IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2018

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE

AND

HON'BLE MR.JUSTICE KRISHNA S.DIXIT

WRIT APPEAL NO.843 OF 2018 (T-ET)

BETWEEN:

M/S DREAM MERCHANTS,
EVENTS AND ENTERTAINMENT GROUPS,
1/1, BORE BANK ROAD, BENSON TOWN,
BANGALORE – 560046.
REPRESENTED BY ITS
MANAGING PARTNER,
SRI. FEROZ KHAN. ... APPELLANT

(BY SRI SHIVARAJ N. ARALI, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
   DEPARTMENT OF FINANCE,
   M.S. BUILDING,
   BANGALORE-560 001
   REP BY ITS PRL. SECRETARY

2. THE ENTERTAINMENT TAX OFFICER,
   CIRCLE-IV, YASHWANTAPURA,
   BANGALORE-560022.

...RESPONDENTS

(BY SRI VIKRAM HUIGOL, HCGP)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 30.01.2018 PASSED IN WRIT PETITION NO.48502/2017 (T-ET) AND ALLOW THE SAME AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:

JUDGMENT

Preliminary

1. This intra-court appeal is directed against the order dated 30.01.2018 in W.P.No.48502 of 2017, whereby the learned Single Judge of this Court has dismissed the writ petition filed by the petitioner/appellant and has upheld the order dated 24.07.2017 made by respondent No. 2, the Entertainment Tax Officer, Circle-IV, Bangalore under Section 6-A (3) and Section 6-A (4) of the Karnataka Entertainment Tax Act, 1958, ['the Act of 1958'], while holding that the event *'Bangalore Fashion Week'* as organised by the petitioner/appellant, fits into the definition of 'entertainment' under Section 2(e) of the Act of 1958 and there had been 'payment for admission' to the said event, rendering the petitioner/appellant liable to entertainment tax and penalty.

2. The questions for consideration in this appeal are in a narrow compass i.e., as to whether the event in question, a fashion show organised by the appellant, falls within the expression 'entertainment' and there had been 'payment for admission' so as to attract the relevant charging provisions of the Act, 1958.

The relevant statutory provisions

3. Before adverting to the facts and the relevant background aspects, appropriate it would be to take note of the relevant provisions of the Act of 1958 which are of bearing and application to the present case.

4. In the scheme of the Act of 1958, entertainment tax is levied on certain payments for admission to entertainments of different nature as specified in Sections 3, 3A, 3C, 4, 4A, 4AA, 4B, 4C, 4E, 4F and 4G thereof. The basic question involved in the present case is as to whether the event in question, as organised by the petitioner, answers to the description of entertainment per sub-clause (iii) of clause (e) of Section 2 and whether the payments received by the

petitioner had been payment for admission within the meaning of sub-clause (iv-a) of clause (i) of Section 2 of the Act of 1958. The relevant definitions read as under:

> *"**2. Definitions:***
>
> *.... ....*
>
> *(e) "**Entertainment"** with all its grammatical variations and cognate expressions means.-*
>
> *.... ....*
>
> *(iii) Any amusement or recreation or any entertainment provided by a multi system operator or exhibition or performance or pageant or a game or sport whether held indoor or outdoor to which persons are admitted on payment;*
>
> *.... ....*
>
> *(i) "**Payment for admission"** includes,-*
>
> *.... ....*
>
> *(iv-a) any payment for any purpose whatsoever connected with an entertainment including sponsorship fee and advertisement charges, which is paid to the proprietor or any person connected with conducting or organizing such entertainment, with a view to promote goodwill, brand name or any business interest directly or indirectly which enables entry of any person into the entertainment;*
>
> *.... ....*
>
> *(k) "**Proprietor"** in relation to any entertainment other than an entertainment referred to in sub-clause (iii) of clause (e) includes any person responsible for the management thereof and in relation to any entertainment referred to in sub-clause (iii) of clause (e) includes any person conducting*

organising, sponsoring or patronising any such entertainment."

The facts and background

5. Put in brief, the relevant facts and the background aspects of the matter are that the petitioner/appellant, said to be engaged in the business of event management, organised the four-day event in question, titled '*Bangalore Fashion Week*' , from 02.02.2012 to 05.02.2012 comprising lifestyle parties, after-hour parties, press conferences, fashion shows, and exhibition of designer products/apparels by live models walking on the ramp and on mannequins. The said event held at Hotel Crown Plaza, Bengaluru, was sponsored by the interested manufacturers or business houses and the invitees/participants were provided food, beverages and accommodation by the said hotel under an agreement with the appellant.

6. The respondents noticed that the appellant had received huge amount by way of sale of tickets and sponsorship fees etc. and opined that such an event organised by the appellant attracted the charging provisions

of the Act of 1958 and, accordingly, issued notices on 14.08.2013, proposing to impose entertainment tax on the amount received by the appellant by way of sale of tickets and sponsorship fees etc. The appellant submitted its reply dated 24.10.2013 resisting the proposition of the respondents, but the respondent No. 2 proceeded to pass an order dated 29.10.2013 holding the appellant liable to the entertainment tax and penalty. A writ petition preferred by the appellant in challenge to the aforesaid order dated 29.10.2013 [W.P. No. 10119 of 2014] was dismissed by a learned Single Judge only on the ground of availability of alternative remedy of appeal; but in appeal [W.A. No. 780 of 2015], a Division Bench of this Court took the view that the matter called for interference because the objections of the appellant had not been considered by the Assessing Officer. Accordingly, the writ appeal was allowed in the judgment and order dated 23.07.2015; the impugned order dated 29.10.2013 as passed by the respondent No. 2 was set aside; and the matter was remanded for consideration afresh.

7. Pursuant to the directions of this Court, the respondent No. 2 took up the matter for consideration afresh; and after rejecting the objections, ultimately, assessed the liability of appellant for payment of entertainment tax amounting to Rs.4,75,000/- with equal amount of penalty in the impugned assessment order dated 24.07.2017 (Annexure-M to the writ petition).

Findings in the order impugned

8. In this second round of litigation between the parties and in challenge to the aforesaid order dated 24.07.2017, the petitioner/appellant preferred the writ petition [W.P. No. 48502 of 2017] that has been considered and dismissed by the learned Single Judge of this Court by the impugned order dated 30.01.2018.

9. It was contended before the learned Single Judge on behalf of the petitioner/appellant that the event in question neither fell within the definition of 'entertainment' per Section 2(e)(iii) of the Act of 1958, nor the sponsorship fees or advertisement charges received by the petitioner-appellant fell within the definition of 'payment for admission' per

Section 2(i)(iv-a) of the Act of 1958. A Division Bench decision of the Madhya Pradesh High Court in the case of ***Calico Mills Ltd. v. State Of M.P. and Others: AIR 1961 M.P. 257,*** was also relied upon. It was further contended that the definition of 'entertainment' under the Act of 1958, *inter alia*, included a '*pageant*,' which connotes a procession of people, or a competition in which awards are given, but nothing of this sort was undertaken in the event in question.

10. The learned Single Judge held that the words employed in the definition of '***entertainment'*** were of wide import and were all pervasive, covering all kinds of amusement, exhibition, performance, pageant, game or sport, whether held indoor or outdoor; and collection of sponsorship fees and advertisement charges left nothing to doubt that receipts in the hands of the appellant would be liable to entertainment tax, being covered by the phrase ***'payment for admission'*** under the Act of 1958. The learned Single Judge observed and held as under:

> "*9. There is no doubt that the wide words employed in the said definition of '**Entertainment',** which words are joined by the word "**or**" are by themselves of wide amplitude or import and there is neither any*

exclusion nor any separate inclusion in the said definition, because the legislature in its own wisdom already provided the wide words include all pervasive entertainments so as to cover all kinds of amusement, entertainment, exhibition or performance or pageant or a game or sport whether held in door or outdoor and made them taxable under the provisions of ***Section 3*** *of the said Act, 1958. The person who collects payment for admission which by afore-quoted definition includes sponsorship fees and advertisement charges as well, which the petitioner collected in the present case also, leaves no manner of doubt that the receipts in the hands of the petitioner, the Event organizer, even though not being paid by the individuals entering in the said indoor place in the Hotel, would be liable to pay entertainment tax on such payment for admission charges including the sponsorship charges collected by it for the entertainment, amusement, etc. provided by it to the visitors."*

11. The learned Single Judge also examined the contentions urged on behalf of the petitioner with reference to the aforesaid decision of the Madhya Pradesh High Court, and observed that the definition of '*entertainment'* (under the Act of 1958) was wider and was not restricted to the words like '*pageant*.' The learned Single Judge also referred to the dictionary meaning of the expression '*pageant'* and to the basic rules of interpretation as under:

> "12. *The aforesaid definition actually commences with, "an entertainment consisting of a procession of people in elaborate costumes" etc., Besides English Dictionary for understanding the meaning of the Event organized by the petitioner, one has to go by the common Parlance Test in the taxing statutes while dealing with such controversy and no water tight compartments or hair splitting exercise can be undertaken by the authorities while implementing the statutes much less by the Constitutional Courts while dealing with the taxing liability for the Event organised by the petitioner."*

12. The learned Single Judge, thus, rejected the contention of the petitioner and upheld the impugned order while observing as under:

> "13. *This Court has no manner of doubt that the event organized by the petitioner clearly attracts the entertainment tax liability and there is no escape from the wide definition of "**Entertainment**" and charging provisions as contained in the Act itself. The overlapping of the words employed in the definition of '**Entertainment**' is intended to cover different kinds of Events and things of entertainment and they cannot be construed in separate and water tight compartments, as is sought to be argued by the petitioner in the present case."*

The submissions in appeal

13. Assailing the order aforesaid, learned counsel for the appellant has strenuously argued that the learned Single

Judge has failed to consider the focal point that the incident liable to be taxed under the Act of 1958 should have an element of 'entertainment' without which, the assessment is beyond the chargeable sections of the statute. According to the learned counsel, the learned Single Judge has failed to consider the relevant grounds urged on behalf of the appellant that ultimately, the sponsor may be liable for payment of tax under Section 2(k) of the Act of 1958, but not the appellant, who was merely an event organizer; and who had only provided a platform for holding the event.

14. Learned counsel would argue that the learned Single Judge has merely locked into the meaning of the expression *'pageant'* and inferred that the definition of 'entertainment' contemplates imposition of tax on 'pageant' too, but has failed to consider that a 'pageant' is essentially for public entertainment and carries with it an element of competition, with participation of the public in general, whereas in the fashion show in question, such elements of competition, awarding, rewarding, etc. were absent; and there were limited seating arrangements, only for designers, models, trade merchants and the like. According to the learned

counsel, taking all these aspects into consideration, the event in question cannot be considered falling within the purview of 'entertainment' under the Act of 1958.

No case for interference

15. Having given anxious consideration to the submissions of the learned counsel for the appellant and having examined the matter in its totality with reference to the law applicable, we are clearly of the view that the appellant has rightly been held liable for entertainment tax and penalty in this matter; and no case for interference is made out.

16. As noticed, the basic questions requiring determination are as to whether the event in question had been an 'entertainment' as defined in the Act of 1958; and as to whether the payment received by the appellant for this event would qualify as the 'payment for admission' within the meaning of the Act of 1958?

17. In our considered view, a bare look at the definition of 'entertainment' in the Act of 1958 is sufficient to find that the expression has been defined in too wide and broad terms

which undoubtedly take within their sweep an event like the one organised by the appellant, namely, a fashion show, which was sponsored by the interested manufacturers or business houses and which comprised of lifestyle parties, after-hour parties, press conferences, and exhibition of designer products/apparels by live models walking on the ramp and on mannequins. The said event definitely falls within the expressions 'exhibition' as also 'performance', apart that it would also answer to the description of an amusement for recreation and entertainment and even of a pageant.

16. Though learned counsel for the appellant has strongly relied upon the decision of the Madhya Pradesh High Court in ***Calico Mills Ltd.*** (supra), but the said decision carries several fundamental distinguishing features. The petitioners therein, being engaged in the business of manufacture and sale of textiles, put up a canvas canopy for display and sale of their textile goods; the admission to the dome was unrestricted and free during morning hours and was restricted in the evening to the *bona fide* purchasers, who were required to obtain a token on payment of Rs.2/- for

admission to the dome. This amount was later on adjusted towards the price of the cloth purchased by the person visiting the dome. In the given set of facts, it was held that the said dome erected by the petitioners was not a place in which any entertainment within the meaning of the applicable statue was held. Holding that the natural import of the term 'entertainment' was gratification of some sort and it connotes something in the nature of an organised entertainment, the Court said that it was "*no more than a display of cloth apparels in well decorated shop"*.

19. The features of the event organised by the appellant had been, as noticed, quite different. It had been a 'fashion show', where there had been sponsorship and advertisements; where the apparels and dresses of various manufacturers were put in exhibition on mannequins as also on live models; and there had been lifestyle parties, after-hour parties too. In a cumulative effect of the activities of the event in question, we are in no doubt that they were of such exhibitions and performances, which indeed provide amusement and entertainment. Even if it served the business interests of the sponsors, the element of

amusement and entertainment naturally woven in it cannot be taken out. The event organised by the appellant, therefore, clearly answers to the wide definition of 'entertainment' per sub-clause (iii) of clause (e) of Section of 2 of the Act of 1958.

20. Coming to the question if there had been any element of 'payment for admission', we are again clearly of the view that from the facts projected, it remains rather indisputable that in relation to the event in question, the appellant received, *inter alia*, the sponsorship fees and advertisement charges. Therefore, the element of receiving 'payment for admission' is directly available per sub-clause (iv-a) of clause (i) of Section 2 of the Act of 1958 and does not appear requiring much debate. The suggestion about limited number of seats etc. are rather irrelevant in the face of such an indisputable fact situation. The receipts of the appellant directly answer to the description of 'payment for admission' under the Act of 1958; and when such payment for admission was received by the appellant for the event in question, which had been an 'entertainment' for the purpose

of the Act of 1958, there is no escape for the appellant from the liability thereunder.

21. For what has been discussed hereinabove and in an overall comprehension of the factual and legal aspects of the case, we are at one with the view taken by the learned Single Judge; and hence, the order impugned calls for no interference.

22. This writ appeal, therefore, fails and is dismissed.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

vgh*