

A STATE OF M.P. AND ANR.
v.
SMT. ABHA SETHI ETC.

APRIL 28, 1999

B [HON'BLE S.P. BHARUCHA, B.N. KIRPAL, S. RAJENDRA BABU,
S.S. MOHAMMED QUADRI AND M.B. SHAH, JJ.]

M.P. Entertainments Duty and Advertisement Tax Act, 1936 :

C *Entertainment Tax—Levy of—State/of Madhya Pradesh—Video
Parlours—Video Games—Held liable to entertainment Tax—The mere fact
that payment was not made at the time of entering the video parlour was
irrelevant; payment made at a later stage by inserting a coin was nonetheless
for being admitted to a place of entertainment—The fee being charged in a
different manner at a different stage was in any case for providing
entertainment.*

D *Harrish Wilson v. State of M.P., (W.P. No. 567/81), Decided by M.P.
High Court, disapproved.*

E *Geetha Enterprises & Ors. v. State of U.P. & Ors., [1983] 3 SCR 812,
affirmed and followed.*

*Standard Games & Ors. v. State of U.P. & Ors., [1996] 4 SCC 467,
referred to.*

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4372 of 1984
Etc. Etc.

From the Judgment and Order dated 23.2.82 of the Madhya Pradesh
High Court in Misc. P. No. 570 of 1981.

G S.K. Agnihotri, Mrs. Madhur Dadlani and Sapam Biswajit Mistel for the
Appellants.

Sarwa Mitter for M/s. Mitter & Mitter Co. for Petitioner in W.P. No.
12221/85.

H S.K. Gambhir and R.B. Misra (NP) for the Respondent.

The following Order of the Court was delivered :

The State of Madhya Pradesh is in appeal against orders of the Madhya Pradesh High Court that followed its earlier judgment in W.P. No. 567/81, *Harrish Wilson v. State of M.P.*, and held that video games located in video parlours were not liable to entertainment tax under the M.P. Entertainments Duty and Advertisement Tax Act, 1936, on the ground that what entertains a person in the video parlour is his own performance and not the exhibition, performance, amusement, game or any sport offered by the proprietor of the video parlour. The payment that was made was only to provide the payer with tools for deriving pleasure from his own performance and that payment did not amount to a payment for admission to an entertainment.

The judgment in the case of *Harrish Wilson* was noticed by this Court in the case of *Geetha Enterprises & Ors. v. State of U.P. & Ors.*, [1983] 3 SCR 812 and it was held that important aspects had been completely overlooked. The pivotal conclusions reached in that judgment did not appeal to this Court. The mere fact that payment was not made at the time of entering the video parlour was irrelevant; payment made at a later stage by inserting a coin was nonetheless for being admitted to a place of entertainment. The fee being charged in a different manner at a different stage was in any case for providing entertainment. The decision in *Harrish Wilson*' case was, therefore, in terms disapproved of.

When the special leave petitions out of which these appeals arise came up for hearing, a Division Bench of this Court, on 5th November, 1984, observed that the view taken in the case of *Geetha Enterprises* required reconsideration.

The case of *Geetha Enterprises* has been followed by this Court in *Standard Games & Ors. v. State of U.P. & Ors.*, [1996] 4 SCC 467. In any event, we have read the judgment in the case of *Geetha Enterprises* and are in agreement therewith. No reconsideration thereof is, in our view, required.

Following the judgment in the case of *Geetha Enterprises*, the appeals are allowed and the orders under appeal are set aside. The writ petitions upon which those orders were passed are dismissed. No order as to costs.

T.N.A.

Appeals allowed.