THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

TAX REVISION CASE No. 128 of 2002

ORDER:- (per Hon'ble Sri Justice G. Chandraiah)

This appeal, at the instance of Revenue, is directed against the order dated 26.08.2000 in T.A.No.209 of 1996 of the Sales Tax Appellate Tribunal. The following substantial questions of law are raised in this appeal:

> **"1. Whether the expenditure tax collected from customers on sales of food and beverages form part of the taxable turnover?**
> **2. Whether the service charges form part of the taxable turnover?**
> **3. Whether the S.T.A.T. is justified in allowing appeal partly regarding to the expenditure tax and setting aside the tax imposed on turnover representing service charges?"**

2. The facts of the case, briefly, are that the respondent-M/s Diana Hotels Limited, Hyderabad is carrying on the business of Boarding and Lodging and they are on the rolls of the Commercial Tax Officer, Khairatabad Circle. The Commercial Tax Officer completed the final assessment for the year 1992-93. On verification of the assessment record, the revisional authority i.e. Deputy Commissioner, Panjagutta Division noticed that certain turnovers relating to sales and purchases were found to have either escaped assessment or deleted from the taxable turnovers. Therefore, the Deputy Commissioner revised the assessment orders and imposed tax on sale of waste material, expenditure tax collected as part of consideration and also service charges collected. Aggrieved by the said orders, the respondent/assessee filed an appeal before the Sales Tax Appellate Tribunal contending that the expenditure tax collected by them cannot form part of the sale consideration and that it collected the said tax only

as an agent of the Union Government under the Expenditure Tax Act, and the assessee also disputed the collection of service charges on sale of Food and Beverages considering the same as part of taxable turnover. The Tribunal, vide the impugned order, allowed the appeal in part, setting aside the levy of tax on turnover representing the expenditure tax and also set aside the turnover representing service charges; but remanded the matter to the Assessing authority for verification whether the disputed turnover representing service charges has been disbursed by the assessee to the stewards or not and to pass necessary orders according to its findings. Questioning the same, the present tax revision case is filed by the State.

3. Heard Mr. Govind Reddy, learned Special Government Pleader, and Mr. P.N. Sunil Kumar Reddy, learned counsel representing Mr. Y. Venkatesh Reddy, advocate-on-record for the assessee.

4. Learned Special Government Pleader Mr. Govind Reddy vehemently contends that the Tribunal is not justified in allowing the appeal in part by setting aside the orders of the Deputy Commissioner (CT), Panjagutta. He submits that it is clear from the turnover definition that the aggregate of the amounts charged as consideration constitutes sales price liable to tax under Section 5C. He further submits that the definition of turnover and sale price are so wide enough to take into its ambit several components which otherwise appear to be extraneous in other circumstances. Learned counsel by placing reliance in the judgment of the Bombay High Court in **East India Hotels Ltd. v. State of Maharashtra**[1], submits that it is decided that the expenditure tax collected i.e. Rs.3,98,280/- forms part of sale consideration. With regard to service charges collected as part of sale consideration, the said amounts were collected from the customers at the rate of 10% on the food and beverages collected by the dealers are entirely different

from tips which forms part of bill raised and consideration charges by the dealers. Placing reliance in the judgment of the Bombay High Court in **Sun-n-Sand Hotel (P) Ltd., v. State of Maharashtra**[2], the learned counsel submits that the Bombay High Court held that the whole of the consideration paid by the customers constitutes sale price. With regard to his contention that service charges form a part of taxable turnover, learned counsel places reliance in the decision in **EC Commission v. French Republic, 22.254 EUROPEAN COMMUNITY LAW,** to buttress his argument.

5. On the other hand, learned counsel for the respondent-assessee submits that the learned Tribunal had rightly allowed the appeal in part and there is no illegality in the said order.

6. Having heard the rival contentions, the issues that require consideration are "whether the expenditure tax forms a part of taxable turnover?" and "whether service charges collected form a part of the taxable turnover?"

7. Insofar as the issue "whether the expenditure tax forms part of the taxable turnover", the State Taxation Tribunal, West Bengal, in **Aruna Estates Pvt. Ltd (Renamed…) v. Deputy Commissioner**[3], has held that the expenditure tax collected does not form a part of the sale price within the meaning of 1941 Act. We are in agreement with the reasoning of the learned Judges in the above case. Therefore, the issue is answered in favour of the assessee.

8. So far as the issue "Whether the service charges form part of the taxable turnover" is concerned, the Bombay High Court in **Sun-n-Sand (2 supra)**, held that Service Charges forms part of the taxable turnover. The Karnataka High Court in **K.S.Shenoy and Co., v. State of Karnataka**[4], at paragraph 9, observed that the Bombay High Court

in **Sun-n-Sand (2 supra),** while considering the scope of definition of 'sale price', has held at page 510 of the said judgment, as under:

> **"In the case of service charges, the customers have no option but to pay these charges when demanded by the assessees, irrespective of the fact whether the employees were serviceable or had rendered useful service. In as much as in the case of demand for tips, it is entirely a voluntary payment, the customer may or may not pay a tip to the particular servant who attends on him according as he is satisfied with the service of that particular employee or not."**
>
> **"…. In other words, service charges had no independent existence of their own. So far as the customer is concerned and for all practical purposes, the price of the food ordered by the customer is what he pays therefor. If the customer is required to pay what is stated as tariff plus 10 per cent over and above that tariff, then the price, so far as the customer is concerned, for the food supplied and served to him in the establishment will be the total amount of the bill that is charged including the so-called service charges.**

9. We are in agreement with the reasoning in the judgments cited above and respectfully following the same, the issue whether the service charges form a part of taxable turnover, is answered in the affirmative.

10. The tax revision case is, accordingly, allowed in part. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

04th August, 2015

ksm

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

TAX REVISION CASE No. 128 of 2002

04th August, 2015

ksm

---

[1] 99 STC 197

[2] 23 STC 507

[3] (2001) 122 STC 50 Tribunal

[4] ILR 1985 KARNATAKA 333