(2011) 09 KAR CK 0042

In the Karnataka High Court

Case No : LTRP No. 1 of 2009

East Cultural Association APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Karnataka Tax on Luxuries Act, 1979 — Section 2 (4), 3 B

Citation : (2012) 55 VST 463

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : G. Rabindranathn and M. Thirumalesh, for the Appellant; S. Sujatha, AGA, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The assessee has preferred this revision petition against the order passed by the Karnataka Appellate Tribunal holding that u/s 3-B of the Karnataka Tax on Luxuries Act, 1979, the assessee is liable to pay luxury tax on Halls used for conducting birthdays, anniversaries and get-togethers, for which requisite charges are collected. The assessee is a cultural association and duly registered under the provisions of the Karnataka Tax on Luxuries Act, 1979. They filed their annual return in Form III-H declaring the total charges received for accommodation for residence at Rs. 4,43,450-00 and paid Luxury Tax amount of Rs. 55,431-25. On verification of books of accounts, the Assessing Authority issued a Proposition Notice and proposed to levy tax along with penalty. Assessee filed its objections. Over-ruling the said objections, the assessment order came to be passed and penalty was also imposed.

2. Aggrieved by the said order, the assessee preferred an appeal to the Joint Commissioner of Commercial Taxes, who uphold the levy of tax and penalty but modified the penalty by reducing it to 50%.

3. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal.

The main ground urged was that Halls were rented out only to members of the association for conducting birthdays, anniversaries and get-togethers and religious poojas, etc., For levy of tax u/s 3-B, two requirements should be satisfied-(i) that the luxury in the form of conference hall is available and (ii) luxury is provided by collecting there for. In the case of the assessee, the said requirements are not established and therefore, the levy u/s 3-B is illegal. The Tribunal upheld the order passed by the authorities and dismissed the appeal. Aggrieved, assessee has preferred this revision.

4. Section 3-B of the Act reads as under:

3-B. Tax on laxuries like health club, etc., There shall be levied and collected a tax at the rate of [ten per cent] on the charges collected for laxuries provides in a hotel for residents or others such as health club, beauty parlour, swimming pool, conference hall and the like when such charges are collected separately.

5. As is clear from the aforesaid provision, it applies only to Hotels. Hotel has been defined u/s 2(4) of the Act. It reads as under:

2(4) "Hotel" means a building or part of a building where lodging accommodation, with or without board is by way of business provided for a monetary consideration, and includes a lodging houses, [club] [and holiday resorts].

Therefore the definition of Hotel includes a Club and consequently Section 3-B is attracted to Club.

6. The definition of Hotel which includes Club came to be challenged before this Court, in the case of BANGALORE CLUB Vs. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES. The said judgment was reversed by the Division Bench of this Court which is reported in 2009 (67) KLJ 221, holding that the amended provision with explanation thereto by which the word ''Club'' was included in the definition of Hotel are struck down as bad in law and the impugned notices were quashed. It was declared that ''Club'' cannot be equated to Hotel for the purpose of levying luxury tax under the Act.

7. It is submitted that against the aforesaid judgment of this Court the State has preferred an appeal to the Apex Court in Civil Appeal Nos. 4092-4094/2010 and the matter is pending consideration before the Apex Court. In the light of the aforesaid judgment of the Division Bench, a Club is not included in the Hotel, as on today. Section 3-B applies only to Hotels and not to Clubs. Therefore the impugned order passed by the authorities levying luxury tax u/s 3-B of the Act on the Club is one without authority of law and cannot he sustained. Accordingly, all the impugned orders are set aside. However, it is made clear that this order is subject to the ultimate decision to be rendered by the Apex Court. Hence, we pass the following order:

(a) Revision Petition is allowed.

(b) The impugned orders passed by the authorities are hereby set aside.

(c) The orders passed by this Court is subject to the decision to be rendered by the Apex Court.

(d) The authorities shall act in terms of the judgment of the Apex Court after its pronouncement.