IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 20871 of 2014
and
M.P. No. 1 of 2014

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

Vs

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

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in TNLTH No.0196/2007-08 and quash the order dated 14.07.2014.

For Petitioner : Mr.P.V.Sudakar
For Respondent : Ms.G.Dhanamadhri
Government Advocate

ORDER

The petitioner has challenged the impugned communication dated 14.07.2014 seeking to levy of luxury tax on internet charges and tax on ineligible revision of tariff under the Tamil Nadu Tax on Luxuries Act, 1981. Similarly, the dispute came up for the succeeding financial years as well i.e., the Assessment Years 2008-2009 and 2009-2010 in W.P.Nos.21206 & 21207 of 2014.

2. By an order dated 01.11.2019, the demand was set aside with the following observations:-

> “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."

3. The learned counsel for the respondent/Commercial Tax Department submits that this order was passed on 01.11.2019 and has not appealed against. Considering the same, this Writ Petition stands allowed in terms of the above order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

arb

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

+1 cc to Specail Government Pleader(Taxes) sr14353

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