

(2013) 08 KL CK 0007
In the High Court Of Kerala
Case No : W.A. No. 3031 of 2007

Brunton Boatyard

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Kerala Tax on Luxuries Act, 1976 — Section 2(f)

Citation : (2013) 4 KLJ 406 : (2013) 4 KLT 37 : (2013) 66 VST 533

Hon'ble Judges : Thottathil B. Radhakrishnan, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : Joseph Markose, for the Appellant; Sebastian Champappilly, Spl. Government Pleader (Taxes), for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—These Writ Appeals arise from a common judgment rendered holding that charges collected for ayurvedic treatment, for laundry services and charges collected from customers for boating arrangements by the hotel where they are accommodated, attract luxury tax. The appellants contend and it is argued by the learned senior counsel appearing for them that the laundry charges, charges received for boating and ayurvedic treatment charges do not come within the purview of "luxury provided in a hotel" as defined in S. 2(f) of the Kerala Tax on Luxuries Act, 1976. According to the appellants, that term takes in only accommodation for residence and other amenities and other services provided in a hotel and the aforesaid charges are not received for any luxury provided in the hotel. It is pointed out that the term is defined to mean what it says and therefore, it cannot be extended beyond. It is further argued that the definition of the term "luxury" in S. 2(ee) does not take within its sweep such services which do not minister comfort or pleasure. The appellants would point out that the amenities specified under S. 4(2) are only amenities like air-conditioning, supply of hot water etc., provided in the room where accommodation is provided and which is not optional for any specified category of rooms. It is also argued that ayurvedic treatment, boating made available through other tourist service providers and laundry are provided

to customers only on their specific demands and therefore, will not come under the general amenities and facilities provided in a hotel. Per contra, the learned Special Government Pleader for the Department of Taxes argued, among other things, that having regard to the definition of the term "luxury provided in a hotel" under S. 2(f) of the Act and the definition of "luxury" in S. 2(ee), the view taken by the learned single Judge cannot be criticised. It is argued that the definition "luxury provided in a hotel" is a self-contained definition and it emphatically takes within its sweep, all amenities and services provided in a hotel except charges which are statutorily excluded. The definition of term "luxury" in S. 2(ee) is wide enough to take in all such services, it is argued.

2. The learned single Judge having noted that *Piem Hotels Ltd. Vs. State of Karnataka and Another*, was rendered without noticing the decision of this Court in *Kovalam Ashoka Beach Resort v. Sales Tax Officer (14 KTR 417)*, has dealt with all the issues arising for decision, independent of precedent law as well. It was pointedly noted by the learned Judge that the contention of the petitioners who are now appellants before us, is that the charging section provides for rate of luxury tax dependent on the rates charged for accommodation for residence and other amenities and services provided in the hotel and that, therefore, only such of the amenities and services covered by standard rates charged from every customer in the hotel are covered by luxury tax. The plea that ayurvedic treatment, laundry, and boating are optional services and therefore, not covered by charging section, has been dealt with in the impugned judgment.

3. Section 2(ee) defines "luxury" to mean a commodity or service that ministers comfort or pleasure. Sub-section (2) of S. 4 provides for levy of luxury tax at rates classified on the rates of charges for accommodation for residence and other amenities and services excepting those which are excluded. This, however, is put at rate applicable per day per room. The definition of "luxury provided in a hotel" in S. 2(f) means accommodation for residence and other amenities and services provided in a hotel. When these terms are taken together, the mere prescription that the rate would be per day per room cannot be held to mean that luxury tax is leviable only on rate of charges for accommodation for residence and other amenities and services attached to that room. This will give a restrictive construction for the term "other amenities and services" and would pin down the luxury tax levy to be confined to the charges for accommodation and amenities and services which would be offered for enjoyment irrespective of the requirement of the customer concerned. In our view, that is not the manner in which the said provision stands. The rate of charges for accommodation for residence is one of the components while other amenities and services enjoyed by the customer would also be luxury provided in a hotel, though that may vary from room to room, depending upon customer's volition and requirement. While that event would not be certain, but would be dependent upon the consumption and enjoyment of the luxuries as may be made available, that is not a ground to exclude any particular amenity or service from the purview of the terms "luxury" and "luxury provided in a hotel" as defined in the Act. No such exclusion is

possible merely on the plea that it is not part of the accommodation for residence and is not such amenity or service as is intricately connected with the accommodation for residence. The statutory provisions in hand do not attempt any such restrictive construction. The term "luxury provided in a hotel" is defined to mean accommodation for residence and other amenities and services provided in a hotel excluding the items mentioned in S. 2(f). The use of the conjunction "and" after the phrase "accommodation for residence" clearly spells out the legislative intent that the amenities which fall into the net of that provision are not those merely confined to providing attendant services in connection with the requirement of an occupant of the hotel for residence. Again, the use of the conjunction "and" between the words "amenities and services" amplifies to bring within its ambit all commodities or services that minister comfort or pleasure. Therefore, all amenities and services provided in a hotel as well as accommodation for residence amount to luxury for the purpose of S. 2(ee) and would fall within the term "luxury provided in a hotel" as defined in S. 2(f) of the Act.

4. Hence, the learned single Judge has rightly concluded that all what the charging section says is that the rate of tax will have to be determined by taking into account the total charges recovered and tax will be payable only on such amount irrespective of whether rent, amenities and services are separately charged or not. The learned single Judge was justified in holding that the Act does not make any difference as to whether charges for services and amenities are combined with rent or such charges are separately collected in addition to rent. The finding that the services rendered in a hotel need not necessarily mean services provided in the hotel building, but include services arranged by the hotel to its customers, though the service is rendered outside the hotel premises cannot also be found fault with. For the aforesaid reasons, we find no ground to interfere with the judgment impugned. These Writ Appeals, therefore, fail.

In the result, these Writ Appeals are dismissed. No costs.