

## ARTICLE

## Taxing Two Aspects, One Activity: Supreme Court validates State Entertainment Tax on DTH

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In a landmark judgment that revisits the nuanced interplay between Central and State taxation powers under the Constitution of India, the Hon'ble Supreme Court in *State of Kerala v. Asianet Satellite Communications Ltd.*, reported in [2025-VIL-39-SC](#), upheld the legislative competence of State Governments to levy entertainment tax on Direct-to-Home (DTH) services or broadcasting services, even where service tax has been imposed by the Centre. The ruling reinforces the '**Indianized version of aspect theory**', a doctrine that has been instrumental in solving taxation disputes involving overlapping legislative fields between the Centre and the States.

### A. The Controversy

At the heart of the dispute was whether cable and DTH service providers, already subject to service tax under the Finance Act, 1994, could also be made liable to entertainment tax under respective State legislations enacted pursuant to Entry 62, List II (popularly knowns as the 'State List') of the Seventh Schedule to the Constitution of India. The assessee argued against such dual taxation, contending that it violates principles of legislative competence and constitutional separation of powers.

### B. Taxpayers' Arguments

1. **Public vs. Private Entertainment:** The assessee distinguished between entertainment in public spaces (cinemas, theatres) which States may tax, and private entertainment (via DTH) which, being part of broadcasting, falls solely under Union jurisdiction under entry no 31 and 97 of List-1 (popularly known as the Union List).
2. **Limitation of Aspect Theory:** It was argued that the aspect theory is inapplicable where the Centre has unambiguously expressed its intent to tax an activity (like broadcasting services under DTH) through service tax laws since 2001.
3. **Lack of Valuation Machinery:** Except in a few States (Delhi, Gujarat, Assam), the State laws did not contain machinery to distinguish service value from entertainment value, thereby making the imposition arbitrary and excessive.

### C. Government's Counter

1. **True Nature of Activity:** The State's contention that regardless of nomenclature, the end use of DTH services is for entertainment, which falls within State legislative competence.
2. **Broad Interpretation of Entry 62 of State List:** The term "entertainments" must be construed widely, encompassing all modes of receiving amusement, whether in public or private spaces.
3. **Doctrine of Pith and Substance:** The States' power to impose entertainment tax stems from Entry 62 of State List, and the existence of a parallel service tax regime does not derogate from this authority.
4. **Dual Aspect:** DTH services have two aspects - *service delivery* (taxable by the Centre) and *entertainment consumption* (taxable by the State), both of which can be taxed independently.
5. **Aspect Theory Supports Taxation:** Far from conflicting with pith and substance, the aspect theory complements it, especially in taxation where a single activity may attract multiple levies under different heads.

### D. Constitutional & Legal Framework

**Relevant Constitutional Provisions:** Articles 245, 246, 248, 265; Entries 31, 62, 97 of List I & II

**Central Legislation:** Finance Act, 1994 (Service Tax on Broadcasting Services)

**State Acts Involved:** Entertainment Tax legislations of Kerala, Assam, Delhi, Gujarat, Punjab, Rajasthan, Tamil Nadu, and Uttar Pradesh.

## E. Key Judicial Findings

### 1. Interpretation of Legislative Entries

- Entries in the Seventh Schedule must be interpreted broadly and harmoniously.
- In case of conflict, pith and substance doctrine prevails: the core object of the legislation determines its validity, not incidental overlaps.
- Entry 97 of Union List (residuary entry) cannot override specific entries like Entry 62 (entertainments) in List II (State List).

### 2. Scope of 'Entertainments'

- The term "entertainments" in Entry 62 is not limited to public amusements; it extends to all forms of amusement, including private, personal, or digital formats.
- Technological progress cannot restrict the scope of this term; entertainment is entertainment, regardless of delivery medium.

### 3. Legislative Competence of States

- Entry 62 of State List is a specific taxation entry, unlike Entry 31 of Union List (broadcasting), which is regulatory in nature.
- It is settled law in Indian constitutional jurisprudence that taxation powers must be construed independently and not implied from general regulatory entries.

- Service tax on broadcasting and entertainment tax on DTH services are distinct levies justified under separate entries and objectives.

#### **4. Reaffirmation of Aspect Theory**

- Originating in Canadian law, aspect theory is valid in Indian taxation jurisprudence, not to validate legislative competence, but to justify multiple levies on different aspects of the same activity.
- While the doctrine of pith and substance determines legislative power, the aspect theory protects laws from invalidation where there is overlap in practical operation.
- The application of the 'aspect theory' in Indian jurisprudence is a domestically evolved principle, tailored specifically to the taxation context and it is not used to determine legislative competence per se,

#### **5. Application to the Present Case**

- The entertainment component falls squarely within Entry 62 of State List making State-imposed entertainment tax valid.
- The broadcasting/service aspect is rightly taxed by the Centre under Entry 97 of Union List.
- There is no legal overlap, though the same activity may give rise to multiple taxable aspects

#### **F. Conclusion**

The Supreme Court's judgment not only clarifies the contours of legislative competence in the realm of taxation but also breathes renewed life into the Indianized version of the aspect theory. By upholding the simultaneous validity of entertainment tax by States and service tax by the Centre, the Court has reaffirmed that overlapping factual situations can be addressed through constitutionally distinct legislative powers. While GST has largely subsumed entertainment-related State levies post-2017, the residual power of local bodies

under Entry 62 of State List - covering taxes by Panchayats and Municipalities - remains untouched, leaving scope for the aspect theory's continued relevance. Looking ahead, this case may well set the stage for broader judicial reliance on the aspect theory, not just as a tool to uphold tax laws, but as a doctrinal bridge to reconcile federal tensions in India's evolving constitutional landscape.

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