

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
19.3.2018

Delivered on
24.4.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.2144 of 2012

1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai 600 005

2.The District Collector,
Kanchipuram District ... Appellants/Respondents

versus

Golden Sun Hotel Beach Resorts
rep. By its Director, Mr.R.L.Jain,
No.59, Kovelong Road,
Mamallapuram,
Kanchipuram District ... Respondent/Petitioner

Appeal filed under clause 15 of letters patent against the
order passed by this Court dated 4.1.2011 passed in W.P.No.1744
of 2008.

W.P.No.1744 of 2008:

Writ Petition is filed under Article 226 of the constitution
of India praying to issue a Writ of Certiorari calling for the
records relating to the letter dated 07.09.2007 in letter No. P
& E 2(4) /5950/2007 and letter dated 17.12.2007 in Lr RC No.
P&E 2(4) /5950/2007 of the first respondent and quash the same.

For appellant : Mrs.A.Sree Jayanthi, Spl.Govt Pleader
For Respondents : Mrs.A.L.Gandhimathi

J U D G M E N T
K.K.SASIDHARAN, J.

The respondent secured FL3 License under 3 Star Hotel
category with effect from 12 December 1997 and carried on liquor
sale. When the arrears of license fee was claimed, the
respondent invented a novel device for avoiding payment, by
contending that as per the proceedings dated 2 August 2005, the
Tourism Department, Government of India, removed the name of the
hotel from the 3 Star category notwithstanding the fact that
there was no application submitted at any point of time to the

Excise Licensing Authority for reclassification and issue another license. In short, the liability to pay the bar license fee for the period from 1997 to 2005 and subsequent period up to 2007-08 are disputed, on the basis of a communication dated 5 August 2015.

The facts:-

2. The respondent is a hotel situated at Mamallapuram. The respondent obtained FL3 License from the Excise Department, claiming that the Hotel is a 3 star category. The license granted during the excise year 1997-98 was renewed periodically. There was shortfall in the payment of license fee. When a demand was made to pay the arrears of license fee, the respondent contended that the 3 star classification expired on 12 December 2000. To substantiate this contention, the respondent produced a letter dated 2 August 2005 issued by the Tourism Department, informing the hotel that there was no renewal of 3 star category after 12 December 2000.

3. The demand for payment of arrears was quashed by the learned Single Judge. The order is under challenge in this intra court appeal.

Contentions :-

4. The learned Government Pleader contended that the respondent at all point of time maintained that the hotel is a 3 star category and got renewal of license. It was only when demand was made to clear the arrears, letter dated 2 August 2005 was produced to dispute the liability. The learned Government Pleader contended that at no point of time the respondent informed the licensing authority that the hotel is no more a star hotel and that an applicable license should be issued. The respondent is therefore liable to pay the arrears.

5. The learned Senior Counsel for the respondent contended that there was no renewal of 3 star category license beyond 12 December 2000. This fact was proved by the communication dated 2 August 2005. The respondent was therefore correct in contending that there was no liability to pay the license fee applicable to a 3 star hotel after 2000.

Analysis:-

6. The respondent was given FL3 license applicable to a 3 Star Hotel. We are now concerned with the arrears of license fee for the license period 2001-02 to 2007-08. The license fee for FL3 license at that point of time was Rs.3,00,000/-. The appellant paid only a sum of Rs.1,00,000/- and agreed to pay the balance fee. The license was periodically renewed with a condition to pay the arrears.

7. There was no application submitted by the respondent at any point of time to issue a lower category license, on the ground that the 3 star category was taken away by the Tourism Department.

8. In case there was no renewal of 3 star category after 12 December 2000, the respondent ought to have reported the matter to the Licensing Authority then and there. At least during the renewal time, the respondent must have reported the fact to the licensing authority.

9. The appellant for the first time by placing reliance on a letter dated 2 August 2005, claimed that there is no liability to pay the license fee treating it as a 3 Star Hotel.

10. The respondent nowhere pleaded that the liquor business was not conducted after 12 December 2000 as a 3 star category. It was only by letter dated 5 November 2005, the respondent informed the Licensing authority that there was no renewal of 3 Star Hotel license after 12 December 2000.

11. The license was granted under 3 Star Hotel category. The respondent conducted the liquor business as a 3 star hotel and continued the business. It was only during the fag end of the license period viz., 2005-06, the respondent informed the Licensing Authority that there was no renewal of 3 star category after 12 December 2000.

12. The Licensing Authority claimed license fee at the rate applicable for a 3 star hotel up to the license year 2007-08. There is no justification for claiming that rate after the license period 2005-06, in view of the fact that the respondent by letter dated 5 November 2005 informed the Licensing Authority that the 3 star license has been taken away.

13. The respondent is liable to pay the license fee payable for FL3 License up to the excise year 2005-06. There is no liability to pay the license fee at the rate applicable to the 3 star category beyond the Excise year 2005-06.

DISPOSITION:-

14. The order dated 4 January 2011 is set aside. The Writ Petition in W.P.No.1744 of 2008 is allowed in part by quashing the impugned demand for the period beyond 2005-06. The respondent is directed to pay the differential license fee up to the excise year 2005-06 along with statutory interest, within a period of four weeks from the date of receipt of a copy of this judgment.

15. The intra court appeal is allowed as indicated above. No costs. Consequently, connected M.P.s, are closed.

-s/d-
Assistant Registrar(CCC)

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Sub-Assistant Registrar

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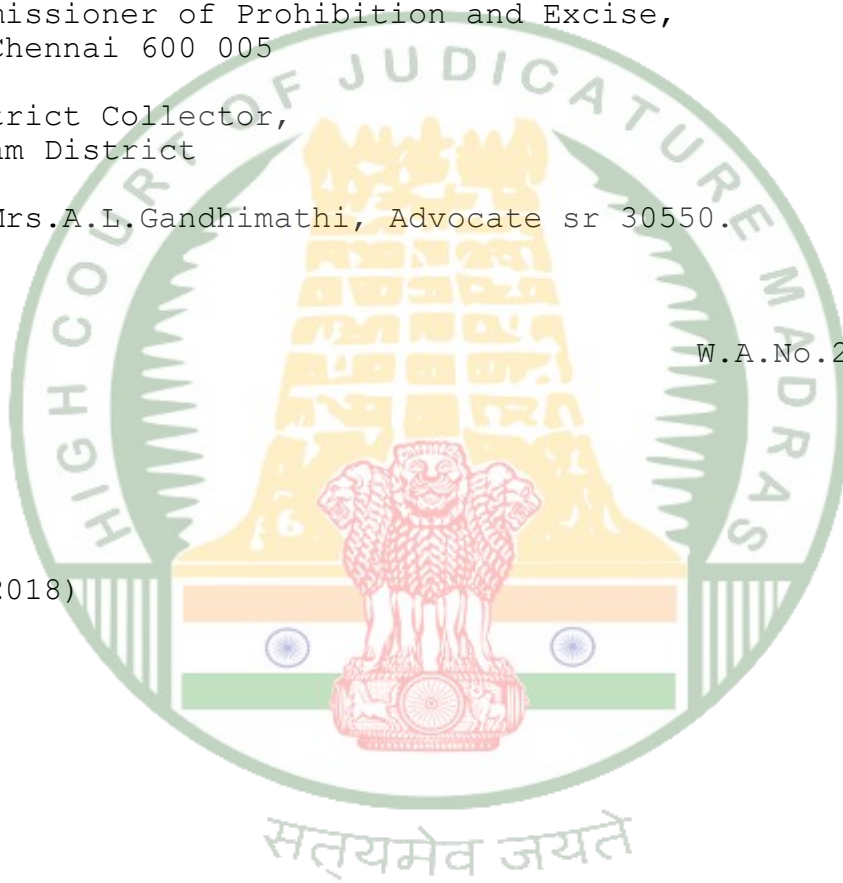
1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai 600 005

2.The District Collector,
Kanchipuram District

+1 CC to Mrs.A.L.Gandhimathi, Advocate sr 30550.

W.A.No.2144 of 2012

BR(CO)
SP(03/05/2018)



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