



SC: State competent to tax ‘Lotteries’, a species of gambling; Reverses HC order

SC holds that ‘betting and gambling’ is a State subject and “‘lotteries’ is a species of gambling activity except to the extent of it “being denuded of its powers insofar as Entry 40 of List I is concerned”; Rules that, “State Legislature has the competence to tax lottery scheme which is gambling being conducted not only by the Government of India or the Government of any State or by any other agency or instrumentality of a particular State but also by a private entity within the State as gambling”; As a consequence, states that “Division Benches of the High Courts of Kerala and Karnataka were not right in holding that the respective State Legislatures had no legislative competence to impose tax on the lotteries conducted by other States in their State (in the State of Karnataka and Kerala respectively)”, thereby, “question of refund of tax collected under the same does not arise”; Counsel for State of Karnataka, ASG N. Venkataraman submitted that source of taxation is Entry 62 of List II and not Entry 54 of List II and the tax is not on sale or purchase of lottery tickets and the ‘charge’ or ‘tax’ is a tax on lotteries i.e., on the chance of those persons participating in a lottery and the chance to win a prize in a lottery, which comes within the nomenclature of gambling; Discussing in detail the concept of ‘betting and gambling’ as well as ‘lotteries’, infers that “It is not in dispute that a scheme of lottery is a form of gambling”; While considering Entry 40 of List I and Entries 34 and 62 of List II to assess whether there is any apparent conflict/overlapping between the same, clarifies that, “In the instant case, the tax imposed is on the ‘gambling’ nature of lotteries, which field is covered in its entirety under Entry 62 of List II and the power to impose tax under this Entry extends in relation to lottery of every kind, with no distinction as to the entity organizing the same”.