SHANKAR VIDEO AND ANR. A

v.

THE STATE OF MAHARASHTRA AND ORS.

JULY 14, 1993

[P.B. SAWANT AND S.C. AGRAWAL, JJ.] B

Cinematograph Act, 1952/Bombay Cinema (Regulations) Act, 1953/Maharashtra Cinema (Regulation) Rules, 1966 (as amended in 1987):

S.2(c)/ss.2(a), 9/44.2.(c), 2(f-6), Chapter III-B, rr.24-C-24-I, 24-J—"Video Cinema"—Video projector used to exhibit pre-recorded movies on video cassettes with aid of VCR/VCP on a wide screen or wall fall within the ambit of "video cinema" as defined in r.2(f-6)—Exhibition of moving pictures with aid of video projector amounts to giving such exhibition through the medium of television. C

D

Word "Television" in expression "through the medium of television" in r.2(f-6) would include a device having a screen operating on television technology—The screen need not be inbuilt in the device and can be separate from the apparatus.

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Bombay Entertainment Duty Act, 1923:

S.2-j—"Video Exhibition"—Includes exhibition of cinematograph film on the screen of a video projector—Video projection system is different from a conventional cinema-theatre and is akin to a television set.

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The appellants in appeal No.3213 of 1993, installed a video projector system called "ENTEL" whereby pre-recorded movies on a video cassette were exhibited with the aid of VCR/VCP on a wide screen or a wall. They obtained licences under the Maharashtra Cinemas (Regulation) Rules 1966 as amended by the Maharashtra Cinemas (Regulation) (Amendment) Rules, 1987, to run a video cinema and were permitted to give exhibition by means of VCR/VCP for a charge of Rs.2 per person with a permitted seating capacity of 75 persons. Respondent No.3, having a licence to run a touring cinema, filed a writ petition in the High Court challenging the grant of licences to the appellants on the ground that their business was not covered by the definition of "video cinema" contained in rule 2(f-6). G

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A The High Court allowed the writ petition holding that the video projector installed by the appellants differed from a television set and it was more akin to the projector in a conventional cinema and that it did not fall within the definition of video cinema contained in rule 2(f-6) of the Rules. The High Court, therefore, directed the State authorities to: (i) refrain from issuing licences for the conduct of video cinemas which used systems having separate projectors and separate screens (ii) issue video licence to only those who use T.V. sets with inbuilt picture tube of a size of more than 51 cms. and; (iii) forthwith cancel such illegal licences if issued and to stop shows on separate screens in video cinemas. The appellants filed the appeal by special leave. The other appeal was filed by four others who were running similar business and were affected by the judgment of the High Court.

On the question : whether the video projectors used by the appellants to exhibit pre-recorded movies on a video cassette with the aid of a VCR/VCP on a wide screen or a wall, can be regarded a "video cinema" within the meaning of Rule 2(f-6) of the Maharashtra Cinema (Regulation) Rules, 1966.

Allowing the appeals, this Court

E HELD : 1. The video projectors used by the appellants fall within the ambit of the definition of "video cinema" contained in rule 2(f-6) of the Maharashtra Cinema (Regulation) (Amendment) Rules 1987 and the High Court was not justified in taking a view to the contrary. [184-D]

2. Keeping in view the provisions contained in clauses (i) and (iii) of sub-Rule (4) of Rule 24-I of the Rules, the word "television" in the expression "through the medium of television" in rule 2(f-6) cannot be construed to mean a television set only. The said expression has to be interpreted to mean the system for reproducing on a screen visual images transmitted by radio singnals. It would include a device having a screen operating on television technology. It is not the requirement of the said expression that the screen must be inbuilt in the device and it cannot be separate from the apparatus. [179-A-B, F-H; 180-A]

Concise Oxford Dictionary referred to.

H *World Book Encyclopaedia,* (1989) Vol.19, pp.95-98; *The New En-*

cyclopaedia Britannica, **15th Edn., Vol.15, pp.238-43;** *McGraw-Hill Encyclopaedia of Science & Technology,* **6th Edn., Vol.18, pp.184-88, 196-201, 206-209, referred to.**

3.1. The video projector functions as a television receiver and an exhibition of moving pictures given with the aid of a video projector amounts to giving such exhibition through the medium of television. Though there are points of difference between a video projector and a television set, but they are not such as to alter the character of the device. Merely because in a video projector the screen is separated from the machine and the image is projected on the screen from the machine, it does not mean that the device has ceased to be a system based on television if the technology on the basis of which it works is that used in a television. [181-B, E-F; 182-C-D; 184-C]

Encyclopaedia Britannica, **15th Edn., Vol.11, p.617.** *Chamber's Science and Technology Dictionary & McGraw-Hill Encyclopaedia of Science & Technology,* **6th Edn., Vol.4, referred to.**

Central Excise Tariff, **Chapter 85, Sub-Heading No.8528.00, referred to.**

Dinesh Kumar Hunuman Prasad Tiwari **v.** *State of Maharashtra,* **AIR (1984) Bombay 34 and** *Sony Corporation America* **v.** *Universal City Studies Inc.,* **78 L.Ed.2d, 574 at p.580, referred to.**

3.2. There is nothing either in the Act or in the rules which may give an indication that the video projector has been excluded from the purview of the definition of video cinema as contained in rule 2(f-6). On the other hand, under the Bombay Entertainment Duty Act, 1923, as amended by Maharashtra Act 11 of 1984 the expression "video Exhinbition" has been defined, in Section 2(j) as including exhibition of a cinematograph film on the screen of a video-scope, i.e., a video projector. This shows that for the purpose of imposing entertainment duty the legislature has treated video projection system as different from a conventional cinema theatre and has treated it as akin to a television set. Imposition of entertainment duty on exhibition of cinematograph films by playing or re-playing a pre-recorded cassette by means of a video cassette player or recorder either on the screen of a television set or video scope or otherwise indicates that the legisature assumes that the exhibition is permissible under the Act and the Rules made thereunder. [182-E-G; 183-A-B, G-H; 184-A]

A **3.3 Levy of entertainment duty on cinemas at a higher rate than that levied on video exhibition would not render the rules violative of Article 14. In the matter of imposition of a tax the legislature has an extremly wide discretion in classifying items for tax purposes and the principle that discrimination would result of unequals are treated as equals has a very limited application. [183-D; 184-A-B]**

B

Venkateshwara Theatre v. *State of Andhra Pradesh & Ors.*, **JT (1993) 3 SC 270 at pp.285-87, referred to.**

3.4. Rule 24-J cannot be invoked to curtail the ambit of the definition C **of video cinema contained in Rule 2(f-6) of the Rules. The rule making authority has made special provisions in relation to the video-cinema in Rules 24-C to 24-I in Chapter III-B and after doing so it provided in Rule 24-J that except the Rules mentioned therein the other provisions in the Rules shall not apply to the video-cinema. It has not been shown that Rule 24-I which prescribes the requirements of video-cinema does not contain** D **adequate provisions to deal with a place for exhibition of moving pictures by video projection system. [183-D-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3213-3214 of 1993.

E

From the Judgment and Order dated 3rd and 6th July, 1992 of the Bombay High Court in W.P. No.618 of 1992.

V.A. Babde, V.M. Tarkunde, S.D. Mudaliar, Raian Karanjawala, P.K. Mullick, Rajesh Kumar and Ms. M. Karanjawala for the Appellants.

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S.K. Dholakia, S.M. Jadhav, A.S. Bhasme and Ms. Rajkumari Kashyap for the Respondents.

The Judgment of the Court was delivered by

G **S.C. AGRAWAL, J.** : Leave granted.

We have heard learned counsel for the parties.

These appeals raise the question whether the place wherein an exhibition of cinematograph films recorded on a video cassette is given on H a large screen by the technology of video cassette recorder/player

(VCR/VCP) and Video Projector can be regarded a "video cinema" as defined in rule 2(f-6) of the Maharashtra Cinemas (Regulation) Rules, 1966 (hereinafter referred to as 'the Rules'). A

The Cinematograph Act, 1952 has been enacted by Parliament to make provision for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematograph. The expression "cinematograph" is defined in section 2(c) of the said Act to include any apparatus for the representation of moving pictures or series of pictures. The Bombay Cinemas (Regulation) Act, 1953, hereinafter referred to as 'the Act', has been enacted by the legislature of the erstwhile State of Bombay to provide for regulating exhibitions by means of cinematographs and the licensing of places in which cinematograph films are exhibited in the State of Maharashtra. The expression "cinematograph" is defined in section 2(a) of the Act in the same terms as the expression is defined in section 2(c) of the Cinematograph Act, 1952 referred to above. In exercise of the powers conferred by section 9 of the Act, the Government of Maharashtra has made the Rules. In *Dinesh Kumar Hanuman Prasad Tiwari v. State of Maharashtra,* AIR (1984) Bombay 34, the Bombay High Court has held that a VCR used for playing pre-recorded cassettes of movies on the screen of a television set comes within the definition of 'cinematograph' as defined under the Cinematograph Act, 1952 and exhibition of films by playing pre-recorded cassettes on VCR and TV in cafes and restaurants comes within the ban contained in section 3 of the Act, which prohibits exhibiton by means of a cinematograph elsewhere than a place licensed under the Act. Thereafter, the Government of Maharashtra amended the Rules by the Maharashtra Cinemas (Regulation) (Amendment) Rules, 1987. As a result of the said amendment in the Rules, the definition of cinema as contained in clause (c) of rule 2 was amended to include a video cinema and the expression "video cinema" was defined in clause (f-6) of rule 2 to mean "any place wherein an exhibition of moving pictures or seriel of pictures is given by means of video cassette recorder, video cassette player, or any such similar instrument or device through the medium of television". A new Chapter III-B (Rules 24-C and 24-J) containing special provisions relating to video-cinemas was inserted in the Rules. Rules 24-C to 24-H relate to licence for video cinemas. In Rules 24-I, provisions have been made with regard to requirements of a video cinema. Rule 24-J provide that in addition to the provisions of Chapter III-B, provisions of Chapter I, rules 3 and 4 of Chapter II, rules 103 to 104 B C D E F G H

A of Chapter VII, rules 116, 125, 127 to 129 of Chapter IX and rules 131 to 133 of Chapter X, shall *mutatis mutandis* apply to the video-cinema and that no other provision of the Rules shall apply to the video cinema.

The appellants in appeal arising out of S.L.P. (Civil) No.13015/92 have installed a video projector system called "ENTEL" based on the B technology developed by NEC Corporation, Japan, whereby pre-recorded movies on a video cassette can be exhibited with the aid of a VCR/VCP on a wide screen or a wall. The said appeallants obtained licences under the Rules on the basis that they are running a video cinema since 1988. Under the said licences the said appellants were permitted to give exhibi- C tion by means of VCR/VCP for a charge of Rs.2 per person with a permitted seating capacity of 75 persons. Swapnalok Touring Talkies, respondent No.3 in the said appeal, were having a licence to run a touring cinema. They filed a writ petition in the Bombay High Court wherein the grant of licences to the appellant was challenged on the ground that a place wherein exhibition of films is given through the Video Projector system on D a wide screen could not be licensed as a video cinema under the Rules since such exhibition is not covered by the definition of "video cinema" contined in rule 2(f-6). The said writ petition of respondent No.3 was allowed by a division bench of the High Court by judgment dated July 3, 1992. It has been held that the Video Projector installed by the appellants E differs from a television set and it is more akin to the projector in a conventional cinema and that it did not fall within the definition of video cinema contained in rule 2(f-6) of the Rules. The High Court, therefore, directed respondents Nos. 1 and 2 in the said civil appeal, namely, State of Maharashtra and the Collector, Nagpur and their officers and licensing F authorities in the State to (i) refrain from issuing licenses for the conduct of video cinemas which used systems having separate projectors and separate screens (ii) issue video licence to only those who use T.V. sets with in built picture tube of a size of more than 51 cms., and (iii) forthwith cancel such illegal licences if issued and to stop shows on separate screens in video cinemas. Feeling aggrieved by the said decisions, the appellants, G who were respondents in the said writ petition, have filed this appeal.

Civil Appeal arising out of S.L.P. (Civil) No.15302/92 has been filed by four appellants who were exhibiting pre-recorded video cassettes of films through VCR/VCP and video projectors and who, though not parties H to the writ petition referred to above, are affected by the judgment of the

High Court. They have filed appeal to challenge the said judgment of the High Court after obtaining leave to file the special leave petition from the court. A

We have heard Shri V.A. Bobde and Shri V.M. Tarkunde, the learned senior counsel appearing for the appellants in the appeals, Shri S.K. Dholakia, learned senior counsel appearing for the State of Maharashtra, and Shri K. Sukumaran, learned senior counsel appearing for respondent No.3, who had filed the writ petition in the Bombay High Court. B

The questions arising for consideration in these appeals turn on the definition of the expression "video cinema" as contained in rule 2(f-6) of the Rules which reads as under: C

> "'video-cinema' means any place wherein an exhibition of moving pictures of series of pictures is given by means of a video cassette recorder, video cassette player, or any such similar instrument or device through the medium of television." D

The said definition postulates the following three requirements:

(i) a place wherein an exhibition of moving pictures or series of pictures is given E

(ii) by means of a VCR/VCP or any such similar instrument or device

(iii) through the medium of television. F

There is no dispute that conditions (i) and (ii) are satisfied by the appellants in the instant case because they have a place wherein exhibition of moving pictures or series of pictures recorded on a video cassette is given by means of a VCR/VCP. The controversy is limited to the fulfilment of the third condition, viz., that the said exhibition must be through the medium of television. In order to resolve this controversy it is necessary to construe the expression "through the medium of television" and more especially the word "television." G

The word "television" is not defined in the Rules and we have to go H

A to its dictionary meaning. It is thus defined in the *Concise Oxford Dictionary:*

> "1 a system for reproducing on screen visual images transmitted (usu. with sound) by radio signals. 2 (in full television set) a device with a screen for receiving these signals. 3 television broadcasting generally."

B

Of the three meanings assigned above the third is the widest while the second is the narrowest. The first meaning is narrower than the third meaning but wider than the second. The question is whether the word C "television" in the expression "through the medium of television" in Rule 2(f-6) is used in the narrowest sense of a television set as found by the High Court or in a broader sense contemplated in the first meaning as contended by the learned counsel for the appellants. Before we proceed to deal with this question we would briefy refer to the salient features of the technology D on the basis of which the television system works.

The television system is composed of three principal components, viz., (i) the television Camera, (ii) the television Transmitter and (iii) the television Receiver. The television Camera converts the light from moving E visual images into a series of electrical signals. It captures images of the screen being telecast and creates video signals from the images. A black and white camera has only on camera tube while colour camera has three such tubes, one for each primary colour, red, blue and green and these tubes create a separate video signal for each colour. The three video signals are combined with other signals to produce a compatible colour signal by F the encoder in the camera. The sound is changed into audio signals by the microphone attached to the camera along with video signals the audio signals are relayed to the television Transmitter for direct telecast. The television Transmitter by increasing the frequency of the video as well as audio signals generates electromagnetic waves which are combined to form G the television signal which is broadcast on a particular channel by the transmission antenna. The television Receiver receives the signals broadcast from the television Transmitter through the antenna or aerial attached to the television receiver. The signals from the antenna are fed into the tuner in the receiver which selects only the signal from the station the H viewer wants to receive and shuts out all others. From the tuner, the

television signal goes through a group of complicated electronic circuits in the receiver which amplify the signal and separate the audio and video portions of it. The audio signals are changed into sound waves by the speaker. The video signals go to the picture tube where they recreate the picture. In a black and white receiver there is an electron gun in the neck of the cathode-ray picture tube having a phosphor screen which glows when struck by an electron beam. Since the strength of the electron beam is controlled by the video signal from the camera the intensity of the glow is proportional to the strength of the electron beam which corresponds to the original image. In a colour television receiver, the video signals first go into the decoder which transmits these signals into red, blue and green signals that duplicates the signals from the three camera tubes and thereafter they go to the picture tube. The neck of the colour picture tube holds three electron guns - one each for the red, blue, and green signals. Each electron gun in a colour picture tube shoots aseparate beam of electrons at the screen and each beam scans the screen. The screen of most colour tubes is coated with more than 300,000 tiny phosphor dots which are grouped into triangular arrangements of three dots each one red, one blue, and one green and these dots glow with their respective colour when struck by an electron beam. A metal plate perforated with thousands of tiny holes lies about 1/2" behind the screen of a colour tube and this plate is called the shadow mask and its holes keep the beams from hitting any colour dots but their own. Ordinarily the screen is in-built in the television receiver and it is a self contained unit which is known as the television set. See : *World Book Encyclopaedia,* (1989) Vol.91, pp.95-98; *The New Encyclopaedia Britannica,* 15th Edn., Vol. 15, pp.238-43; *McGraw-Hill Encyclopaedia of Science & Technology,* 6th Edn., Vol.18, pp.184-88, 196-201, 206-209.

A B C D E F

At this stage we may also refer to the manner in which a VCR or VTR functions. It performs two functions - (i) it can record on a magnetic tape in a video cassette the broadcast relayed a television transmitter and (ii) it can play a pre-recorded video cassette to show the moving pictures recorded therein on a television screen. It consists of three basic components - (i) a tuner which receives electromagnetic signals transmitted over the television band of the public air-waves and separates them into audio and visual signals; (ii) a recorder, which records such signals on a magnetic tape; and (iii) an adapter, which converts the audio and visual signals on the tape into a composite signal that can be received by a

G H

A television set. The separate tuner in the VCR/VCP enables it to record a braodcast off one station while the television set is tuned to another channel permitting the viewer to watch two simultaneous broadcasts, one live and recording the other for later viewing. See : *Sony Corporation of America* v. *Universal City Studios Inc.,* 78 L.Ed. 2d. 574 at p.580. A VCP cannot record a programme but it can play a pre-recorded video-cassette so as to convert the audio and visual signals on the tape into a composite signal that is received by a television receiver. With the aid of a VCR/VCP the pre-recorded cassette of a cinematograph film can be exhibited on the screen of a television receiver.

B

C We now revert to the question posed earlier about the meaning to be assigned to the word "television" in Rule 2(f-6) of the Rules. We find that some light on the meaning of the said word is thrown by clauses (i), (ii) and (iii) of sub-rule (4) of rule 24-I which prescribes the requirements of video cinema. Clauses (i), (ii) and (iii) of sub-rule (4) provide as follows:

D

> "24-I Requirement of video-cinema. A video-cinema shall be exhibited so as to conform to the following requirements, that is to say -
>
> (4) (i) the distance between the *television screen or any other screen* used for exhibition of video-cinema and the front row of seats shall not be less than 1.80 metres;
>
> E
>
> (ii) the *television set* used for exhibition through the video cassette recorder, video cassette player or any other instrument shall be kept on an elevated fixed platform so as to be visible to the viewers sitting in the last row;
>
> F
>
> (iii) the size of the *television screen or screen used for any other media* shall not be less than 51 centimetres;" (Emphasis supplied)

G In contradistinction to the words "television set" used in clause (ii) the words "the television screen or any other screen used for exhibition of videocinema" are used in clause (i) and the words "television screen or screen used for any other media" have been used in clause (iii). The difference in the phraseography used in clauses (i) and (iii) on the one hand and clause (ii) on the other, would indicate that the screen that is H used for exhibition is not confined to the screen of a Television Set but

would include any other screen on which pictures are exhibited through VCR/VCP and television. The words "television set" have been used in clause (ii) for the reason that the requirements of the said clause about placing the apparatus on an elevated fixed platform can apply to a television set only and it cannot apply when there is a separate screen which is fixed on the wall. The word "television" in the expression "through the medium of television" in Rule 2(f-6) cannot, therefore, be confined to a television set but would include a device having a screen operating on television technology and it is not the requirement of the said expression that the screen must be inbuilt in the device and it cannot be separate from the apparatus. While referring to clause (i) of sub-rule (4) of Rule 24-I, the High Court has expressed the view that the words "any other screen" in the said clause refer to an additional screen which can be fixed at a short distance in front of the television set. We find no basis for thus restricting the meaning of the words "any other screen" which are wider and comprehensive to cover every screen on which pictures are exhibited through VCR/VCP. After referring to clause (iii) of sub-rule (4), the High Court has expressed the view that the manner in which the Rules have been generally framed and worded does leave scope for the argument that use of other equipment is permitted and that it was most unfortunate that the State Government had not aken the trouble to ensure that minor inconsistencies and ambiguities were eliminated. According to the High Court the Rules are drafted in a shoddy fashion whereby the implementing authorities have been provided with elbow room to run a Nelson's eye at infringments of the present type and to even provide justification for acting contrary to the spirit of the provisions on the ground that such a course of action is permissible by virue of the unsatisfactory wording. The High Court went on to hold that nothing in the Rules can override the definition in the Act. In taking this view the High Court was under a misapprehension that definition of 'video cinema' is contained in the Act and the provisions in clauses (i) and (iii) of sub-Rule (4) of Rule 24-I could not override the said definition. The expression "video-cinema" is, however, defined in Rule 2(f-6) of the Rules and the other provisions contained in the Rules can be taken into consideration for construing the said definition. Keeping in view the provisions contained in clauses (i) and (iii) of sub-Rule (4) of Rule 24-I of the Rules, we are of the opinion that the word "television" in the expression "through the medium of television" in rule 2(f-6) cannot be construed in the narrowest sense to mean a television set and has to be

A B C D E F G H

A given the first meaning assigned to the said word in the *Consise Oxford Dictionary,* namely, a system for reproducing on a screen visual images transmitted by radio signals. It is, therefore, necessary to examine whether the Video Projector installed by the appellants can be regarded as such a system.

B According to the *New Encyclopaedia Britannica,* 15th Edn., Vol. 11, p.617, it is a device for projecting television on to a large screen which became available in the late 1970s.

The Chamber's *Science and Technology Dictionary* defines Video C Projection System as "an optical presentation of a TV picutre on a separate open screen in contrast to the direct viewing of a CRT image, generally used for showing a large picture to an audience."

In McGraw-Hill *Encyclopaedia of Science & Technology,* 6th Edn., Vol.4, reference has been made to 'Theatre Television' and it is stated :

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> "Because of nationwide and sometimes worldwide interest in certain sporting or entertainment events, a one-way closed-circuit television systems are used to permit a number of geographically dispersed audiences to view the event simultaneously. In this application, the original television signal is transmitted and distributed to theatres which are equipped with large-screen television projection systems for displaying the received image to the paying audience." (p.46)

E

From the technical data given in the brochure issued by the manufac- F turers of ENTEL Video Projection System, that has been placed on record it appears that it contains a built-in tuner and built-in stereo amplifier. It can receive the signals from the TV broadcasting station e.g. DoorDarshan programmes through the antenna and it can also be connected directly to the video camera or to the video cassette recorder or the computer. Instead of one picture tube containing three electron guns, as in a television set, in G the video projection system, there are three separate Cathode-Ray Tubes for the three primary colours, namely, red, blue and green which project the visual images through a series of lenses on the screen placed on a wall. The video projector can be fixed either on the ceiling or it can be placed on the floor. It would thus appear that like a television set the video H projector is also a television receiver since it can receive T.V. signals

transmitted from a television transmitter on a particular channel through the antenna and the tuner and after separating the audio and video signals it reproduces the sound on the speaker and the pictures on the screen. Apart from receiving T.V. programmes it can also be put to other uses in the same way as a television set in the sense that it can be connected to a VCR/VCP for the purpose of exhibiting a cinematograph film recorded on a video cassette. It can also be connected to the computer as well as to the video camera. The points of difference between a video projector and a television set are as follows:

(i) In a colour television set there is only one picture tube in which the three primary colours, viz., red, blue and green are fed in three electron guns located in the neck of the picture tube whereas in a video projection system, there are there separate tubes for the three primary colours.

(ii) In a television set screen is a part of the television set and the picture is reproduced on the said screen whereas in a video projection system the screen is separate and is fixed on the wall while the video projector can be fixed either on the ceiling or on the floor.

(iii) In a television set the picture is reproduced on the screen when the electron beams of the three primary colours strike the screen of the picture coated with tiny phosphor dots whereas in a video projection system the picture is reproduced by projection of beams from the three picture tubes through the series of lenses of the cloth or plastic screen on the wall.

These points of difference are the result of further advancement in television technology so that the reproduction of images through the process of television can be available for a larger audience. These differences are not such as to alter the character of the device and in spite of these differences a video projector is a television receiver like a television set.

In this context, it would not be out of place to refer to the Central Excise Tariff. Sub-Heading No.8528.00 in Chapter 85 is in the following terms:

> "Television receivers (including videomonitors and video projectors), whether or not combined, in the same housing, with radio-broadcast receivers or sound or video recording or reproducing

A apparatus."

This would show that for the purpose of levy of excise duty, video projectors are included under the head of "television receivers". The Learned counsel for the appellants have invited our attention to the Gate Pass issued in Form G.P.I about levy of central excise duty on the video B projectors manufactured by ENTEL Projectors which shows that excise duty was paid on the same under sub-heading No.8528.00.

The High Court has held that a video projector is not covered by the definition of "video cinema" as contained in rule 2(f-6) for the reason that C the screen is separated from the main body of the machine and the image is projected on the screen and the device is more like a conventional cinema than like a television and to hold otherwise would be acting contrary to the spirit of the provisions. We are unable to agree. Merely because the screen is separated from the machine and the image is projected on the screen from the machine does not, in our opinion, mean D that the device has ceased to be a system based on television if the technology on the basis of which it works is that used in television.

The contention that the Video Projector and the screen are using the same technique as the T.V. set was rejected by the High Court for the reason that such equipment is not only outside the definition but is lso E excluded by the spirit of the provision and in that regard, the High Court has observed that the Act contemplates the existence of the conventional cinema and that by amendment the Act has made provision for this new form of exhibition and it does not assume of the second encroaching on the first. We are unable to appreciate this reasoning of the High Court. F We do not find anything either in the Act or in the Rules which may give an indication that the video projector has been excluded from the purview of the definition of video cinema as contained in rule 2(f-6). On the other hand, we find that under the Bombay Entertainment duty Act, 1923, as amended by Maharashtra Act 11 of 1984 the expression "video exhibition" G has been defined in section 2(j) in the following manner:

> "'video exhibition' means an exhibition of a cinematograph film or moving pictures or series of pictures organised for a financial gain by playing or pre-playing a re- recored cassette by means of a video cassette player or recorder either on the screen of a television set H or video scope or otherwise, at residential or non-residential place

of entertainment, other than a hotel or a public vehicle which is or is not licensed under the Bombay Cinemas (Regulation) Act, 1953 and the rules made thereunder or under any law for the time being in force."

The aforesaid provision would indicate that entertainment duty is chargeable on exhibition of cinematograph films by playing or re-playing a pre-recorded cassette by means of a video cassette player or recorder either on the screen of a television set or video scope or otherwise and assumes that such exhibition is permissible under the Act and the rules made thereunder. It has been submitted that the appellants have been paying entertainment duty on the basis of the permits issued to them in accordance with the provision of the said Act.

The High Court has observed that the video show of the type the appellants are showing is virtually a cinema show in truth and substance and in that context the High Court has made a reference to Rule 24-J which exempts the video cinema from certain regulations. The High Court has also pointed out that entertainment duty for cinema as much higher and that the interpretation sought to be canvassed on behalf of the appellants, if accepted, would render equals as unequals and unequals as equals and would render the relevant rules violative of Articles 14 and 19(1)(g) of the Constitution. We find it difficult to subscribe to this view. Keeping in view the special features of a video-cinema the Rule making authority has made special provisions in relation to the video-cinema in Rules 24-C to 24-I in Chapter III-B and after doing so it provided in Rule 24-J that except the Rules mentioned therein the other provisions in the Rules shall not apply to the video-cinema. It has not been shown that Rule 24-I which prescribes the requirements of video- cinema does not contain adequate provisions to deal with a place for exhibition of moving pictures by video projection system. It is, therefore, difficult to appreciate how Rule 24-J can be invoked to curtail the ambit of the definition of video cinema contained in Rule 2(f-6) of the Rules. So also the principle that unequals are being treated equally and equals are being treated unequally, to which reference has been made by the High Court on the ground that the entertainment duty for cinema is much higher, cannot be invoked to cut down the scope of Rule 2(f-6). As noticed earlier under the Bombay Entertainment Duty Act, 1953, the expression "Video Exhibition", as defined in Section 2(j) of the said Act includes exhibition of a cinematograph film on the screen of a

A video scope, i.e., a video projector. This shows that for the purpose of imposing entertainment duty the legislature has treated video projection system as different from a conventional cinema theatre and has treated it as akin to a television set. In the matter of imposition of a tax, e.g., entertainment duty, the legislature has an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes and the principle that discrimination would result if unequalls are treated as equals, has a very limited application. See : *Venkateshwara Theatre* v. *State of Andhra Pradesh & Ors.,* JT (1993) 3 SC 270 at pp.285-87.

B

C For the reasons mentioned above we are unable to endorse the view of the High Court that exhibition of moving pictures given by means of VCR/VCP and a video projector does not fall within the ambit of the definition of 'video-cinema' contained in Rule 2(f- 6) of the Rules. In our view the video projector functions as a television receiver and an exhibition of moving pictures given with the aid of a video projector amounts to giving such exhibition through the medium of television. It must, therefore, be concluded that Video Projectors used by the appellants fall within the ambit of the definition of "video cinema" contained in rule 2(f-6) of the Rules and the High Court was not justified in taking a view to the contrary.

D

E The appeals are accordingly allowed and the judgment and order of the Bombay High Court dated July 3, 1992 in Writ Petition (C) No.618/92 is set aside and the said writ petition filed by respondent No.3 is dismissed. The parties are, however, left to bear their own costs.

R.P. Appeals allowed.