

*THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

*THE HON'BLE MS. JUSTICE J. UMA DEVI

+WRIT PETITION No. 217 of 2017

% 23-03-2017

M/s. Bhimas Hotels Pvt. Ltd.,
#34-38, G.Car Street, Near Railway Station,
Tirupati, A.P., rep. by its Director,
Sri K.V.Ranganathan, S/o late K.R.Venkatachalam,
Aged about 62 years. .. Petitioner

Vs.

\$ The Union of India, rep. by its Secretary,
Ministry of Finance, Service Tax,
Central Secretariat, New Delhi, and others .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Dr. M.V.K. Murthy

^ Counsel for respondents : Mr. B. Narayana Reddy,
the Assistant Solicitor General

? CASES REFERRED : ----

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No. 217 of 2017

Between:

M/s. Bhimas Hotels Pvt. Ltd.,
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Aged about 62 years. .. Petitioner

Vs.

The Union of India, rep. by its Secretary,
Ministry of Finance, Service Tax,
Central Secretariat, New Delhi, and others .. Respondents

DATE OF JUDGMENT PRONOUNCED: 23-03-2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

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1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? Yes/No

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ORDER: (*Per VRS,J*)

Aggrieved by an order in original passed by the 2nd respondent under the proviso to Section 73(1) of the Finance Act, 1994 (for short 'the Act'), demanding service tax together with interest and penalty on the value of the food supplied to the workers of the petitioner, the petitioner has come up with the present writ petition.

2. Heard Dr. M.V.K. Moorthy, learned counsel for the petitioner, and Mr. B. Narayana Reddy, learned Assistant Solicitor General, appearing for the respondents.

3. The petitioner is a hotel engaged both in the business of boarding and lodging. The petitioner also has a restaurant. But, the present dispute is confined only to the value of the food supplied by the petitioner to the workers employed by them.

4. By the order in original impugned in the writ petition, the 2nd respondent came to the conclusion that the food supplied by the management of the petitioner to its own workers at a subsidized rate, tantamounted to a service, taxable under Section 67 of the Act, in view of the fact that the food is supplied in an area outside the registered premises. Therefore, the short question that arises for our

consideration is as to whether the food supplied by an employer to the workers at a subsidized rate, would come within the meaning of the expression ‘service’, irrespective of whether the food is supplied within the premises or outside the premises.

5. The word ‘service’ is defined in sub-section (44) of Section 65B of the Act, as follows:

“service” means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include –

(a) an activity which constitutes merely –

- (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
- (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or*
- (iii) a transaction in money or actionable claim;*

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any court or tribunal established under any law for the time being in force.”

It may be seen from the above definition that to come within the purview of the definition of the expression ‘service’, the following pre-requisites are to be found:

- (i) there should be an activity,
- (ii) such activity should be carried out by a person for another,
and
- (iii) it should be carried out for a consideration.

6. But, the definition of the expression '*service*' under Section 65B (44) positively excludes certain activities from the purview of the definition. Clause (a) of sub-section (44) of Section 65B excludes any activity, which constitutes merely a transfer of title in goods or immovable property, by way of sale, gift or in any other manner from the purview of the definition. Similarly, any transfer, delivery or supply of any goods, which is deemed to be a sale within the meaning of Clause (29A) of Article 366 of the Constitution, is also excluded from the definition of the expression '*service*'.

7. Under a Notification bearing No.25/2012-Service Tax, dated 20.06.2012, which came into force with effect from 01.07.2012, certain activities were exempted from the purview of taxable services. The stand taken by the respondents is that after the amended definition of the expression '*service*', all types of services come within the purview of the tax net, except those that are exempted under the Notification, dated 20.06.2012. It is on this basis that the 2nd respondent proceeded to pass the order impugned in the writ petition.

8. But, what has been omitted to be taken note of, is the fact that unless an activity carried on by a person falls within the purview of the definition '*service*', the question of analyzing whether such activity falls within the exemption under the Notification, dated 20.06.2012, does not arise. Therefore, primarily, one has to satisfy oneself as to whether the activity in question satisfies all the

ingredients of service within the definition of the term under Section 65B (44).

9. The specific case of the petitioner, on which there is no dispute on facts, is that they supply food to their workers at a subsidized rate. Naturally, no management will be magnanimous enough to ask the workers to take the food sitting inside the air-conditioned dining hall. If the workers are provided food outside such a restaurant, which is meant exclusively for feeding them, the same cannot be treated as not forming part of the establishment. To say that the establishment feeds its own workers, but to conclude that the place where it is provided is not part of the establishment, tantamounts to creating a dichotomy, which does not exist.

10. As a matter of fact, any supply of subsidized food to the workers by the management of a Company, has to be seen as part of the pay package that the workers have negotiated with the employer. Under the Factories Act, 1948 and even under the Industrial Disputes Act, 1947, the expression '*wages*' would include within its purview, anything that is supplied at a subsidized rate. Section 2(rr) of the Industrial Disputes Act, 1947 defines '*wages*' to mean, all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment. Interestingly, the definition of the expression '*wages*' under Section 2(rr) of the Industrial Disputes Act, 1947 is both an inclusive as well as

exhaustive definition. Some of the items specifically included under Clauses (i) to (iv) under Section 2(rr) includes (1) all allowances including dearness allowance, (2) the value of any house accommodation or supply of light, water, medical attendance or other amenity including the concessional supply of foodgrains or other articles, (3) traveling concession, and (4) any commission payable on the promotion of sales or business.

11. Therefore, the food supplied by an employer to its employees at a subsidized rate forms part of the wages under Section 2(rr) of the Industrial Disputes Act, 1947.

12. Once the activity undertaken by the petitioner in the form of supply of food to its workers at a subsidized rate is understood to be part of their industrial obligation, it is unthinkable that the same can be construed as service falling within the definition of the expression 'service' under Section 65B(44) of the Finance Act. The 2nd respondent has completely overlooked this aspect and assumed a jurisdiction not vested in him in law. As a matter of fact, the petitioner has paid the value added tax on the value of the food supplied to its workers. In respect of some assessment years, they have even been imposed with a penalty under the Andhra Pradesh Value Added Tax Act, 2005. Therefore, once the State Authorities have treated the supply of food to the workers of the petitioner as sale, it is not open to the respondents to treat the same as service and impose a liability.

13. Hence, the Writ Petition is allowed and the impugned order is set aside.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

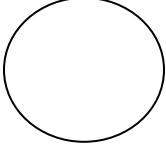
V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

23rd March, 2017

Note: L.R. copy be marked.
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THE HON'BLE MS. JUSTICE J. UMA DEVI



Writ Petition No. 217 of 2017
(allowed)

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