IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NOS.4719 & 4721 OF 2022

ITC Limited,
Sheraton Chola {Welcomhotel Chennai},
Represented by its General Manager,
Mr.Virender Thapa,
13, Cathedral Road,
Chennai – 600 086. ... Petitioner in both W.P's

.Vs.

1. The Assistant Commissioner (CT)(FAC),
   Mylapore Assessment Circle,
   46, Greenways Road,
   Chennai – 600 028.

2. The Appellate Deputy Commissioner (CT),
   Chennai (East),
   C.T. Building, Annexe,
   Greams Road,
   Chennai - 600 006.

3. The Additional Commissioner,
   (Revenue Collection and Monitoring),
   Office of the Commissioner
   of Commercial Taxes,
   Ezhilagam, 4th Floor,
   Chepauk, Chennai – 600 005. ... Respondents in both W.P's

PRAYER IN W.P.NO.4719 OF 2022:-

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the third respondent herein, in R.P.No.68/2015 dated 11.08.2021 confirming the proceedings of the first respondent in TNTLH/189/2008-09 dated 31.10.2013 and quash the same and direct the first respondent to grant to the petitioner refund of a sum of Rs.4,32,980/-.

PRAYER IN W.P.NO.4721 OF 2022:-

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the third respondent herein, in R.P.No.69/2015 dated 11.08.2021 confirming the proceedings of the first respondent in TNTLH/190/2009-10 dated 31.10.2013 and quash the same and direct the first respondent to grant to the petitioner refund of a sum of Rs.5,94,470/-.

IN BOTH W.P'S

For Petitioner : Mr.K.A.Parthasarathy

For Respondents : Mr.V.Prasanth Kiran
Government Advocate

COMMON ORDER

Since the issue raised in these writ petitions is common, with the consent of the learned counsel appearing for both sides, these writ petitions were heard and are being disposed of by this common order.

2. The petitioner is a Star Hotel and it is provided various services to the guests who come to the hotel which includes the internet facility. The said internet facility provided for the assessment years 2008-09 and 2009-10 has been now levied luxury tax by the impugned orders dated 31.10.2013 by the Assessing Authority and when the said order was appealed, the same also has been confirmed by the order of the Appellate Authority dated 19.02.2015. As against which, further revision was filed before the Revisional Authority, who also has confirmed the same, by order dated 11.08.2021. Challenging these orders, the present writ petitions have been filed.

3. Heard Mr.K.A.Parthasarathy, learned counsel appearing for the petitioner who pointed out that, the issue as to whether the internet facility provided to the guests of the Hotel concerned like the petitioner, whether can be levied for the purpose of luxury tax or not is no more res integra as that issue has been considered in more than one judgment by this Court, where, he relied upon a decision of the Writ Court made in W.P.Nos.21206 & 21207 of 2014, where, by order dated 01.11.2019 in the matter of M/s.Adyar Gate Hotel Limited Vs. The Assistant Commissioner (CT), Chennai, a learned Judge has passed an order to the following effect:

"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 acknowledgments is placed on record. Let a request be made to the Assessing Officer seeking refund which shall be granted in accordance with law.”

4. Subsequently, another order has been passed for the same assessee viz., M/s.Adyar Gate Hotel Limited in W.P.No.20871 of 2014 for subsequent assessment year by order dated 04.03.2021, where also another learned Judge has passed the following order:

“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."

5. Relying upon these decisions, the learned counsel would contend that, the present order passed by the Revisional Authority confirming the order of the Appellate Authority as well as the Assessing Authority imposing the luxury tax on the services of providing internet facility by the hotel concerned i.e., the assessee is unjustifiable or unlawful and therefore, the said orders are liable to be set aside, he contended.

6. Per contra, Mr.V.Prasanth Kiran, learned Government Advocate appearing for respondents would submit that, though initially there was no appeal filed against the said orders, subsequently, the Department has decided to file intra-Court appeal against those orders, therefore, the decision taken by the Writ Court cannot be construed as a conclusive one.

7. I have considered the said submissions made by the learned counsel for both sides and have perused the materials placed before this Court.

8. Even though it is submitted by the learned Government Advocate for respondents that, they decided to prefer appeal against the said orders, of course belatedly, that may not preclude this Court from following the earlier orders based on the same subject or same point, where, those writ petitions have been allowed in a similar circumstances by giving interpretation to the concerned provision of law viz., luxury tax and therefore, I am inclined to follow the orders referred to above and if the said principle enunciated in the said orders is applied to the present facts of the case, this Court has no hesitation to hold that the impugned orders cannot be sustained.

9. In that view of the matter, this Court is inclined to dispose of these Writ Petitions with the following orders:

> That the impugned orders are quashed and the writ petitions are allowed.

10. It is brought to the notice of this Court that, during the pendency of the proceedings upto the Revisional Authority levels due to the steps taken to recover the money by the Revenue from the petitioner/assessee, the petitioner/assessee without prejudice his right to contend that, he is not liable to pay the tax, has already paid the tax due.

11. In view of the above, since the writ petitions have been allowed and the orders of assessment including the Revisional Authority's order since has been set aside, the petitioner is entitled to get the refund of the amount already paid and therefore, there shall be a direction to the respondents to refund the said amount within a period of four weeks from the

date of receipt of a copy of this order. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Assistant Commissioner (CT)(FAC),
Mylapore Assessment Circle,
46, Greenways Road,
Chennai – 600 028.

2. The Appellate Deputy Commissioner (CT),
Chennai (East),
C.T. Building, Annexe,
Greams Road,
Chennai - 600 006.

3. The Additional Commissioner,
(Revenue Collection and Monitoring),
Office of the Commissioner
of Commercial Taxes,
Ezhilagam, 4th Floor,
Chepauk, Chennai – 600 005.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.14035
+1cc to the Special Government Pleader(Taxes), S.R.No.14791

W.P.NOS.4719 & 4721 OF 2022

GP(CO)
PBS/27/04/2022