

(2025) 02 KAR CK 0899

In the Karnataka High Court, Principal Bench

Case No : Sales Tax Revision Petition No. 39 Of 2023

Dish Tv India Limited (Formerly Known As M/S Asc
Enterprises Ltd.)

APPELLANT

Vs

Joint Commissioner Of Commercial Taxes (Appeals)-3,
Shantinagar, Bangalore - 560027 & Ors.

RESPONDENT

Date of Decision : 20-02-2025

Acts Referred:

Citation : (2025) 02 KAR CK 0899

Hon'ble Judges : Shivashankar Amarannavar, J

Bench : Division Bench

Advocate : Satyanarayana S Chalke

Final Decision : Dismissed

Judgement

Krishna S Dixit, J

1. Assessee is invoking revisional jurisdiction of this court u/s.8F of the Karnataka Entertainment Tax Act, 1958 for laying a challenge to Karnataka Appellate Tribunal's order dated 29.07.2022 whereby its appeals in STA Nos.1916-1954 of 2014 having been negated, the appellate order made by the authorities have been upheld.

2. BRIEF FACTS OF THE CASE:

2.1 Assessee is a Direct to Home (DTH) entertainment service provider in terms of DTH License dated 16.09.2003 w.e.f. October 2003. The DTH services are being provided under the brand name 'Dish TV'. The short grievance of the Assessee is inclusion of service tax component in the 'amount received or receivable' while levying entertainment tax, in terms of Sec.4G of the Act.

2.2 The authorities did not agree with the Assessee that the service tax component cannot be included while computing the amount received or receivable whilst levying entertainment tax. His appeals to the Tribunal against

the same came to be rejected by the common order. That is how this Revision Petition is placed at our hands.

3. Though the Assessee as many as six questions posing them to be of law, only the following three questions are essentially argued by the Assessee.

i) Whether the service tax collected by the Petitioner from the subscribers under the provisions of the Finance Act, 1994 against the DTH broadcasting services shall form part of consideration for the levy of Entertainment Tax under Section 4G of the 1958 Act ?

ii) Whether in the absence of definition of 'invoice' in the 1958 Act, the bills/statement of accounts containing the itemized details/segregation of the basic value of DTH broadcasting services, service tax, license fee etc. will be considered as 'invoice' ?

iii) Whether the Ld. Karnataka Appellate Tribunal vide Order dated 29.07.2022 erroneously held that the Petitioner had not submitted the invoices to show that the service tax has been collected separately ?

4. SUBMISSION MADE ON BEHALF OF THE ASSESSEE:

4. 1. Learned counsel Mr.Vivek Sarin appearing for the Assessee seeks to falter impugned order of the Tribunal on the following grounds:

(i) If Sec.4G r/w Sec.3 of the Act, it leaves no manner of doubt that the expression 'amounts received or receivable' is only the consideration money which the subscribers would pay to the multi system operator towards distributing satellite television signals and therefore service tax component cannot be added while computing the same for the purpose of levy of entertainment tax.

(ii) Power to levy entertainment tax is referable to Entry 78 in the State List, Schedule 7 of the Constitution of India whereas power to levy service tax is broadly relatable to Entry 97 in the Central List; that being the position levying entertainment tax even on the service tax would be constitutionally impermissible and therefore Sec.4G should be restrictively construed to exclude service tax component.

(iii) In the absence of definition of 'invoice' in the Act, the Bills/Statement of Accounts containing the itemized details/segregation of the basic value of DTH broadcasting services, service tax, license fee, etc., ought to have been considered as invoice and on that basis, the assessment should have been made. This having not been done, the impugned orders suffer from error apparent on the face of the record.

In support of above two contentions he relied upon certain rulings.

4.2 SUBMISSION MADE ON BEHALF OF THE REVENUE:

(i) Learned AGA appearing for the respondents resisted the petition making

submission in justification of the impugned orders contending that the text of Sec.4G is as clear as Gangetic waters and therefore does not admit any interpretation other than literal and that the construction placed by the Assessee on the said provision is incorrect.

(ii) Section 3 and Section 4G of the Act have different terminologies and, that difference makes the maxim *expressio unius est exclusio alterius* applicable and therefore while computing the amounts received or receivable, service tax component cannot be excluded.

(iii) The contention of Assessee that levy of tax on tax is unconstitutional, does not have jurisprudential support. He gave the example of cess being levied on income tax and such other taxes, to buttress his point.

5. Having heard the learned counsel for the parties and having perused the Petition Papers, we are inclined to interfere in the matter as under and for the following reasons:

5.1 The 1958 Act is more a consolidating and amending legislation, necessitated by the integration of the State of Karnataka under the States Re-organisation Act, 1956. The Preamble to the Act reads: "...It is expedient to consolidate and amend the laws relating to the levy of tax on entertainments in the State of Karnataka." It has undergone a slew of amendments. Section 2 is the dictionary clause. Clause (ca) of section 2 defines 'cable television'; clause (e) defines 'Entertainment'; clause (gg) defines 'Multi System Operator'. Sections 3(1) & 4G were much pressed into service by both the sides and therefore, they are reproduced below:

"[3. Tax on payment for admission to entertainments.-

[(1) There shall be levied and paid to the State Government entertainments tax on each payment for admission excluding the amount of tax, to an entertainment..."

4G. Tax on Multi System operator [and Direct To Home service provider]-

Notwithstanding anything contained in sections 4C and 4D, there shall be levied and collected a tax at the rate of ten percent on the amounts received or receivable by a Multi System Operator towards distributing satellite television signals, communication network, including production and transmission of programmes and packages and by a Direct To Home service provider towards providing television signals under the Direct To Home scheme."

5.2 The entertainment tax is levied and collected 'on the amounts received or receivable' by a Multi System Operator or Direct To Home service provider [DTH]. These amounts are nothing but the consideration which the customers would pay towards providing television signals under the DTH scheme. The transaction would obviously include both entertainment and service. Since both are discernible independent of each other, they are taxable separately; the

entertainment is taxed under the provisions of 1958 Act whereas, the service is taxed under the provisions of Finance Act, 1994. The text, content & intent of section 4G leaves no manner of doubt that for the purpose of levy of entertainment tax, the 'amount received or receivable' cannot include service tax component. Had the legislature intended inclusion, the text of this provision would have been a bit different. Therefore, the first question of law is answered in the negative and in favour of the Assessee.

5.3 The above view gains support from the decision of Apex Court in M/s ANAND SWARUP MAHESH KUMAR vs. COMMISSIONER OF SALES TAX (1980) 4 SCC 451 wherein, at para 10, Assessee therein had argued that the market fee payable under the UP Krishi Utpadan Mandi Adhiniyam, 1964 being a sum which could be collected from the purchaser under the provisions of the said statute by the commission agent for being remitted to the market committee, could not be considered as forming part of the consideration payable by the purchaser of the goods to the commission agent and therefore, it could not be included in the 'turnover of purchases' for the purpose of levy of tax under section 3-D of the UP Sales Tax Act, 1948. The Apex Court at para 13 observed as under:

"where a dealer is authorised by law to pass on any tax payable by him on the transaction of sale to the purchaser, such tax does not form part of the consideration for purposes of levy of tax on sales or purchases but where there is no statutory provision authorising the dealer to pass on the tax to the purchaser, such tax does form part of the consideration when he includes it in the price and realizes the same from the purchaser. The essential factor which distinguishes the former class of cases from the latter class is the existence of a statutory provision authorising a dealer to recover the tax payable on the transaction of sale from the purchaser. "

5.4 There is another aspect to the above question. The taxes and fees inter alia on entertainment and amusements are levied by the State by virtue of the powers vested in it, under Article 246(3) read with entries 62 & 66 of List II of the Seventh Schedule to the Constitution of India. However, the Finance Act, 1994 is enacted by the Parliament pursuant to Article 248 read with Entry 97 of List I of Schedule 7; it provides for the levy of tax on service. Service part of the entertainment transaction suffers tax under the provisions of 1994 Act. If that tax component is also included in the expression 'amounts received or receivable', then that would amount to levying tax on tax, as argued by learned counsel for the Assessee. Learned AGA Mr.Aditya Bhat is right in telling that the Constitution does not bar levy of tax on tax. His example that cess is tax levied on taxes, is very attractive. However, that is permissible only when the legislature has the competence to levy the original tax and the tax on that tax, whatever be the nomenclature. No contra Ruling or opinio juris is cited before us.

5.5 Learned AGA submitted that there is textual difference between sections 3 and 4G of the Act in the sense that section 3 employs the expression 'excluding the amount of tax' and therefore, the intention of the legislature is clear that the

absence of such an expression in section 4G does not permit exclusion of service tax component while computing the amounts received or receivable, for the purpose of levy of entertainment tax. In support of this, he invoked the maxim *expressio unius est exclusio alterius* to mean that express mention of one in a provision of a statute may be regarded as by implication excluding all other of that class in the other provision therein. The maxim will not apply when the provisions of the Act show that the exclusion would not have been intended. In *COLQUHOUN vs. BROOKS* 1887 (19) QBD 400, the court observed:

"I agree with what is said in the Court below by Wills J. about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The *exclusio* is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice..."

Therefore, much support cannot be drawn from the text of section 3 of the Act for invoking the maxim. Added, in construing fiscal statutes, an interpretation which does not follow from the plain, unambiguous language, is impermissible. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit & 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 postulates in a taxation statute, that would enure to the benefit of the Assessee subject to all just exceptions.

5.6 The last contention of the Assessee is that the invoice issued by it to each of the customers every time was reflected in the records produced before the authorities, cannot be summarily rejected. Abundant evidentiary material is produced even in the paper book of the petition. The Assessee had placed before the authorities the Statement of Account showing itemized billing and separate collection of service tax amount which aspect has been discussed by a Coordinate Bench of this Court in Assessee's earlier STRP No.436/2017 disposed off on 10.12.2021. True it is that the word 'invoice' is not defined in the 1958 Act nor in the Mysore General Clauses Act, 1899. However, Black's law dictionary, 5th edition, gives the meaning of this word. "A written account or itemized statement of merchandise shipped or sent to a purchaser, consignee, factor, etc., with the quantity, value or prices and charges annexed... Document showing details of a sale or purchase transaction...The new International Webster's comprehensive dictionary, 2004 edition, defines 'invoice' to mean a list sent to a purchaser, etc., containing the items and charges of merchandise..." Both the authorities at their level and the Tribunal in its domain would have treated this aspect of the matter in a satisfactory way. This having not happened, we are inclined to upset the finding in this regard so that even this aspect of the matter would be considered afresh.

In the above circumstances, this petition is allowed; the impugned order of the Tribunal is set at naught; matter is remitted to the domain of the Tribunal for consideration afresh in the light of the observations hereinabove made and in accordance with law. This remand would be decided within an outer limit of three months and after giving an opportunity of hearing to the stakeholders.

Costs made easy.

Before parting with the papers, we place on record our deep appreciation for the assistance rendered by learned advocate Mr.Vivek Sarin, AGA Mr.Aditya Vikram Bhat and Research Assistant Mr.Raghunandan K.S.