

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 09.03.2017

+ **W.P.(C) 427/2014 & CM No. 851/2014**

SITI CABLE NETWORKS LIMITED

...Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ORS.

...Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr S.K. Bagaria, Sr. Adv. with Mr Vivek Sarin, Mr Mohd. Danish, Mr Virender Thakur

For the Respondents : Mr Parag P. Tripathi, Sr. Adv. with Mr Naushad Ahmad Khan, Mr Mohit Paul, Mr Kunal Bahri and Ms Astha Nigam

+ **W.P.(C) 475/2014 & CM Nos. 933/2014, 2648/2014, 6401/2014, 21185/2014 & 6571/2015**

INDUSIND MEDIA AND COMMUNICATIONS LTD.

...Petitioner

versus

GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI & ORS.

...Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr Salman Khurshid, Sr. Adv. with Ms Vandana Jaisingh, Ms Meghna Mishra, Ms Kanupriya, Ms Jasmeet Singh and Mr Naman Joshi

For the Respondents: Mr Parag P. Tripathi, Sr. Adv. with Mr Naushad Ahmad Khan, Mr Mohit Paul, Mr Kunal Bahri and Ms Astha Nigam

+ **W.P.(C) 476/2014 & CM Nos. 936/2014, 21212/2014 & 6840/2015**

DEN NETWORKS LTD.

...Petitioner

versus

GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI & ORS

...Respondents

Advocates who appeared in this case:-

For the Petitioner: Mr Jayant Tripathi and Mr Dinesh Dahiya,

For the Respondents: Mr Parag P. Tripathi, Sr. Adv. with Mr Naushad Ahmad Khan,
Mr Mohit Paul, Mr Kunal Bahri and Ms Astha Nigam

+ **W.P.(C) 477/2014 & CM Nos. 939/2014, 18419/2014, 21213/2014,
4364/2015, 6839/2015, 13366/2015**

HATHWAY CABLE & DATACOM LTD

...Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ORS

...Respondents

Advocates who appeared in this case:-

For the Petitioner: Mr Jayant Tripathi and Mr Dinesh Dahiya,

For the Respondents: Mr Parag P. Tripathi, Sr. Adv. with Mr Naushad Ahmad Khan,
Mr Mohit Paul, Mr Kunal Bahri and Ms Astha Nigam

+ **W.P.(C) 3927/2015 & CM No. 7012/2015**

SITI CABLE NETWORKS LTD

...Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ORS.

...Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr S.K. Bagaria, Sr. Adv. with Mr Vivek Sarin, Mr Mohd.
Danish, Mr Virender Thakur

For the Respondents : Mr Parag P. Tripathi, Sr. Adv. with Mr Naushad Ahmad Khan,
Mr Mohit Paul, Mr Kunal Bahri and Ms Astha Nigam

+ **W.P.(C) 1285/2016 & CM No. 5649/2016**

DEN ADN NETWORK PVT LTD.

...Petitioner

versus

Advocates who appeared in this case:-

For the Petitioner: Mr Jayant Tripathi and Mr Dinesh Dahiya,

For the Respondents: Mr Parag P. Tripathi, Sr. Adv. with Mr Naushad Ahmad Khan,
Mr Mohit Paul, Mr Kunal Bahri and Ms Astha Nigam

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

1. These petitions raise common issues and were, therefore, heard together and are being decided together. Siti Cable Networks Limited v. Government of NCT of Delhi and Another [WP(C) 427/2014] was considered as the lead case.

2. All the petitioners are multi-system operators (MSOs). They are aggrieved by the circular dated 17.12.2012 as also notices similar to the notice dated 08.01.2014 issued to the petitioner in WP(C) 427/2014. Declarations are also sought to the effect that Section 2(o) read with Section 7 of the Delhi Entertainments and Betting Tax Act, 1996 (hereinafter referred to as 'the said Act') be declared as vague and ambiguous and, therefore, resulting in no levy of tax in law. Prayers have also been sought

seeking the quashing of Section 8 of the said Act as also Rule 12 of the Delhi Entertainments and Betting Tax Rules, 1997 (hereinafter referred to as 'the said Rules') to the extent they regulate cable television services provided by the petitioners. A restraining order is also sought against the respondents prohibiting transmission of cable TV signals in the National Capital Territory of Delhi.

3. In sum and substance, the grievance of the MSOs is that by virtue of the circular dated 17.12.2012 they are being foisted with the liability to collect and pay entertainment tax when, according to them, such liability/responsibility is that of the cable operators. It is also the case of the MSOs that the circular dated 17.12.2012 is, in any event, without the authority of law and cannot be sustained in view of the provisions of the said Act and the said Rules. The notice dated 08.01.2014 and other similar notices to the other MSOs are also challenged inasmuch as they are a consequence of the circular dated 17.12.2012.

4. On the other hand, the case of the respondents is that by virtue of the provisions of the said Act and the said Rules, the MSOs, since under the new regime they were required to bill the customers directly, are liable to collect and pay the entertainment tax to the government. It was also

submitted that the circular dated 17.12.2012 was not without authority and had been issued under the powers given by Section 46 of the said Act.

5. At this juncture, it would be appropriate to set out the impugned circular dated 17.12.2012 issued by the Entertainment Tax Officer. The same reads as under:-

“GOVT. OF N.C.T. OF DELHI
OFFICE OF THE COMMISSIONER EXCISE, ENT. & LUXURY TAX
L- BLOCK VIKAS BHAWAN, NEW DELHI
(ENTERTAINMENT TAX BRANCH)

No. F. 13(4)/ETO/12-13/4284

Dated: 17.12.2012

To,

The All MSOs (List enclosed)	Wire & Wireless India Ltd
National Capital Territory of Delhi	Essel House, B-10
	Lawrence Road Indl Area,
	Delhi-35 (Siti Cable)

Sub. – Payment of due Entt. Tax for operation of cable network.

Sir,

You are aware that the Central Govt. had made it obligatory for every Cable Operator to transmit or re-transmit telecast of any channel in an encrypted form through the Digital Addressable System (DAS) from 1st November, 2012 in four metros i.e. Delhi, Mumbai Chennai and Kolkata. After implementation of DAS in NCT of Delhi control over the cable television network has been shifted from LCOs to MSOs. Under the new system only the MSOs can encrypt the cable signal and decrypt the same through their set-top boxes. Every MSO has its own set top box and local cable operator has no control over it except seeding it to the subscriber. Through set-top boxes MSOs are in position to know exact number of subscribers/connections at a given point of time. However, in a recent meeting held with the MSOs they have submitted that they are in the process of compiling the entire data base of subscribers by collection of SAF forms from the customers through cable operators.

It would have been ideal for the Department in the changed situation as elaborated above, the collect tax only through MSOs. However, keeping in view, the submissions of MSOs. It has been decided that the existing system of collection and deposition of tax through LCOs will continue till 31st March, 2013. In this period MSOs will make sure that the entire data base of subscribes is ready with them. From the month of April, 2013 onwards the tax will be Collected by the MSOs and deposited with the Department by the 7th of May, 2013. However, it is also clarified here that MSOs & LCOs are jointly and severally responsible for payment of Entertainment Tax and will be liable to be proceeded against in case of default.

Sd/-
17/12/2012
(S.N. SAH)
Entt. Tax Officer

Copy to
All ETIs for strict compliance

Sd/-
17/12/2012
(S.N. SAH)
Entt. Tax Officer.”

(underlining added)

6. It is also necessary to set out the notice dated 08.01.2014, which was received by the petitioner in WP(C) 427/2014 (similar notices have been received by the other petitioners). The said notice is as under:-

“OFFICE OF THE COMMISSIONER EXCISE, ENT. & LUXURY TAX
GOVT. OF N.C.T. OF DELHI
L-BLOCK, VIKAS BHAWAN, NEW DELHI
(ENTERTAINMENT TAX BRANCH)

No. F. 5720

Dated: 8.1.2014

NOTICE

Vide order No. F.13(4)/ETO/12-13/4284, Dated 17/12/2012 all the MSOs were directed to collect entertainment tax for cable television as per provisions of the Delhi Entertainments and Betting Tax Act, 1996 (hereinafter the Act) and deposit the same in the Department for the month of April, 2013 onwards (copy enclosed).

As per the Rule 26 of Delhi Entertainments and Betting Tax Rules, 1997 the proprietor of a cable television network is liable to pay tax in accordance with sub-section (1) of Section 7 of the Act shall file monthly returns in Form "10".

Further, as per record available in this office M/s Siti Cable has installed 5,63,616 STBs as on 05.06.2013 whereas M/s Siti Cable has partly deposited tax for the period June 2013 to December 2013. Thus, M/s Siti Cable has neither filed returns nor deposited entire due tax as per provisions of Act. Thus M/s Siti Cable has breached the provisions of the aforesaid Act & Rules.

As per section 39(1) of the Act, the amount of any tax, penalty or other amount due under any provision this Act shall, without prejudice to any other mode of recovery available to the Government under any law for the time being in force, be recoverable as arrears of land revenue.

Further, as per section 8(3) of the Act television signals through cables of M/s Siti Cable, can be prohibited in the National Capital Territory of Delhi by taking all reasonable steps for breaching the provisions of the said Act and Rules.

Now, therefore, M/s SITI Cable is hereby directed to file returns in Form-10 and deposit due Entertainment Tax along with up to date interest payable as per prescribed rate under the said Act, within 07 calendar days from the date of issue of this notice and appear before the undersigned on 16.01.2014 at 11.30 AM in Room No. 203, L-Block, Vikas Bhawan, New Delhi, along with all the relevant documents/ record to show cause as to why television signals through cables of M/s SITI Cable, should not be prohibited in the National Capital Territory of Delhi by taking all reasonable steps for breaching the provisions of the said Act and Rules.

Please take notice that in the event of your failure without sufficient reason to comply with this notice necessary action as deemed fit shall initiated under the provisions of the Delhi Entertainment and Betting Tax Act, 1996 without any further notice.

Sd/-
Entertainment Tax Officer

M/s SITI Cable Network Ltd.
Essel House, B-10,
Lawrence Road Industrial Area, Delhi-110035."

7. On behalf of the petitioners, it was submitted that Section 7 was the charging section in the said Act. The said provision clearly stipulated that the entertainment tax was to be collected by the ‘proprietor’ and paid to the government in the prescribed manner. Referring to the decision of a Division Bench of this Court in **Bharti Tele Media v. Government of NCT of Delhi: (2011) 44 VST 262**, it was submitted that the levy under the said Act is on entertainment and it is paid in respect of all payments for admission to entertainment. It is to be collected by the proprietor and paid to the government in the manner prescribed. The tax is neither on the person nor on a thing but on the activity of entertainment and the proprietor is only a collector of entertainment tax on behalf of the government.

8. Referring to the other provisions of the said Act and, in particular, Section 2(o), which gave the definition of ‘proprietor’, it was submitted that such definition was wide enough to include a broadcaster, a multi-system operator (MSO) and the (local) cable operator (LCO). It was submitted that though the definition of proprietor could include all such persons/entities, the liability to collect and pay the tax could be only on one person and that person had to be clearly defined. It was submitted, by referring to the

various provisions of the said Act, that that person was the one who provided the service by the transmission by cables. It was, therefore, contended that it is only the service provider who provided the service to subscribers who would be liable to collect the tax and pay the same to the Government.

9. A reference was also made to the notification dated 01.04.1998 which was issued by the Government of NCT of Delhi in exercise of the powers conferred under Section 7(1) of the said Act. The said notification reads as under:-

“F 12(5)/97-Fin./(G)(i)/65, Delhi, the 1st April, 1998

In exercise of the powers conferred by sub-section (1) of section 7 of the Delhi Entertainments and Betting Tax Act, 1996 (Delhi Act 8 of 1997) the Government of the National Capital Territory of Delhi hereby directs that with effect from the first day of April, 1998, the proprietors of Cable Television Network providing cable service in the National Capital Territory of Delhi shall pay in the government account entertainment tax at the rate of Rs. 10 per subscriber connection per month.”

(underlining added)

Referring to the said notification, it was submitted that the liability to collect and pay entertainment tax under Section 7 of the said Act was only on the proprietors of cable television networks providing cable service in

the National Capital Territory of Delhi. In this backdrop, it was submitted that even though the definition of ‘proprietor’ as contained in Section 2(o) of the said Act was wide enough to include MSOs as well as LCOs, the liability to collect and pay entertainment tax under the provisions of the said Act and the said Rules read with Notification dated 01.04.1998 was fastened only on the proprietor, who provided cable service, in other words, who made the transmission/re-transmission through cables.

10. It was explained by the learned counsel for the petitioners that MSOs enter into agreements with broadcasters, such as Zee TV, Sony and Star etc. They provide integrated Receiver Decoder Boxes (IRD Boxes) to MSOs to receive their signals in encrypted form. These boxes are installed in the ‘Digital Head Ends’ and maintained by the MSOs. MSOs maintain distribution centres at different locations which are connected with the Digital Head Ends. At the distribution centres, optical signals are converted to radio frequency. At the distribution centres, MSOs can do the following two things:-

- (a) Directly provide cable service to the subscribers (without the involvement of LCOs). In such a situation, the MSOs lay their own cables from the distribution

centre to the subscribers' locations. The cables are owned and maintained by the MSOs and in such a case, there is no involvement of any LCO. Subscription charges for providing the cable services directly to the subscribers are paid by the subscribers to the MSOs and the MSOs are solely responsible for maintenance and upkeep of such cables through which the cable service is provided directly to the subscribers by the MSOs; and/or

- (b) Provide the cable service through LCOs. The LCOs lay the cables from the MSO's distribution centre up to the premises of the subscribers. Such cables are laid, owned and maintained by the LCOs. The entire responsibility of providing proper cable connections and rendering cable service to the subscribers is that of the LCOs. It was submitted that in such cases even though particulars of subscribers are available with the MSOs, they are contacted by the LCOs and all payments from subscribers are collected by the LCOs.

11. It was submitted that the expression 'proprietor' has to be construed in the light of the above fact situation. In cases where LCOs provide cable service to the subscribers, it is the LCOs who are to be regarded as the proprietors liable to collect and pay the tax. However, where the cable service is provided to the subscribers directly by MSOs, without the involvement LCOs, it is the MSOs who would be regarded as the proprietors and would be liable to collect and pay tax. It was submitted that this principle of liability for collection and payment of tax on the last mile operator providing cable service by cables is inbuilt into the provisions of Sections 7 and 2(o) of the said Act read with Rule 26 of the said Rules and other definitions contained in Section 2 of the said Act and the Notification dated 01.04.1998.

12. It was next submitted that the circular dated 17.12.2012, which created joint and several liability of the MSOs and LCOs for payment of entertainment tax, was bad in law and was without jurisdiction. In this context, it was submitted that the said Act did not create any such joint and several liability for the collection and payment of entertainment tax upon the MSOs and LCOs. It was submitted that joint and several liability for collection/payment of tax could be created only by a statute enacted by the

Legislature. Reliance was placed on the decision of the Supreme Court in *ITO v. Radha Krishan*: AIR 1968 SC 46 and *Kalva Suryanarayan v. ITO*: AIR 1969 SC 285.

13. In this very context, it was also submitted that under Section 4(1) of the said Act, the Government is prohibited from delegating its powers, *inter alia*, under Section 7 of the said Act to any person or authority subordinate to it. Section 4(1) of the said Act reads as under:-

“(1) The Government may, by notification, delegate all or any of its powers under this Act, except those under sections 3, 6, 7 and 45 to any person or authority subordinate to it.”

It was, therefore, submitted that the power to fix the liability on a person for collection and payment of tax cannot be delegated. In any event, the circular dated 17.12.2012 had been issued by the Entertainment Tax Officer and under the provisions of the said Act and the said Rules, no power has been conferred upon the Entertainment Tax Officer to create any joint and several liability of MSOs and LCOs.

14. It was submitted that there are certain essential components of a tax and they have to be unambiguous and clear. The three components which were referred to were as under:-

- (i) Subject of the tax;
- (ii) The person who is liable to pay the tax ; and
- (iii) The rate at which the tax is to be paid.

It was submitted that if there is any ambiguity with regard to any of these three components in a tax statute, it would be fatal to the levy of tax.

Reference was made to the Supreme Court decisions in **Govind Saran Ganga Saran v. Commissioner of Sales Tax: 1985 (Suppl) SCC 205** and **Mathuram Agarwal v. State of Madhya Pradesh: (1999)8 SCC 667**. It was submitted that if the relevant provisions were not read in the manner suggested by the learned counsel for the petitioners, then the provisions of Section 7 and 2(o) of the said Act would be arbitrary, illegal and *ultra vires* the Constitution as being completely ambiguous and uncertain resulting in a situation of non-levy of any tax at all.

15. It was thus submitted on behalf of the petitioners that this set of petitions raise the following important issues:-

- (i) The authority of the respondents to demand entertainment tax from MSOs in the absence of any legislative provision in respect thereof;

- (ii) The legality of the respondents' action in raising a demand on the petitioners on the ground of 'joint and several' liability in respect of taxation; and
- (iii) The failure of the respondents to carry out their duties in collecting and paying tax from the Local Cable Operators (LCOs).

It was submitted that Section 7(1) itself stipulates that the tax is to be collected and paid to the Government 'in the manner prescribed'. Rule 26 of the said Rules becomes important as it lays down that the liability to collect and pay the tax is on the proprietor of a cable television network. When the expression 'cable television network' has been used, it clearly distinguishes other proprietors from the proprietor of a cable television network. 'Cable television network', in turn, is defined in Section 2(h) of the said Act to mean any system consisting of a set of closed transmission paths etc. designed to provide cable service for reception by multiple subscribers. 'Cable service', in turn, is defined in Section 2(g) to mean transmission by cables of programmes including re-transmission by cables of any broadcast television signals and the word 'subscriber' has been defined in Section 2(s) of the said Act to mean a person, who receives the signals of television network and value added services from:-

- (i) An MSO or
- (ii) from a cable operator or
- (iii) from direct-to-home (DTH) broadcasting service at a place indicated by him to the service provider, without further transmitting it to any other person.

‘Cable operator’ has been defined in Section 2(fb) as the person who provides cable service through a cable television network.

16. After going through all these provisions, it was submitted that the MSOs cannot be regarded as proprietors of a cable television network and, therefore, the MSOs were not liable for collection and payment of tax. It was also submitted that the impugned circular dated 17.12.2012 attempts at shifting the statutory responsibility of collecting and depositing entertainment tax from LCOs to MSOs and the reason for this has been given as administrative ease. It was submitted that the statutory duty to collect and pay tax cannot be shifted from one entity to another and that, too, through a mere circular which did not have any authority in law. Such shifting of liability could only be done through legislative amendment which has not occurred in the present case.

17. It was submitted on behalf of the petitioners that for all these reasons, the circular dated 17.12.2012 was liable to be quashed as being without any authority of law and, in any event, being *ultra vires* the said Act and Rules. It was also submitted that the notices dated 08.01.2014 and other similar notices to the petitioners on the foundation of the circular dated 17.12.2012 were, therefore, bad and were ought to be quashed.

18. On the other hand, the learned counsel for the respondents submitted that there was a clear-cut rationale for collecting entertainment tax from MSOs rather than LCOs. It was submitted that before implementation of the Digital Addressable System (DAS), Local Cable Operators were in a position to decide the subscription rate, raise bills to the customers etc. Therefore, the LCOs, being proprietors under Section 2(o) of the said Act, were under the obligation to collect entertainment tax from the subscribers and deposit the same with the Entertainment Tax Department. However, after the implementation of DAS, the LCOs were not in a position to decide the subscription rate, bouquet of channels, generate bills or to collect entertainment tax against their Entertainment Tax Registration Number. They merely become collection agents of the MSOs and they did not have

any control over the network except for seeding it to the subscribers. It was, therefore, submitted that the petitioners/MSOs, being the ultimate regulators, were covered within the definition of 'proprietor' under Section 2(o) of the said Act being connected with the organization of entertainment as well as responsible for the management of the system.

19. It was also submitted that earlier, there was no involvement of set-top boxes in the cable TV system and as such, the LCOs had the details of the subscribers and had control over the provision of cable service. But, with the introduction of set-top boxes, cable TV service to the subscribers could not be made available by the LCOs on their own because the MSOs had control over the set-top boxes. The MSOs could encrypt and decrypt the cable signals through their set-top boxes and they provided the service and took decisions with regard to the subscription rate, bouquet of channels and generation of bills and activation/de-activation of the set-top box cards etc. The MSOs also had direct subscriber agreements with the ultimate subscribers.

20. References were also made to Regulations 14 and 15 (2) of the Standards of Quality of Service (Digital Addressable Cable TV Systems)

Regulations, 2012 issued by TRAI under the Notification dated 14.05.2012. The said Regulation indicated that the multi-system operator would, *inter alia*, be responsible for the generation of bills for the subscribers. Regulation 15(2) also required that in the case of post-paid bills, the subscribers shall be billed, generally on monthly basis and the bill shall contain the Service Tax Registration Number and the Entertainment Tax Registration Number of the multi-system operator. It was submitted that the MSOs were governed by TRAI Regulations. From the above, it was evident, according to the respondents, that the MSOs were to be responsible for, *inter alia*, the collection of entertainment tax.

21. It was also submitted that by virtue of several Supreme Court decisions as also decisions of the High Courts, it has been held that under the new DAS regime, MSOs are to be regarded as ‘proprietors’ and are liable to collect and pay entertainment tax under the respective State Entertainment Tax Acts. Reliance was placed on the following decisions:-

- (i) **IndusInd Media and Communications Limited v. Mamlatdar and Others: (2011) 15 SCC 294;**
- (ii) **The State of West Bengal and Others v. Purvi Communication Private Limited: (2005) 3 SCC 711;**

- (iii) **Digi Cable v. State of M.P.: AIR 2013 M.P 36;** and
- (iv) **Sky Media (P) Limited v. Assistant Commissioner, Commercial Taxes Rajasthan,** decided by a Single Judge of High Court of Rajasthan, Jodhpur Bench in **S.B. Sales Tax Revision Nos. 229/2012 and other connected matters on 16.02.2015.**

22. It was submitted that the charging section, that is, Section 7 of the said Act was not ambiguous. It was submitted that the said provision makes it clear that the tax is levied on entertainment and is to be paid in respect of all payments for admission to an entertainment and the same is to be collected by the proprietor and paid to the Government in the manner prescribed. It was submitted that no person other than the 'proprietor' was liable to collect and pay such tax to the Government. Consequently, it was submitted that there was nothing ambiguous and vague about the charging section.

23. It was also submitted that the charging section empowers the Government to prescribe a manner to collect and pay the tax to the Government. Section 46 of the said Act was relied upon to submit that it empowers the Commissioner to issue directions to the proprietors for carrying out the purposes of the Act. Based on this, it was submitted, the

Entertainment Tax Officer, on being directed by the Commissioner under Section 46 issued the impugned circular dated 17.12.2012 which provided that the liability to collect and deposit tax with the Government would be on the MSOs after 31.03.2013 and also that the MSOs and LCOs would be jointly and severally liable in case of default. It was finally submitted that a reading of the provisions of the said Act and, in particular, Section 7 with Section 2(o) makes it abundantly clear that the intention of the Legislature was to make the proprietors of the cable television network liable, which in the present case, were the MSOs.

24. Before we analyse and discuss the submissions of the parties, it would be necessary to set out the relevant provisions of the said Act and Rules:-

Provisions of the said Act:

“2. Definitions

In this Act, unless the context otherwise require,—

XXXX XXXX XXXX XXXX

“(fb) “cable operator” means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network.”

XXXX XXXX XXXX XXXX

“(g) "cable service" means the transmission by cables of programme including re-transmission by cables of any broadcast television signals;

(h) "cable television network" means any system consisting of a set of closed transmission paths and associated signal generation/control and distribution equipment, designed to provide cable service for reception by multiple subscribers;”

XXXX XXXX XXXX XXXX

“(ka) “multi-system operator (MSO)” means any person including an individual, group of persons, public or body corporate, firm or any other organization or body, who or which is engaged in the business of receiving television signals and value added services from a broadcaster or his authorized agencies and distributing the same or transmitting his own programming service including production and transmission of programmes and packages, directly to the multiple subscribers or through one or more cable operators and includes its authorized distribution agencies by whatever name called;”

XXXX XXXX XXXX XXXX

(n) "prescribed" means prescribed by rules made under this Act;

(o) "proprietor" in relation to any entertainment *includes* any person—

- (i) connected with the organisation of the entertainment, or
- (ii) charged with the work of admission to the entertainment, or
- (iii) responsible for, or for the time being in charge of, the management thereof;

- (iv) having licence to provide direct-to-home (DTH) service, by the Central Government under section 4 of the Indian Telegraph Act, 1885 (13 of 1885), and the Indian Wireless Telegraphy Act, 1933 (17 of 1933) and also include service provider of cable television signals and value added services, registered or licensed under the Cable Television Network (Regulation) Act, 1995 (7 of 1995);”

XXXX

XXXX

XXXX

XXXX

“(s) "subscriber" means a person who receives the signals of cable television network and value added services from multi-system operator or from cable operator or from direct-to-home (DTH) broadcasting service at a place indicated by him to the service provider, without further transmitting it to any other person;

Explanation In case of hotels each room or premises where signals of cable television network are received shall be treated as a subscriber.

Explanation II: In case of direct-to-home (DTH), every television set or computer set receiving the signals shall be treated as a subscriber;”

XXXX

XXXX

XXXX

XXXX

“7. Tax on cable, video service and direct-to-home (DTH) service

- (1) Subject to the provisions of this Act, there shall be levied and paid an entertainment tax on all payments for admission to an entertainment through a direct-to-home (DTH) or through a cable television network with addressable system or otherwise, other than entertainment to which section 6 applies, at such rates not exceeding rupees six hundred for every

subscriber for every year, as the government may, from time to time, notify in this behalf, which shall be collected by the proprietor and paid to the Government in the manner prescribed.

(2) Nothing in sub-section (1) shall preclude the government from notifying different rates of entertainment tax for household, or for different categories of hotels,

(3) Where the subscriber is a hotel or a restaurant; the proprietor may, in lieu of payment under sub-section (1), pay a compounded payment to the Government on such conditions and in such manner as may be prescribed and at such rate as the Government may, from time to time, notify and different rates of compounded payment may be notified for the different categories of hotels.

(4) The proprietor of a video cinema shall be liable to pay entertainment tax at a rate to be notified by the Government from time to time in this behalf.

(5) The tax payable under this section shall be paid, collected or realised in such manner as may be prescribed.”

XXXX

XXXX

XXXX

XXXX

“45. Power to make rules

(1) The Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide, for-

(a) collection of tax and payment thereof in the government account by the proprietor;”

XXXX

XXXX

XXXX

XXXX”

Rule 26 of the said Rules:

“26. Payment of tax for cable service

(1) The proprietor of a cable television network liable to pay tax in accordance with sub-section (1) of section 7 of the Act shall file monthly returns in Form “10” in duplicate showing the number of subscribers, the name and address of each subscriber, the amount received from each subscriber and the amount of tax calculated as per the rates notified by the Government. The amount of tax so calculated shall be deposited in the Government account in the form of pay order/demand draft and the return and challan of payment shall be furnished to the assessing authority within seven days from the end of the month for which the tax is due. The provisions of sub-rules (2) and (3) of rule 25 shall *mutatis mutandis* apply with regard to payment of tax for cable service.

(2) Where entertainment tax is payable by a hotel in accordance with sub-section (3) of section 7, the tax shall be payable at a rate to be notified by the Government for every room having the facility of cable service. The proprietor shall file a monthly return in Form “11” in duplicate showing the category of hotel, number of rooms having the facility of cable service and the amount of tax calculated. The amount of tax so calculated shall be deposited in the Government account and the return and challan of payment shall be furnished to the assessing authority within seven days from the end of the month for which tax is due and the provisions of sub-rules (2) and (3) of rule 25 shall *mutatis mutandis* apply.

(3) Where the subscriber is a restaurant, the entertainment tax shall be paid as per the provisions of sub-section (3) of

section 7 of the Act and each room and premises where signals of cable television network are received, shall be treated as a subscriber. The provisions of sub-rules (2) and (3) of rule 25 shall *mutatis mutandis* apply.”

25. It will be seen from the above provisions that Section 7 is the charging section. It clearly stipulates that entertainment tax is to be levied on all payments for admission to entertainment, *inter alia*, through a cable television network. The same is to be collected by the proprietor and paid to the Government in the manner prescribed. The nature of the tax and meaning of the expressions ‘levied’, ‘paid’ and ‘collected’ have been dealt with by a Division Bench of this Court in ***Bharti Tele Media*** (*supra*). In that matter, it was observed as under:-

“40.The tax is on the entertainment and not the manner in which the content of entertainment reaches the actual persons entertained. The tax is not on the content provider or the content transporter or the person entertained – it is on the entertainment. The subscriber may be the person on whom the incidence of the tax falls and the measure of the tax may be based on the subscription money but, as we have already seen, the incidence of a tax or the measure of a tax ought not to be confused with the subject matter of the tax.

41. The charging section itself makes it clear that the *levy* is on entertainment and it is *paid* on all *payments for admission to an entertainment*. There are three very important words used in section 7(1) of the said Act and they are – “levied” (or levy), “paid” and “collected”. These words are used in distinct and

different senses and must not be confused with each other. The tax is “levied” on “entertainment”, it is “paid” on all “payments for admission to an entertainment” and it is “collected” by “the proprietor” and “paid” to the Government in the manner prescribed. It is clear from this scheme that the tax is neither on provider of the DTH service nor on the DTH service nor on the person entertained. Though the incidence of the tax may fall on the ultimate subscriber and the tax may have to be collected by the DTH service provider and paid to the government but, those are matters concerning incidence and measure of the tax, which, we have seen, is irrelevant for determining the subject-matter of a tax.”

XXXX

XXXX

XXXX

XXXX

“43. The entertainment tax is to be “collected” by the “proprietor” and paid to the government in the manner prescribed. The word “proprietor” as used in section 7(1) of the said Act is a term of art and has been defined in section 2(o). In relation to entertainment through a DTH system, section 2(o)(iv) of the said Act defines the word “proprietor” to include any person having licence to provide direct-to-home (DTH) service, by the Central Government under section 4 of the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933 and also includes the service provider of cable television signals and value added services, registered or licensed under the Cable Television Network (Regulation) Act, 1995. So, the licensed DTH service provider is only a “collector” of the entertainment tax on behalf of the government. He is not the subject matter of the tax, nor is the service provided by him the subject-matter of the entertainment tax. At the cost of repetition but, for the sake of clarity, we state that the tax in question is neither on a person nor on a thing but on the activity of entertainment. This is the true nature and character of the tax and is, therefore, within the legislative field of Entry 62 of List II of the VIIth Schedule to the Constitution.”

26. It is, therefore, clear that the tax is levied on entertainment. It is not on the content provider or the content transporter or the person entertained. The subscriber may be the person on whom the incidence of the tax falls. But, that is not the subject matter of the tax. The tax is collected by the proprietor and paid to the Government in the manner prescribed.

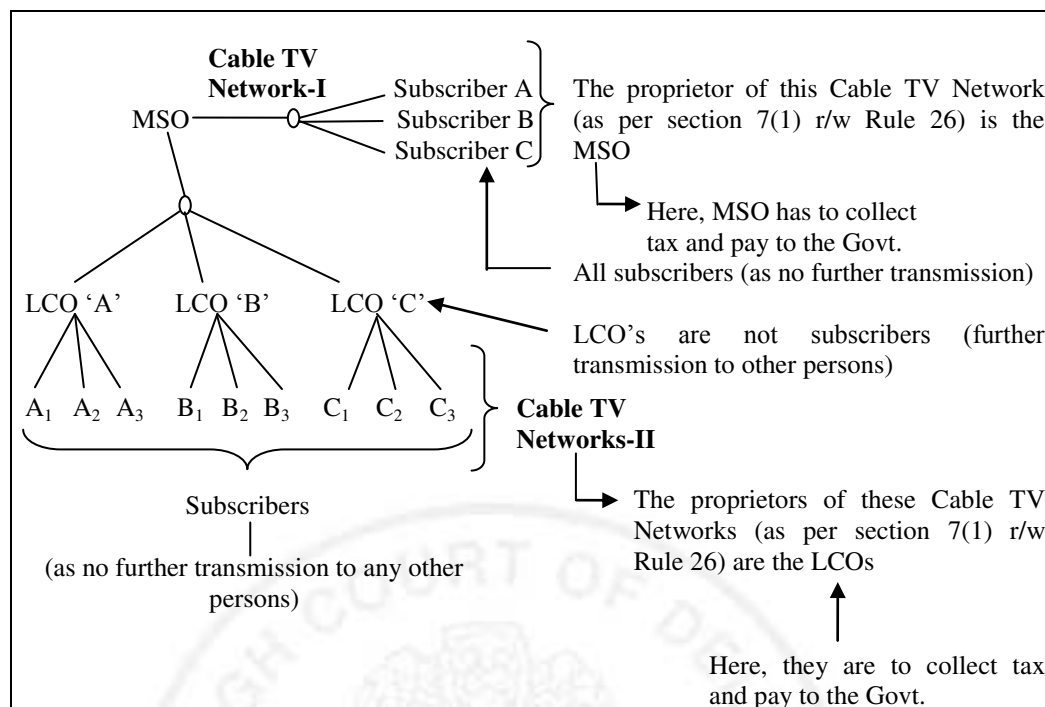
27. The terms 'proprietor' and 'in the manner prescribed' require explanation. 'Proprietor' has been defined in Section 2(o) which has already been set out above. It is common ground that the definition of a proprietor, as contained in Section 2(o), is wide enough to include not only the cable operator but also the MSO, amongst others. Therefore, we proceed on the basis that the definition of the word 'proprietor' covers both the MSO and the LCO. The expression 'in the manner prescribed' and particularly the word 'prescribed', as defined in Section 2(n) of the said Act, means prescribed by Rules made under the said Act. This takes us to Rule 26 of the said Rules. The said Rule 26 clearly refers to 'the proprietor of a cable television network'. Thus, the liability to collect the tax and pay it to the Government is not on all proprietors as defined under Section 2(o) of the said Act but only on proprietors of cable television networks. At this juncture itself, we would like to point out that the Notification dated

01.04.1998 is also in respect of “proprietors of cable television networks providing cable service in the National Capital Territory of Delhi”. Therefore, not only Rule 26 but also the Notification under Section 7(1) dated 01.04.1998 bears reference to proprietors of cable television networks.

28. A ‘cable television network’, in turn, is defined in Section 2(h) of the said Act to mean any system consisting of a set of closed transmission paths etc. designed to provide cable service for reception by multiple subscribers. Here again, two expressions are used which require further elaboration. They are – ‘cable service’ and ‘subscribers’. ‘Cable service’ has been defined in Section 2(g) to mean ‘transmission by cables’ of programmes including re-transmission by cables of any broadcast television signals. In other words, a cable television network, which has been referred to in Rule 26 means a system designed to provide the service through transmission by cables for reception by multiple subscribers.

29. This takes us to the meaning of the word ‘subscriber’ as defined in Section 2(s) of the said Act. According to the said provision, ‘subscriber’ means a person who receives the signals of a television network and value

added services from (i) an MSO; or (ii) a cable operator; or (iii) DTH broadcasting service at a place indicated by him to the service provider “without further transmitting it to any other person”. In other words, the subscriber is the point at which the transmission terminates. There can be a subscriber who receives signals of a cable television network from an MSO as well as a subscriber who receives such signals from a local cable operator. Incidentally, the definition of cable operator as given in Section 2(fb) has a reference to a person who provides cable service (transmission by cable) through a cable television network. It is, therefore, clear that where an MSO provides the cable service directly to the subscribers, the said MSO would have to be regarded as the ‘proprietor’ of the cable television network. On the other hand, where the MSO provides the service through cable operators who, in turn, directly supply to the subscribers by means of transmission by cables, the MSO in such a case would not be regarded as the ‘proprietor’ of a cable television network. Instead, it would be the local cable operator who would be the proprietor of the concerned cable television network. This would be clear from the following diagram:-



30. From the above diagram, it is evident that there are two kinds of cable television networks. The first is the cable television network which has been shown as Network-I, where the MSO directly provides cable service to its subscribers A, B, C etc. The other kind is designated as Networks-II, where each of the LCOs of the MSO has its own independent network in respect of its subscribers. For example, LCO 'A' has its subscribers A₁, A₂ and A₃. That constitutes a cable television network in which LCO 'A' is regarded as the 'proprietor'. LCO 'B' has its own set of subscribers B₁, B₂ and B₃ and so on and that network is also a cable television network in which LCO 'B' is to be regarded as the 'proprietor'.

31. It is, therefore, clear that where the MSOs directly provide cable services to their subscribers without intervening LCOs, that would constitute a separate cable television network of which the MSOs would certainly be the proprietors for the purposes of Rule 26 and, in turn, Section 7 of the said Act. However, in respect of the cable television networks of the LCOs, the MSO would not be a proprietor thereof but, each of the LCOs would be proprietors of their cable television networks which have their individual subscribers as the end points of transmission. In such cases, each of the LCOs would be proprietors of their individual cable television network for the purposes of Rule 26 and Section 7 of the said Act.

32. This is the plain and simple meaning which can be ascribed to the word 'proprietor' as appearing in Section 7(1) of the said Act.

33. In ***Govind Saran Ganga Saran*** (*supra*), the Supreme Court referred to the components of tax and indicated that none of the components must be vague otherwise it would be fatal to the validity of the levy itself. Paragraph 6 of the said decision reads 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 these 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.”

(underlining added)

34. Furthermore, in ***Mathuram Agarwal*** (*supra*), the Supreme Court conveyed the same sentiment:-

“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.”

(underlining added)

From the above decisions, it is clear that if there is any ambiguity or vagueness associated with any of the components of the tax which includes the person who is liable to pay the tax, then the validity of the tax/levy itself would be in jeopardy and if that was the case, then it would be for the Legislature to do the needful in the matter. Fortunately for us, the Legislative intent is clear as indicated above. It is only the circular dated 17.12.2012 which has brought in the ambiguity.

35. Such ambiguity is impermissible in law particularly in the field of taxation. We do not understand as to how the Entertainment Tax Officer held the MSOs and LCOs jointly and severally responsible for payment of entertainment tax. It appears that because of the change over to the new system, the Entertainment Tax Officer was finding it difficult administratively to regulate the collection of taxes and it is perhaps for this reason that in the circular dated 17.12.2012, it is mentioned that ‘it would be ideal for the Department in the changed situation’ to collect tax only through MSOs. The argument of the respondents that the changed system was brought about by the regulations and the directions of TRAI and,

therefore, MSOs were liable to collect and pay entertainment tax, is an argument which is stated to be rejected. The said Act is a complete code in itself and it is the said act which is to provide for chargeability as well as for the collection and payment of the tax. If there was any change necessitated because of the switch over to the new system after implementation of DAS in the National Capital Territory of Delhi, nothing prevented the Legislature from making appropriate Legislative changes either in the said Act or in the said Rules. That has not happened and we cannot supply any such provision particularly in the case of a tax statute.

36. Moreover, the circular dated 17.12.2012 is, in our view, without any authority of law. The respondents claim that the said circular has been issued in exercise of the powers under Section 46 of the said Act. That power is given to the Commissioner. We have not been shown any provision whereby the Entertainment Tax Officer derives its power from the Commissioner. In any event, the Commissioner can only issue directions which are not inconsistent with the provisions of the said Act or the Rules. The said directions are clearly inconsistent with the provisions of Section 7(1) read with Rule 26 of the said Rules. Thus, even if we were to assume that the circular was issued with the authority of the

Commissioner, it would still be invalid as it would be inconsistent with the provisions of the said Act and the said Rules. Furthermore, if the circular dated 17.12.2012 were to be given effect, then it would introduce ambiguity and vagueness in a charging provision and thereby put the levy itself in peril. Such an interpretation, therefore, has to be avoided in order to save the enactment.

37. The learned counsel for the respondents had placed reliance on *IndusInd Media (supra)* which, in turn, placed reliance on *Purvi Communication (supra)*. We note that *IndusInd Media (supra)* was decided in the context of the Gujarat Entertainment Tax Act, 1977 and *Purvi Communication (supra)* was decided in the context of the West Bengal Entertainment-cum-Amusement Tax Act, 1982. In fact, the decision in *IndusInd Media (supra)* is based on the decision in *Purvi Communication (supra)*. The case of *Purvi Communication (supra)* is clearly distinguishable inasmuch the provisions therein were entirely different to the provisions under the said Act pertaining to Delhi. In *Purvi Communication (supra)*, Section 4-A(4-a)(ii) of the West Bengal enactment was under consideration. The said provision was as under:-

“(4-a) Where any owner, or any person for the time being in possession, of any electrical, electronic or mechanical device, is a cable operator and receives through such device the signal of any performance, film or any other programme telecast, and thereafter such owner or person, against payment received or receivable,-

- (i) exhibits such performance, film or programme through cable television network directly to customers, or
- (ii) transmits such signal to a sub-cable operator, who in turn provides cable service for exhibition of such performance, film or programme to the customers,

such owner or person shall be liable to pay tax from the month in which he exhibits such performance, film or programme or transmits such signal to a sub-cable operator on the basis of his monthly gross receipt at such rate, not exceeding twenty five *per centum* of the monthly gross receipt, as may be specified by the State Government by notification published in the Official Gazette.”

38. It will be seen that the expression ‘cable operator’ has been referred to in the said provision. ‘Cable operator’ was, under the West Bengal act, defined to mean any person who provides cable service ‘directly to customers 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’. It is, therefore, clear that the ‘cable operator’ referred to in the West Bengal Act, which is sought to be equated to an ‘MSO’ under the said Act, was entirely different.

Under the West Bengal Act, a specific liability was created in respect of the ‘cable operator’ which is not the case with an MSO under the said Act. Therefore, in our view, the decisions both in *Purvi Communication* (*supra*) and *IndusInd Media* (*supra*) which have reference to the West Bengal act and the Gujarat act, respectively, would be of no help to the respondents where the concepts and definitions under the said Act applicable to Delhi are entirely different.

39. For all these reasons, the impugned circular dated 17.12.2012 is quashed. The notice dated 08.01.2014 in the case of WP(C) 427/2014 and similar notices in the case of the other petitions, which are founded on the circular dated 17.12.2012, are also quashed. Insofar as the assessments are concerned, the petitioners would have to take their own remedies against the assessment orders and/or appellate orders in view of the decision arrived at in this case.

40. To be clear, MSOs to the extent that they directly provide cable service to the subscribers without the intervention of any LCO, would be regarded as the ‘proprietors’ under Section 7(1) and would be liable to collect and pay the entertainment tax to the Government. However, where

the MSOs provide the service through the LCOs, the individual LCOs having their own subscriber networks, would be regarded as the proprietors in respect of their individual networks and would be liable to collect the entertainment tax and pay the same to the Government.

The writ petitions are allowed to the aforesaid extent.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MARCH 09, 2017
SR