ORDERED TO BE REPORTED

BEFORE THE KARNATAKA APPELLATE TRIBUNAL AT BANGALORE

This the 10th Day of March, 2016

[C.H. – 3]

PRESENT

1. SRI UMESH MOOLIMANI: **District Judge Member.**

2. SRI P. PUTTARAJU: **Commercial Taxes Member.**

STA Nos. 1916 to 1954/2014

BETWEEN:

Dish TV India Ltd.,
(Formerly known as M/s. ASC Enterprises Ltd.)
No. 39, United Mansion,
M.G.Road,
Bangalore – 560 001. ..... **APPELLANT**

(By Sri. Vivek Sarin - Advocate)

AND:

State of Karnataka ..... **RESPONDENT**

(By Smt. K.A.Uma- State Representative)

.....

:COMMON JUDGMENT:

The following **Judgment** of the Bench is delivered by
:Sri. P.PUTTARAJU, Commercial Taxes Member:

These thirty nine (39) appeals are filed u/s. 8-E(1) of the Karnataka Entertainments Tax Act, 1958

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(henceforth called as the **'Act'**) contesting the common appellate orders issued u/s 8-B(5) of the Act in case Nos. KET.AP.20 to 58/2009-10 dated 08th July 2014 for the tax periods of April 2006 to March 2007; April 2007 to March 2008; April 2008 to March 2009; & April 2009 to June 2009 by the Joint Commissioner of Commercial Taxes (Appeals)-3, Bangalore (hereinafter referred to as First Appellate Authority or for short as **'FAA'**). The appellate authority has dismissed the appeals and thereby upholding the reassessment orders dated 30.01.2010 issued u/s. 6-B(1) of the Act for the periods from April 2006 to March 2008 & u/s. 6-A(3) of the Act for the periods from April 2008 to June 2009 by the Deputy Commissioner of Commercial Taxes (Enforcement)-1, South Zone, Bangalore (hereinafter referred to as Assessing Authority or for short as **'AA'**). The AA has issued reassessment orders and assessment orders separately for each month. Being aggrieved by the common impugned appellate order, these appeals are filed before this tribunal.

2. Brief facts are alluded thus:-

2.1 It is stated that the appellant has been subjected to reassessment and assessment for the periods of April 2006 to June 2009 as mentioned at

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paragraph 1 above and the said orders have been upheld by the FAA. The same is enclosed as **Annexure-A**.

2.2 The appellant formerly known as M/s. ASC Enterprises limited, now known as M/s. Dish TV India Limited is a **'Direct To Home'** (for short as **DTH**) Service provider and has been granted DTH license by the Ministry of Information and Broad Casting, Government of India u/s. 4 of Indian Telegraph Act, 1885 vide license agreement dated 16th September 2003 for providing DTH Services and the commencement of DTH Services is from October 2003. The name of the company (M/s. ASC Enterprises Limited) has been subsequently changed to M/s. Dish TV India Limited w.e.f. 07.03.2007 and the DTH Services are being provided under the brand name 'Dish TV'.

2.3 The DTH is a distribution platform for multi channel TV programme on KU Band (frequency of more than 4800 Mega Hertz) by using a satellite system that transmits the programme/provide TV signals directly to subscriber's premises. A Subscriber can have access to all these multiple channels directly at home using a small antenna

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and Set Top Box (STB) a digital decoding device, which can be attached to the viewer's TV set and is connected to small dish. The signals of various TV channels are received at the teleport of the appellant which is located in Noida. The signals are thereafter uplinked to satellite, from where these are transmitted to subscribers though out the country. The DTH services are categorized as Broadcasting Services under the Finance Act, 1994 and the appellant is liable to pay applicable service tax on the value of such services realized from the subscriber. The appellant is regularly paying Service Tax and filing its return. True copy of certificate of registration under Section 69 of the Finance Act, 1994 (32 of 1994) has been filed along with the connected appeals. The said copy of certificate of registration is enclosed as **Annexure-B**.

2.4 Section 4G of the KET Act, 1958 came into effect from 01.04.2006 by Act No. 5 of 2006 by which the liability to pay on DTH service has been created.

2.5 It is mentioned that the business premises of the appellant was inspected by the CTO (MS-1) and

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the statement of Sri. G.Ramkumar Regional Manager has been recorded which is enclosed an **Annexure-C.**

2.6 It is mentioned that the appellant has been assessed under the Act by the concerned Entertainment Tax Officer (ETO) u/s. 6-A(2) of the Act for the periods from April 2006 to March 2008 vide order dated 19.10.2007. The true copy of the notice, the order for the month of April 2006 and the demand notice issued to that effect are enclosed as **Annexures-D to F** respectively. It is mentioned that such reassessment has been passed after detailed scrutiny and verification of the records.

2.7 It is mentioned that inspection has been done on 29th June 2009 as mentioned by the AA that entertainment tax has not been paid on service tax component. No report of inspection is said to have been drawn and so also the showcause notice to that effect. However, the appellant in compliance with the call notice, submitted by letter dated 27.08.2009, the details of subscription charges received during the impugned periods of April 2006 to June 2009 and also details of subscription charges received during the said periods. The

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concerned ETO has issued assessment orders dated 19.10.2007 and 10.07.2008 for the periods of April 2006 to March 2008. Thereafter, the appellant has been subjected to reassessment u/s. 6-B(1) for the periods of April 2006 to March 2008 and assessment u/s. 6-A(3) for the periods of April 2008 to June 2009 which are all dated 30th January 2010 and the assessing authority has issued 39 separate orders for each month. The notices issued, objections filed against the notice & the reassessment/assessment orders & the demand notices are enclosed as **Annexures-G, H, I & J.**

2.8 The appellant has carried the demand created by virtue of above mentioned reassessment/ assessment orders before the FAA who by his impugned appellate order has dismissed the appeals and thereby upholding the orders of the AA. It is mentioned that the appellate authority has not appreciated the fact and the law and thereby upholding the levy of tax liability on service tax component included in the total amount received by the DTH provider towards providing television signals under the DTH Scheme. Aggrieved by the said impugned appellate order, the present appeals are filed before this tribunal.

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3. Grounds of appeal:-

3.1 The impugned orders passed by the AA and FAA dated 08.07.2014 and 30.02.2010 is contrary to law and probabilities of the case, hence, the same are liable to be set aside.

3.2 The respondent authorities failed to appreciate that the expression used in Section 4G is the "Amount received..... by a DTH service provider towards providing television signals under Direct to Home Scheme" is clear enough that the tax shall be levied on the *'amount'* received towards television signals and not the amount received towards *'Service Tax'* and *'Entertainment Tax'*. The AA illegally equated the expression "Amount" with "Gross receipt" in order to artificially inflate the value for the levy of tax, which is illegal and without jurisdiction.

3.3 The respondent grossly erred in giving finding returned by the AA based on clarification vide letter dated 18.08.2007 issued by the Commissioner of Commercial Taxes are illegal, arbitrary and perverse. The said clarification concluded that KET Act does not have any specific provision for allowing deductions for Service Tax and Entertainment tax

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on amount received towards Service Tax and also on Entertainment Tax. It is submitted that the said clarification is illegal and travels beyond the limits of Section 4G of the KET Act. It expands the scope of Section 4G of the KET Act and artificially inflates and expands the measure of taxation. Such clarification does not fall within the category of 'Law' under Article 265 of the Constitution, hence illegal and unconstitutional. *The Hon'ble High Court of Patna (Ranchi Bench) in the case of Sky Vision vs. State of Bihar, 1995 (2) BLJR 845* held that the circular issued by the department cannot be the basis of the levy of tax and it does not fall within the meaning of word 'Law' used in Article 265 of Constitution of India. The said decision was challenged before the Hon'ble Supreme Court in SLP (C) CC No. 28596/1994. The Hon'ble Supreme Court while dismissing the SLP has passed the following order:

"Delay Condone. In view of the observations in judgment under appeal, it is always open to State to amend the law who impose the impugned levy, if they are so advices, we see no ground to interfere. The special leave petition is dismissed."

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3.4 The respondents perversely and illegally treated the incidence of Service Tax and Entertainment Tax as two Taxable Events amenable to Entertainment Tax under the Act causing the imposition of tax on service tax which is ***tax on tax*** and also imposition of ***Tax on Entertainment Tax itself*** bad in law.

3.5 The respondents illegally concluded that in case of Hyderabad Race Club vs. Betting Tax Officer, the tax was collected by the appellant as an agent of the Government and under the KET Act such tax is not collected as agent for the State Govt. from the subscribers. It is submitted that the DTH services of the appellant is a Pre paid service and the amount inclusive of taxes is charged to the subscriber. In such business model or in the post-paid services the tax amount is collated only as an agent for the Govt. and the same cannot be retained by the appellant. The respondents illegally concluded that Hyderabad Race Club case is not applicable to the present controversy because an assessee is not an agent for Government and also the language used in both enactments are different.

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