**HIGH COURT OF BOMBAY**

**Bench: Justices K.R. Shriram and Jitendra Jain**

**Date of Decision: 20th June 2024**

ORDINARY ORIGINAL CIVIL JURISDICTION

Case No. : WRIT PETITION NO. 2346 OF 2007

**APPELLANT(S): Film & Television Producers Guild of India (FPGI)**

**VERSUS**

**RESPONDENT(S): State of Maharashtra and others**

**Legislation:**

Sections 2(a), 2(b), 2(a-3), 2(g-3), 3, 5, 9A of the Maharashtra Entertainments Duty Act

Article 226 of the Constitution of India

Companies Act, 1956

**Subject:** Petition challenging the imposition of entertainment duty and penalty on the APSARA award function organized by the petitioner, focusing on the definition of “entertainment” and “payment for admission” under the Maharashtra Entertainments Duty Act.

**Headnotes:**

Entertainment Duty – Definition and Scope – Petitioner organized APSARA award function, argued it did not fall under “entertainment” as per Maharashtra Entertainments Duty Act – Court held the function included performances and thus fell within definition of “entertainment” [Paras 10-12].

Sponsorship as Payment for Admission – Reliance Communications sponsored the event, petitioner claimed it did not constitute “payment for admission” – Court held sponsorship amounted to payment for admission under Section 2(b)(viii), making duty applicable [Paras 15-16].

Legislative Intent – Definition of “Award Function” added in 2010 for concessional duty rate – Court concluded earlier functions also fell within “entertainment” definition, purpose of amendment was rate reduction not exclusion [Paras 12-14].

Penalty and Fine – Original and appellate orders imposing penalty lacked proper reference to specific statutory provisions – Court held imposition of penalty was unjustified and deleted it [Paras 21-22].

Decision – Petition partly allowed – Entertainment duty upheld, penalty deleted – Impugned order modified accordingly [Paras 23-24].

**Referred Cases**:

- Geeta Enterprise v. State of U.P. (Supreme Court)
- Gondwana Club Nagpur v. State of Maharashtra (Bombay High Court)
- CIT v. B.C. Shrinivasa Setty (Supreme Court)
- Tata Sky Ltd v. State of M.P. (Supreme Court)
- State of Bihar v. S.K. Roy (Supreme Court)

Representing Advocates:
Mr. Nirman Sharma, Mr. Ansh Karnawat, Ms. Viveka Truman i/by ANM Global for petitioner.
Ms. Jyoti Chavan, Additional G.P. for respondents.

**JUDGMENT (PER JITENDRA JAIN, J) :**

1. By this petition under Article 226 of the Constitution of India, petitioner seeks to challenge an order dated 28th September 2007 by which the Appellate Authority has confirmed the demand of entertainment duty of Rs. 71,87,500/- and reduced the penalty from Rs.1,43,75,000/- to Rs. 71,87,500/-.

:Brief facts:

2Petitioner is a company incorporated under Section 25 of the Companies Act, 1956 and engaged in the activities of promoting Indian Cinema and Television in India and Worldwide.

3On 21st January 2006, petitioner organised 'APSARA' award function at Jamshedji Bhabha Auditorium for felicitating distinctive achievements in cinema and television. The said function was organised in association with Speed Bright, Sony TV, NDTV, Hungama Events, and Reliance Communications etc. Reliance Communications, vide letter dated 29th December 2005, informed Respondents that they had entered into an agreement with petitioner for sponsorship containing details of offer and monetary value in relation to the said award function. The total monetary value worked out to Rs. 4.90 crores which was attributable to Free Commercial Time on NDTV channels, Press Advertisement, Internet, Venue Branding, and Collateral Branding etc. Reliance also informed that the sponsorship amount was Rs.2,87,50,000/-. However no tickets were sold but only guild members were invited to attend the function. On the day of award function, flying squad of respondents visited the function and observed that there were banners of Reliance and other companies which advertised brand name of 'Reliance' and other corporates and their products. The squad also, inter alia, reported dance being performed to Hindi cinema tunes. The report of the flying squad is not disputed by petitioner.

4On 7th March 2006, Respondent No.2, Additional Collector, passed an order directing petitioner to pay entertainment duty of Rs.71,87,500/- and fine of Rs.1,43,75,000/- being two times the duty. The said order was challenged in appeal and the Appellate Authority on 17th April 2007 passed an order confirming the entertainment duty but reduced the penalty from Rs.1,43,75,000/- to Rs.71,87,500/-. Against the said appellate order, Writ Petition No.1347 of 2007 was filed before this Court in which an order came to be passed remanding the order passed in appeal back to the Appellate Authority for passing speaking order.

5Pursuant to the aforesaid order of this Court, the present impugned order came to be passed on 28th September 2007 confirming the entertainment duty of Rs.71,87,500/- and reducing penalty to

Rs.71,87,500/- from Rs.1,43,75,000/-. It is in this backdrop, petitioner is before us. Petition was admitted and Rule issued vide order dated 7th December 2007. The Petitioner was directed to give bank guarantee of Rs.15

Lacs to be kept alive pending the final disposal. The Petitioner has complied with the same.

:Submissions of Petitioner:

6Petitioner submits that the 'APSARA' award function does not fall within the definition of "entertainment" as defined by Section 2(a) of the Maharashtra Entertainments Duty Act ('the said Act') [earlier known as Bombay Entertainment Duty Act]. Petitioner further submits that the said Act inserted the definition of "Award Function" by insertion of Section 2(a-3) by Mah. 2 of 2010 and therefore, the said function which was held prior to 2010, was never intended to be covered by the definition of "entertainment." Petitioner further submits that the said Act does not provide for pro rata assessment and charging on intermittent performances between 2 awards and therefore, machinery provision fails and consequently there cannot be a charge in such a scenario. Petitioner further submits that the amount received from Reliance Communication cannot fall within the definition of "payment for admission" as contemplated in Section 2(b) the said Act. Petitioner further submits that activities being temporary, same is outside the purview of the definition of "entertainment". Petitioner in alternative submits that there cannot be a penalty since the issue involved is a contentious issue revolving around interpretation of various provisions of the said Act. Petitioner relied on various case laws in support of its submissions. Petitioner in its written submissions has referred to provisions of Section 6 to contend that being a company incorporated under Section 25, they are out of purview of the Act. However, no such argument was canvassed at the time of the hearing before us.

:Submissions of Respondents:

8Per contra, respondents submit that the award function falls within the phrase "performance" which is included in the definition of "entertainment." The definition of "Award Function" inserted by 2010 was only for the purpose of reduction in rate of duty and would not amount to saying that such award function would not fall within the definition of "entertainment" prior to 2010. Respondents further supported the order of the Adjudicating Authority and the Appellate Authority and prayed for dismissal of the writ petition.

:Analysis & Conclusions: The provisions of the said Act which require consideration of this Court are as under :

“2 Definitions

In this Act, unless there is anything repugnant in the subject or context -

(a-1) …….. (a-2)……..
(a-3)“Award Function” means the award distribution programme organised by the representative bodies of the Film or Television Industry or Media organisations with intermittent performance of songs or dances or other performances or such other award function as the State Government may, by notification in the Official Gazette, specify in this behalf;

……..

“2(a). “entertainment” includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment, or, in the case of television exhibition with the aid of any type of antenna with a cable network attached to it or cable television, or Direct to Home (DTH) Broadcasting Service for which persons are required to make payment by way of contribution or subscription or installation and connection charges or any other charges collected in any manner whatsoever but does not include magic show and temporary amusement including games and rides.

2 (b) “Payment for admission” in relation to the levy of entertainment duty includes,

(i) to (vii) …….

(viii) any payment made by way of sponsorship amount for a programme which is organised only for invitees, without selling tickets :

……

2(f) “entertainment duty”, or “duty” in respect of any entertainment means the entertainment duty levied under Section 3 ;

2(g-3) “sponsorship amount” means an amount paid or value of goods supplied or services rendered or benefits provided to the organisor of an entertainment programme by the sponsorer in lieu of advertisement of sponsorer’s product or his brand name, etc.

“3. Duty on payments for admission to entertainment (1) There shall be levied and paid to the State Government [on all payments for admission] to any entertainment [“except in the case of video games, exhibition by means of any type of antenna or cable television, [or Internet Protocol Television] or exhibition by means of Direct-to-Home (DTH) Broadcasting service, bowling alley, Go-carting, dance bar, [permit room or beer bar with live orchestra, pub] discotheque, amusement park, water sports activity, pool game]; [or tourist bus with video facility] a duty (hereinafter referred to as “entertainments duty” at the following rates, namely:-

……

TABLE

| Serial No. | Area | Rate of entertainment duty on payment for admission fixed by the proprietor |
|---|---|---|
| (1) | (2) | (3) |
| 1. | Brihan Mumbai Municipal Corporation. | 25 per cent |
| 2. | ..... | |
| 3. | ..... | |
| 4. | .....… | |

Provided that, .....

Provided that, the entertainment duty in respect of an amusement park shall be 15 per cent. of the payment made for admission to the amusement park, including payment made for admission for games and rides, whether charges separately or not: Provided also that, .....

Provided also that, the entertainment duty in respect of the Award Function organised only for invitees, without selling tickets, shall be 12.5 per cent. of the total sponsorship amount received for such function."

"5. 1) If any person is admitted to any place of entertainment and the provisions of section 4 are not complied with, the proprietor of the entertainment to which such person is admitted shall, in addition to the entertainment duty which should have been paid, also be liable to pay to the Collector for each such noncompliance, a penalty equal to rupees fifty thousand or ten times of such entertainment duty, whichever is higher :

Provided that, no order requiring the proprietor to pay such penalty shall be passed by the Collector, unless such proprietor is given an opportunity of being heard."

"9A [(1)] Any officer authorised by the State Government in this behalf may recover from any person who has committed or is reasonably suspected of having committed an offence against this Act or the rules made thereunder, by way of composition of such offence -

(a) where the offence consists of the failure to pay, or theevasion of, any duty payable under this Act, in addition to the duty so payable, a sum of [two hundred rupees] or double the amount of the duty payable, whichever is greater; and

(b) in other cases, a sum of [not less than five hundred rupeesbut not more than two thousand rupees]"

10 The first issue which requires consideration is whether the ASPARA award function organised by petitioner falls within the definition of "entertainment" as defined by Section 2(a) of the said Act. Section 2(a) defines entertainment to include any exhibition, performance, amusement, game, or sport……., but does not include magic show and temporary amusement including games and rides.

11 The award function organised by petitioner included not only the activity of awarding artists but also included various performances like dance on Hindi cinema tunes as reported by the flying squad and admitted by petitioner in para 7 of it's submissions to the Appellate Authority wherein they have stated that out of total duration of 253 minutes, a duration of 53 minutes was towards performances. The definition of entertainment is "inclusive" definition and is widely defined to include any exhibition, performance, etc. Admittedly, therefore, it cannot be gain said that the function organised by petitioner cannot be construed as performance and consequently that it would not fall within the definition of the term "entertainment". The phrase "include" indicates that legislature did not intend to give a restrictive meaning. The definition of "entertainment" does not make a distinction between temporary and permanent performance. Certainly, the performance of dance would fall more appropriately within the phrase "performance" rather than "amusement". The definition of "entertainment" expressly excludes magic show and temporary amusement. The expression "temporary amusement" is defined by Explanation (iii) to Section 2(a) which refers to rides and games. The activities of the petitioner certainly cannot fall within the meaning of the phrase "temporary amusement" nor there is any type of exclusion for "performance".

12 The contention of petitioner that the legislature inserted definition of "award function" in 2010 and, therefore, same was never intended to fall within the definition of entertainment prior to 2010 cannot be accepted for more than one reason. In 2010, definition of "entertainment" was not amended to include "award function". Had that been the case, petitioner could have contended so but that is not the case. The definition of "award function" inserted in 2010 was to give concessional rate of duty to award function under fourth proviso to Section 3(1) of the Act which provides that entertainment duty in respect of the award function organised only for invitees without selling tickets with intermittent performance of songs or dance shall be 12.5% of the total sponsorship amount received for such

function. If the contention of petitioner that award function was never included prior to 2010 is to be accepted then there was no need for the legislature to have introduced fourth proviso to reduce the rate of entertainment duty on award function. On the insertion of the definition of "award function" from 2010 what is made clear is that prior to 2010, the award function was charged duty @ 25% and after 2010, the rate of duty is reduced to 12.5%. It is important to note that definition of "entertainment" has been amended from time to time to include Direct-to-Home (DTH), Broadcasting Service etc. If the legislature wanted to bring "Award function" within the ambit of the Act from 2010 then they would have amended the definition of "entertainment" itself which is not what has been done by the legislature. Therefore, the contention of petitioner that subsequent insertion is to be construed to mean that award function would not fall within the definition of "entertainment" prior to 2010 is misconceived, and on the contrary the insertion makes it clear "that the award function" was always intended to fall within the definition of the term "entertainment" as defined in Section 2(a) of the said Act. The definition of "entertainment" includes performance since inception and definition of "award function" also includes performance. Therefore the corollary is that "award function" with intermittent songs or dance always fell within the definition of "entertainment".

13 The statement of objects and reasons of 2010 amendment, while introducing the bill on 3rd June 2009, which reads as under also supports the view we have taken above :

> In the State of Maharashtra, specially in the City of Mumbai, award distribution functions or programmes are arranged by the representative bodies of the Film or Television Industry or Media organisations with intermittent performance of songs or dances or other performances. These functions or programmes are generally organised for invitees without selling tickets and in respect of such functions or programmes the entertainment duty is levied on the sponsorship amount received in that behalf. It is observed that since the entertainment duty in respect of such functions or programmes is high, they are not organised on the large scale in the State. As it is difficult to cross check the details submitted by the organisers, meagre revenue is received to the Government. The Government, therefore, considers it expedient to levy the entertainment duty on such functions or programmes at the concessional rate, so that the organisers may come

forward to arrange such functions or programmes in other parts of the State also, and a permanent source of revenue may be available to the State Government.

Taking into account, the cultural heritage and the tourism policy of the State, various cultural and tourism festivals are arranged in the State by the Government. The Government has, therefore, with a view to disseminate the cultural heritage of the State and to boost the development of the State by expanding tourism, decided to grant concession in entertainment duty in respect of the Government Sponsored Cultural Festival or programme organised, sponsored, or cosponsored by the State Government or the Government Undertaking or autonomous body or the educational institutions.

14 Section 3 of the said Act provides for different rates of duty qua various types of entertainment and each of these activities are defined in Section 2 for determining the appropriate rate of duty. For example, 2nd proviso to Section 3(1) provides for 15% rate of duty in respect of amusement park and amusement park is defined by Section 2(a-1). Same is the case with multi-system operator, local cable, dance-bar, etc. and the relevant Sections are Section 3(4)(b) r/w 2(a-ab), Section 3(4)(d) r/w 2(aa3) and Section 3(11) r/w 2(e-e) respectively. This scheme clearly demonstrates that insertion of Section 2(a-3) to define “award function” was only to provide concessional rate of duty under Section 3 of the Act.

15 The next issue which requires consideration is “payment of admission” as defined by Section 2(b) of the said Act. Section 2(b)(viii) defines payment of admission to include any payment made by way of sponsorship amount for a program which is organised only for invitees without selling tickets. The said clause was added in 2003. Section 2(g-3) defines “sponsorship amount” to mean an amount paid or value of goods supplied or services rendered or benefits provided to the organiser of an entertainment programme by the sponsor in lieu of advertisement of sponsor’s product or his brand name, etc. In the case before us, it is observed in the adjudicating order and the Appellate Order and admitted by Petitioner, that Reliance and other companies had paid substantial amount to petitioner for organising the award function. There is no dispute that there was no sale of tickets but the program was organised only for invitees.

The flying squad as observed in the original adjudicating order and Appellate order, has given a report that they found big advertisement banners which stated Reliance Company presents “APSARA Awards”.
Furthermore, there were advertisement of other companies like Speed Bright, Sony TV, NDTV, Provogue, etc. The expenses of the function were met by the amount contributed by these companies whose products and brands were advertised at the time of the function. Petitioner, in para 6 of its submissions to the Appellate Authority, has admitted that amount received from Reliance was by way of sponsorship to meet event expenditure. Reliance has also confirmed the said fact to Respondents vide letter dated 29th December 2005. Therefore, on the basis of admission and on a conjoint reading of Section 2(g-3) of the said Act read with Section 2(b), the sponsorship amount received from Reliance Communication and others is to be treated as “payment of admission” for the purpose of the said Act.

16 Section 3 of the said Act levies entertainment duty to be paid by the proprietor to the State Government on payment for admission at the rates mentioned therein. There is no dispute that petitioner is a proprietor as defined by Section 2(c) of the Act, who had organised the award function. We have already observed above that the award function falls within the meaning of the term “entertainment” as defined by Section 2(a) and further the amount contributed by Reliance Communication and others would fall within definition of sponsorship amount as defined by Section 2(g-3) which would consequently fall within the definition of “payment of admission” as defined as per Section 2(b) of the said Act. Therefore, all the ingredients specified in Section 3 for levy of entertainment duty namely the activity, rate, amount to which rate is to be applied and persons liable are satisfied and, therefore, petitioner is liable for payment of entertainment duty on the award function as adjudicated and confirmed by the Appellate Authority.

17 The contention of petitioner that performance was for only 53 minutes out of 253 minutes and in the absence of any machinery provision to levy duty only on 53 minutes is to be rejected. The amount of duty is to be calculated by applying rates specified in Section 3 on payment for admission. In this case, rate applicable to Petitioner is 25 per cent being an event prior to 2010 and held within limits of Brihan Mumbai Municipal Corporation. The amount of “payment for admission” as discussed earlier is the sponsorship amount received from Reliance & Others. Therefore, the rate and sum to which such rate is to be applied is clearly satisfied. The activity of

performance is charged and the duty is to be calculated by applying aforesaid rate to sponsorship amount. Petitioner cannot make machinery provision unworkable by contending that only 53 minutes is to be charged out of 253 minutes. Our view is supported by the decision of the Supreme Court in the case of Geeta Enterprise v. State of U.P. [12] wherein it is held that duration of the show is wholly irrelevant in judging the actual meaning of the word "entertainment".

18 Petitioner has relied upon the decision of the Supreme Court in the case of Geeta Entertainment & Ors. (supra), and the decision of this Court in the case of Gondwana Club Nagpur Vs. State of Maharashtra[2], wherein it is held that unless the admission is to general public and with payment, no duty can be levied. The said decisions are not applicable to the facts of petitioner's case, since we have already observed that sponsorship amount would amount to "payment of admission" and, even in case where tickets are not sold.

19 The decision in the case of CIT Vs. B.C. Shrinivasa Setty[3], and Tata Sky Ltd vs. State of M.P. [4] relied upon by Petitioner are also not applicable, since Section 3 expressly provides the rate of entertainment duty on payment for admission and payment for admission is defined by Section 2(b) which we have already observed would include the sponsorship amount. Therefore, the principal that charging Section fails in the absence of machinery provisions would also not be applicable since in the instant case, the amount on which rate of duty is to be calculated is provided.

20 The next decision of the Supreme Court relied upon by petitioner, State of Bihar Vs. S.K. Roy[5], is on a general interpretation that in matters of construction subsequent legislation may be looked at in order to see what is the proper interpretation to be put upon the earlier act where the earlier act is ambiguous. We do not dispute this proposition, but same is not applicable to the facts of petitioner before us since we have already observed that the insertion of definition of award function by 2010 Act is only for the purpose of granting concession in the rate of entertainment duty and the same would

[1] (1983) 4 SCC 202
[2] SCC OnLine Bom 94
[3] 1981 (2) SCC 460
[4] (2013) 4 SCC 656
[5] AIR 1966 SC 1995

not mean that it was not included in the definition of the term “entertainment”. Therefore, this decision cannot be of any assistance to petitioner’s case.

21 Now coming to the issue of penalty, the original order dated 7 March 2006 does not specify as to under which Section of the Act fine of Rs.1,43,75,000/- is imposed. In the absence of same in the original order the imposition is bad-in-law. The original authority ought to have referred to the Section of the Act which empowers levy of fine and how the ingredients of that Section are satisfied in a particular case. In the absence of such a discussion imposition of fine is without application of mind. The Appellate authority in his order while reducing the fine has referred to Section 9A(a) and observed that said provision levies penalty. In our view Section 9A is a provision for compounding of offences and not for levy of fine or penalty and therefore the Appellate Authority has misdirected in referring to Section 9A and proceeded on a wrong footing that it is penalty. Section 5 of the Act provides for levy of penalty for each of the noncompliance of Section 4. This provision, however, is not invoked in the original or appellate order. Therefore on a conspectus reading of provisions, we are of the view that certainly fine/penalty order cannot be sustained.

22 Even otherwise, insofar as levy of penalty is concerned, it is important to note that the Adjudicating Authority had levied fine of 200% of the duty demanded, which was reduced by the Appellate Authority to 100% on the basis that it is penalty and petitioner is promoting Indian film and is a not for profit organisation. It is important to note that the issue raised by petitioner is based on the interpretation of various definitions of the said Act which we have analysed above and, therefore, one cannot say that petitioner had any intention to evade the duty and was not under the bonafide belief that its award function is not covered by the said Act. The issue is purely on questions of law and it being a debatable issue certainly one cannot attribute any intention on the part of petitioner to evade duty. Therefore, in our view, this is not a fit case where the Authorities ought to have imposed the fine / penalty.

23 In view of above, we pass the following order:-

(a) The entertainment duty of Rs.71,87,500/- imposed andconfirmed by the Appellate Authority vide order dated 28th September 2007 is upheld.

(b) Fine / Penalty of Rs.71,87,500/- confirmed by the AppellateAuthority is deleted.

(c) Impugned order dated 28th September 2007 is modified accordingly.

24 Rule is made absolute in terms of the above order. Petition disposed.