IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

WP(C).No. 21791 of 2009 (T)

PETITIONER :

CASINO HOTEL,
A UNIT OF M/S HOTEL & ALLIED TRADERS
PRIVATE LIMITED, WILLINGDON ISLAND, KOCHI-682 003,
REPRESENTED BY ITS EXECUTIVE OFFICER,
MR. MICHAEL DOMINIC.

BY ADVS.SRI.JOSEPH KODIANTHARA
SRI.TERRY V.JAMES

RESPONDENT :

COMMERCIAL TAX OFFICER (WC & LT),
OFFICE OF THE DEPUTY COMMISSIONER, COMMERCIAL TAXES,
MATTANCHERRY, KOCHI -682 002.

BY SPL. GOVERNMENT PLEADER DR.SEBASTIAN CHAMPAPPILLY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

WP(C).NO.21791/2009

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE ORDER DATED 30/6/2009 OF THE DEPUTY COMMISSIONER (APPEALS)

P2 COPY OF THE REVISED ASSESSMENT ORDER DATED 13/7/2009 FOR 2005-06

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C).No.21791/2009

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Dated this the 29th Day of May, 2015

J U D G M E N T

The short question in this writ petition is related to assessment under the Luxury Tax Act. The assessment year in question is 2005-06. The learned Senior Counsel raised two points before me which are as follows:

i. Whether the assessment based on Rule 3C of the Kerala Tax on Luxuries Rules, 1976 (for short, the "Rules"), which was brought into effect only from 01/07/2006 can have any application for the assessment years 2005-06.

ii. Whether the petitioner is entitled for credit of the payment already made for the entire amount towards sales tax.

2. The Kerala Tax on Luxuries Act, 1976 (for short, the "Act") is an enactment to levy and collection of tax on luxuries. The petitioner is a Hotel. The present issue pertains to assessment of luxury tax on banquet sales bills. The petitioner has two halls, which are given on rent, on parties and bills are charged based on food sales. The petitioner's case is

that food is exempted from luxury tax and therefore there is no question of levy of tax. Rule 3C was brought into rules as per SRO 566/2006 dated 28/07/2006 which prescribes procedure for computation of rent or other charges realized for hall, auditorium, *Kalyanamandapam* etc. where such rent or other charges are not separately ascertainable. It is apposite to quote Rule 3C of the Rules for easy reference, which is as follows:

> **"3C. Procedure for computation of rent or other charges realized for hall, auditorium, Kalyanamandapam and place of the like nature where such rent or other charges are not separately ascertainable,** - Where the bills issued or the accounts maintained by the proprietor do not show the rent or other charges realized for the hall, auditorium, Kalayanamandapam or place of the like nature separately and the rent and other charges are merged with the charges realised for food, drink, and telephone, twenty five percent of the total charges realised shall be treated as the rent and other charges to which the provisions of sub-section (2B) of section 4 applies."

3. In the light of Rule 3C of the Rules, if the rent and other charges are merged with the charges realised for food, 25% of the total charges realised shall be treated as the rent and other charges to which the provisions of sub-section (2B) of section 4 applies. Sub-Section 2B of Section 4 prescribed that luxury tax payable in respect of hall, auditorium,

kalyanamandapam etc. shall be at the rate of such charges received on all amenities and services provided, but exclusive of charges for food, drink etc. However, Sub section 2B of Section 4 of the Act was omitted by Act 22 of 2006 with effect from 01/07/2006.

4. The petitioner's case is that since Rule 3C of the Rules was introduced only subsequent to the year of assessment, i.e. 2005-06, Rule 3C procedure ought not have been relied on for determination of luxury tax. I am also of the view that Rule 3C could not have been relied by the Authority for the purpose of fixing different proponents of luxury tax. It is to be noted that Rule 3C is a deeming provision and it delineates different components liable for luxury tax.

5. However, it is to be noted that merely because there is no definite procedure as contemplated under Rule 3C for determination of luxury tax in the year 2005, it does not divest the petitioner from any liability to pay luxury tax in the light of *non obstante* clause under Section 4(2) of the Act. There is no dispute that the petitioner charged a consolidated amount as food bill, including service charges of banquet hall. The petitioner has failed to provide any other evidence to delineate the components of charges levied on the food bill. In that view of the matter, there is nothing wrong on the part of the Authority to apply the components

under Rule 3C of the Rules to arrive at a calculation for the purpose of luxury tax. Though, Rule 3C would not apply, its yardstick can be applied to arrive at as a best judgment. Therefore, I do not find any infirmity with the calculation of the luxury tax.

6. The learned Senior Counsel for the petitioner submits that the petitioner has already paid 12.5% VAT on full value of the banquet sales, the same has to be given credit by bifurcating rent and food sale. I do find merit in this argument. Since the petitioner has already paid VAT on full value on banquet sales, excess VAT paid has to be set off against luxury tax payable. Accordingly, the impugned order is set aside. Fresh assessment shall be made after giving credit to the excess VAT paid.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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