, the petitions fail and are rejected. Rule is discharged with costs.