IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.21206 & 21207 of 2014
and
M.P.Nos.1 & 1 of 2014

M/s.Adyar Gate Hotel Ltd.,
Rep. by its Managing Director,
132, T.T.K. Road,
Chennai-600 018.

... Petitioner in both WPs

Vs.

The Assistant Commissioner (CT),
Mandaveli Assessment Circle,
Chennai.

... Respondent in both WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records of the respondent in TNLTH No.00196/2008-09 and TNLTH No.00196/2009-10 respectively and quash the order dated 14.07.2014 passed therein.

(Both WPs)
For Petitioner : Mrs.C.P.Priya for M/s.B.Raveendran

For Respondent : Mr.V.Haribabu Additional Government Pleader

COMMON ORDER

The petitioner is a registered dealer, a Star Hotel, providing room for accommodation on rental basis. The petitioner is an assessee in terms of the provisions of the Tamil Nadu Tax on Luxuries Act, 1981 (in short 'Act').

2.The challenge in the present two writ petitions is as against two orders of assessment framed in terms of the Act, both dated 29.05.2014, for the periods 2008-2009 and 2009-2010. Though a plea has been advanced to the effect that the order of assessment dated 29.05.2014 has been passed even prior to the date of notice, which according to the petitioner is 05.06.2014 and the order of the assessment signed only on 14.07.2014, I do not propose to dwell on this aspect, since the requisite documents to establish the alleged disparity in dates are not before me.

3.On merits, two additions have been made. The petitioner collects charges towards Internet facilities provided through the telephone, in terms of Section 2(g) of the Act. Section 2(g) of the Act is extracted below:

> '2(g) "luxury provided in a hotel" means accommodation for residence provided in a hotel, the rate of charges for which (including charges for air-conditioning, television, radio, music, extra beds and the like but excluding charges for food, drink and telephone calls) is [five hundred rupees or more].'

4.The petitioners' case is that the Internet connection has been provided via telephone that stands specifically excluded from the ambit of 'luxury', as per the definition above. I agree. Moreover, Internet facility can hardly be considered as a luxury and has come to be regarded as a basic necessity, equatable to telephone facility. This addition is deleted.

5.The second addition is made in terms of Section 4-A of the Act. Section 4-A is extracted below:

> '4-A. Intimation of revised rate to the Assessing Authority.- Where any proprietor intends to revise any rate of charge for any luxury provided in a hotel, he shall intimate in writing to the assessing authority seven days prior to the date of giving effect to such revised rates. The proprietor shall be liable to pay tax at the revised rate after the expiry of seven days from the date of receipt of such intimation by the assessing authority.'

6.In the present case, admittedly the petitioner has put into operation the revised rates within a period of 7 days and prior to intimation of the revision to the Department. This is not called into dispute by Mr.Haribabu, learned Additional Government Pleader appearing for the respondent. Tax has thus been remitted by the petitioner on the revised, enhanced rates.

Thus, there can be no prejudice caused to the Department, since it has, in fact received the tax on the enhanced rates as per the timelines stipulated in Section 4-A above though intimation of the revision was belated. This ground is allowed and the modification deleted.

7.Coming to the aspect of penalty, the provisions of Section 8(d) of the Luxury Tax Act, if at all, would be applicable in the present case. However, the Assessing Authority has levied penalty in terms of the provisions of the Tamil Nadu Value Added Tax Act which is patently incorrect. That apart, since the additions on merits have been set aside, there can be no question of levy of penalty. In fine, the impugned assessments are set aside and the writ petitions allowed. No costs. Consequently, connected miscellaneous petitions are closed.

8.This Court on 07.08.2014 had granted an interim stay upon condition that the balance taxes demanded under the impugned orders of Rs.17,66,735/- and Rs.14,07,514/- be paid within three weeks from the date of order. The petitioner has effected remittances as aforesaid. A copy of covering letter dated 01.09.2014 with cheque numbers and acknowledgements is placed on record. Let a request be made to the Assessing Officer seeking refund which shall be granted in accordance with law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Mandaveli Assessment Circle,
Chennai.

+1cc to Special Government Pleader (Taxes) sr.91287
+1cc to M/s.B.Raveendran, Advocate sr.90824

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nr 31/01/2020