$~25 to 29

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ VAT APPEAL 5/2019, CM APPL. 3574-3576/2019

M/S R.K.AGGARWAL(NOW KNOWN AS SUNSHINE CATERERS PRIVATE LIMITED) ..... Appellant

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

\+ VAT APPEAL 6/2019, CM APPL. 3577-3579/2019

SATYAM CATERERS PRIVATE LIMITED ..... Appellant

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

\+ VAT APPEAL 7/2019, CM APPL. 3582-3584/2019

M/S R.K.AGGARWAL(NOW KNOWN AS SUNSHINE CATERERS PRIVATE LIMITED) ..... Appellant

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

\+ VAT APPEAL 8/2019, CM APPL. 3585-3587/2019

M/S R.K.AGGARWAL (NOW KNOWN AS SUNSHINE CATERERS PRIVATE LIMITED) ..... Appellant

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

\+ VAT APPEAL 9/2019, CM APPL. 3588-3590/2019

R.K.ASSOCIATES& HOTELIERS PRIVATE LIMITED ..... Appellant versus

COMMISSIONER OF TRADE & TAXES

..... Respondent

Present: Mr. Rajesh Jain, Mr. Puneet Rai, Advs. for appellant.
Mr. Satyakam, ASC, Govt. of NCT of Delhi.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% 25.01.2019

C.M. APPLs.3574/2019, 3577/2019, 3582/2019, 3585/2019 & 3588/2019 (for exemption)

Allowed, subject to all just exceptions.

C.M. APPLs.3575/2019, 3578/2019, 3583/2019, 3586/2019 & 3589/2019 (for condonation of delay)

For the reasons stated in the applications, the delay is condoned. The applications are accordingly disposed of.

VAT. APPEAL 5/2019, C.M. APPL.3576/2019
VAT. APPEAL 6/2019, C.M. APPL.3579/2019
VAT. APPEAL 7/2019, C.M. APPL.3584/2019
VAT. APPEAL 8/2019, C.M. APPL.3587/2019
VAT. APPEAL 9/2019, C.M. APPL.3590/2019

The question of law urged is with respect to the management and catering on board services and the levy of VAT by the GNCTD on board services provided by the appellant to the IRCTC through its agreement. It is contended that the activities are subjected to service tax levy and, therefore, does not attract Value Added Tax (VAT).

At the outset, this Court notices that the VAT Tribunal has considered the submissions of the parties on merits and furthermore noted in para 22 of the impugned order that, in the judgment of this Court in *Indian Railways Catering and Tourism Corporation Ltd. v. GNCTD and Ors.* 2009-10 (48) DSTC 290, in respect of identical facts, the VAT levy was upheld. Furthermore, the appellants too appear to have conceded that the questions urged are covered by *IRCTC (supra)*.

The Court was informed during the hearing of these appeals that the Supreme Court has entertained an appeal by special leave in the *IRCTC* matter and stayed the recovery of amounts due *pendente lite*.

In the circumstances, following the decision in *IRCTC (supra)*, the appeals are dismissed. The respondents, however, shall not recover the amounts during the pendency of appeals before the Supreme Court. Accordingly, the parties, i.e. the present appellants and the respondents shall be bound by the final decision of the Supreme Court. The recoveries from the appellants are hereby stayed till the final decision is arrived at.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 25, 2019/akv