* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
* HON'BLE SRI JUSTICE P. KESHAVA RAO

+ W.P.Nos.28445, 28538, 28568 & 28609 of 2018

% Date: 11-12-2018

Between:

M/s. Hotel Pavani Residency,
Near District Court, Guntur Road,
Nellore, rep. by its Proprietrix,
Smt. P. Pavani, W/o. P.V. Raghava Rao,
SPSR, Nellore District.

….. Petitioner
(in all the W.Ps)

And

1. State of Andhra Pradesh, rep. by its Principal Secretary, Revenue (CT) Department, Velagapudi, Amaravathi, Guntur District, Andhra Pradesh.
2. The Joint Commissioner (State Tax), Nellore Division, SPSR Nellore District, Andhra Pradesh.
3. The Commercial Tax Officer-II, Nellore, SPSR Nellore District, Andhra Pradesh.

…. Respondents
(in all the W.Ps)

! Counsel for the Petitioner : Mr. M.V.J.K. Kumar

^ Counsel for Respondent No.2 : Mr. S. Suri Babu Spl. S.C.

^ Counsel for Respondent No.3 : Mr. Shaik Jeelani Basha Spl.S.C.

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? Cases referred

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COMMON ORDER: (Per VRS,J)

The petitioner, which is a hotel located in Nellore District, has come up with the above writ petitions challenging the revisional orders of assessment passed under the A.P. Luxury Tax Act, 1987, for the assessment years 2012-13, 2013-14, 2014-15 and 2015-16.

2. Heard Mr. M.V.J.K. Kumar, learned counsel for the petitioner and Mr. S. Suri Babu as well as Mr. Shaik Jeelani Basha, learned Special Standing Counsel appearing for the respondents.

3. Under Section 3 of the A.P. Tax on Luxuries Act, 1987, a levy and collection of luxury tax was authorized with respect to the luxuries provided to every person residing in a hotel or a corporate hospital, if the tariff is Rs.300/- or more per day per person. In other words, the tax leviable under Section 3 is not applicable to rooms where the tariff is less than Rs.300/- per day per person.

4. The assessment of the petitioner for the years 2012-13 to 2015-16 were completed during the relevant period, allowing exemption on a particular turnover on the ground that they related to rooms where the tariff was less than the minimum prescribed under Section 3.

5. However, the Joint Commissioner, who is the revisional authority, issued a notice under Section 12(1) of the A.P. Tax on Luxuries Act, 1987 proposing to revise the assessments. The petitioner seems to have filed a reply. Thereafter, an opportunity of personal hearing was granted, but there is a dispute as to whether the petitioner availed of the

opportunity or not. Therefore, the revisional authority proceeded to pass orders confirming the proposal. It is against these orders that the petitioner is before us.

6. We think one simple aspect is enough for us to dispose of the cases on hand. The orders of assessment passed by the Assessing Officer record the fact that the books of accounts of the dealer were produced before him and the claim of exemption was verified with reference to the books of accounts. The fact that the petitioner produced the books of accounts before the Assessing Officer is reflected very clearly in the assessment order in more than one place. In paragraph-2 of the order of assessment it is stated that the books of accounts were called for and they were produced. In the third paragraph of the order of assessment a finding is recorded by the Assessing Officer to the following effect:

> "The claim of exemption is verified with reference to the books of accounts and found to be in order."

7. Therefore, if a Revisional Authority wanted to exercise the power of revision under Section 12, he must naturally have some material to discredit the entries in the books of accounts. Let us now see what is the material on the basis of which the entries in the books of accounts were discredited by the Revisional Authority.

8. In the impugned orders, the Revisional Authority has stated as follows:

> "M/s. Hotel Pavani Residency, Nellore has got recognition as three star hotel and located in the heart of the Nellore city. The dealers are enrolled in Goibibo, Oyo, Booking.com etc., and to be eligible for getting booking through these websites hotels should provide amenities like TV, AC, Radio, telephone, Gym etc. M/s. Hotel Pavani Residency, Nellore has been providing banquet facilities, room, service, tennis court along with above mentioned amenities. The minimum room tariff during 2012-13 is Rs.1000/- as per the tariff slips issued to the customers.

> Therefore, considering the location of the Hotel, amentias provided, and the prevailing room tariff rates in the city during 2012-13, the claim of the dealer that the room tariff is below Rs.300/- corresponding to a turnover of Rs.57,55,090/- is found to be false and the assessment order is prejudicial to the interest of revenue."

9. The portion of the impugned order extracted above would show that the Revisional Authority, has disbelieved the entries found in the statement of accounts, though he has not expressly stated so in the impugned order. But the ground on which the Revisional Authority chose to discredit the entries in the books of accounts are – (1) that the petitioner had recognition as a three star hotel; (2) that the customers can book their rooms through online web portals; (3) that the web portals show the availability of several luxuries in the hotel; and (4) that the minimum room tariff during the assessment years in question was Rs.1,000/- as per the tariff slips issued to the customers.

10. At the outset, it should be pointed out that it is not the case of the petitioner that the entire turnover was an exempted turnover. The part of the turnover was agreed by the petitioner to be liable to the levy of luxury tax. Therefore, the fact that they had recognition as three star hotel would hardly have a bearing on the entries in the statement of accounts. The records produced before us do not show any material or document on the basis of which the Revisional Authority came to the conclusion that the petitioner had recognition as a three star hotel. It is only through the advertisements in the online web portals like Goibibo etc., that the Revisional Authority has come to such a conclusion. But the advertisement hosted in the online web portals, cannot be taken to be authenticated information. In fact, people who make bookings for air travel through some of the online web portals have experienced lot of

difficulties. Therefore, the advertisements issued in online web portals cannot form a solid basis for dislodging the entries in the books of accounts.

11. Coming to the tariff slips issued to the customers, it is found from the records produced by the learned Special Standing Counsel that they were all actually pamphlets issued by way of promotional material. These pamphlets were in public domain distributed to the general public. It is not an indication of the tariff collected from the customers, who occupied the rooms at the relevant points of time. The Revisional Authority would have done much better had he checked the bank account of the petitioner to see how much of the transactions had passed through online banking or through cheque payments. At least the Revisional Authority could have checked the receipt books. These were authenticated records to show what was actually paid. What is advertised need not necessarily be what is paid. Therefore the so called tariff slips, which are nothing but the pamphlets, which also do not bear any date, cannot be correlated to the assessment years in question.

12. Therefore, we are of the considered view that without any solid basis for dislodging the entries in the books of accounts, the Assessing Authority has exercised the jurisdiction. Hence the impugned orders are liable to the set aside and an opportunity be given to the petitioner.

13. Therefore, the writ petitions are allowed and the impugned orders are set aside. However, we remand the matter back to the Assessing Authority to afford personal hearing to the petitioner. The Revisional Authority may examine the relevant records and pass fresh orders. There will be no order as to costs.

14. As a sequel, pending miscellaneous petitions, if any, will stand closed.

V. RAMASUBRAMANIAN, J.

P. KESHAVA RAO, J.

11th December, 2018
Js.

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AND
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