IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 140 OF 2017

M/S Paradise Cruises, A Partnership firm registered under the Indian Partnership Act, Having its registered office at:
Fifth Floor, Nizari Bhavan, Menezes Braganza Road, Panaji, Goa.
Represented herein by its Partners:

(a) Mr. Anil V. Madgavkar, 64 years of age, son of late Vijay Madgavkar.

(b) Ms. Nisha Madgavkar, 37 years of age. …. Petitioner

Versus

1. Asstt. Commissioner of Commercial Taxes, Office of the Commissioner of Commercial Taxes, Vikrikar Bhavan, M.G. Road, Panaji, Goa.

2. Asstt. Commercial Tax Officer, Office of the Commissioner of Commercial Taxes, Vikrikar Bhavan, M.G. Road, Panaji, Goa. …. Respondents

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Shri Ashwin D. Bhobe, Advocate for the Petitioner.

Ms. Amira A. Razaq, Additional Government Advocate for the Respondents.

CORAM:- C. V. BHADANG, J.

DATE:- 28th FEBRUARY, 2017

ORAL JUDGMENT:

Rule made returnable forthwith. The learned Additional Government Advocate for the respondents, waives service. Heard finally by consent of parties.

2. The petitioner is in the business of conducting river/boat cruises and is holding two vessels namely, Paradise 1 and Paradise 2. According to the petitioner, vessel Paradise 1 is ordinarily operated, while the vessel Paradise 2 is operated only for a few days, that too in peak season. The petitioner has registered itself with the Commissioner of Commercial Tax, as required under the provisions of the Goa, Daman and Diu Entertainment Tax Act, 1964 (Act, for short).

3. On 20.10.2010, the petitioner filed an application purportedly, under Section 3D of the Act for composition of tax for the month of November, 2010 in respect of both the vessels. The request of composition of tax in respect of Paradise 2 was granted, however, in respect of Paradise 1, it was refused.

4. According to the respondent no.2, the composition under Section 3D of the Act, read with Rule 10 of the Rules, can be claimed only for the full month and not for a part thereof.

5. On 17.12.2010, the petitioner again applied for composition of tax for the month of January, 2011 in respect of both the vessels and at this time, the composition in respect of Paradise 1 was granted, while the request in respect of Paradise 2, was refused, again for similar reasons.

6. On 24.11.2010, the petitioner brought to the notice of respondent no. 2 that the Act/Rules, do not mandate and/or require that the vessel has to operate for every single day of the month and thus, the petitioner sought reconsideration of the request for composition. The petitioner also brought to the notice of the respondent no. 2 that the vessel Paradise 2 operates only for a few days and that too during the peak season.

7. On 19.03.2013, the respondent no.2 levied Tax/Penalty amounting to Rs.1,13,976/- on the petitioner for the period from

01.04.2010 to 31.03.2013. Undisputedly, the said amount has been deposited by the petitioner on 27.05.2013.

8. The petitioner challenged the assessment order in an appeal under Section 6 of the Act, before the respondent no.1, which appeal was dismissed on 02.04.2015. The petitioner carried the matter further in an appeal before the Administrative Tribunal being Entertainment Tax Appeal No.1/2015, which has been dismissed on 09.01.2017, which brings the petitioner to this Court.

9. I have heard Shri Bhobe, the learned Counsel for the petitioner and Ms. Razaq, the learned Additional Government Advocate for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the impugned orders and the relevant records produced.

10. The short question which arises is, whether the claim for composition can be considered for a part of a month or it necessarily has to be for a full month. Section 3D of the Act provides for composition under Section 3, which reads as under:

> "**3D. Composition of tax payable on**

> **entertainment provided by way of river cruises/boat cruises under section 3** — *In lieu of tax payable under section 3 for entertainment provided by way of river cruises/boat cruises, the proprietor may, at his option and in such manner as may be prescribed, pay the tax by way of composition at [50% or any lower rate of percentage that the Government may notify for such period] of the aggregate value of notional receipts receivable for admission worked out as under:-*
>
> *Aggregate notional receipts = total capacity of the boat or vessel by way of number of persons, on which entertainment is provided by way of river cruises/boat cruises X rate per ticket per adult persons X number of trips."*

It can thus be seen that under Section 3D of the Act, the proprietor can opt for composition of tax, in lieu of tax payable under Section 3 of the Act. The tax by way of composition has to be calculated on the basis of the aggregate notional receipts. Section 3D also provides the formula on the basis of which, the aggregate value of notional receipts is to be calculated. The formula for calculation of the aggregate value of notional receipts would show that it depends upon the total capacity of the boat/vessel, on which the entertainment is provided, the rate per ticket per adult and the number of trips made. A bare perusal of Section 3D would show that it is not dependent on the receipts per month and on the contrary, it depends on the trips made.

11. It may be mentioned that the petitioner had applied for determination of the disputed question, under Section 3A of the Act to the Commissioner of the Commercial Tax. The office of the Commissioner vide order dated 29.07.2016 has determined the point no.1 as under:

> *"The applicant operates river cruise boats. It is therefore, clarified that as to point no.(1) above, there are no restrictions provided for granting of composition in the number of trips under the Goa Entertainment Tax Act, 1964."*

12. The learned Counsel for the petitioner states that the order dated 29.07.2016 was produced before the Administrative Tribunal, however, there is no reference to the same in the impugned judgment. Be that as it may, considering the fact that the composition under Section 3D of the Act, has to be computed on the basis of the aggregate value of notional receipts, which

depends upon the number of trips, I do not find that the stand taken by respondent no.2 can be accepted. In such circumstances, it would be appropriate if, respondent no.2 considers the application for composition afresh, and passes appropriate orders, in accordance with law.

13. In the result, the following order is passed:

O R D E R

(a) The petition is partly allowed.

(b) The impugned order dated 09.01.2017, is hereby set aside.

(c) The respondent no.2 shall decide the application filed by the petitioner afresh, in accordance with law, within a period of four weeks from today.

(d) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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