

(1976) 10 MAD CK 0011

In the Madras High Court

Case No : T.C. No"s. 131 and 132 of 1972 (Revision No"s. 111 and 112 of 1972)

Hotel Ashoka

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-10-1976

Acts Referred:

Industrial Disputes Act, 1947 — Section 12

Citation : (1977) 40 STC 347

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ismail, J.—The question raised in these two tax revision cases is whether the service charges collected by the petitioner herein could be

included in the taxable turnover or not. It is not in dispute that the petitioner is collecting 5 per cent of the value of the articles served as service

charges and the collection is made along with the price of the articles served. The case of the petitioner was that previously the workers were

collecting tips from customers, that subsequently under an agreement entered into between the management and the employees u/s 12(3) of the

Industrial Disputes Act, 1947, it was agreed that the employees would not collect tips from the customers and instead the management would

collect 5 per cent of the tariff value of the articles served as service charges and utilise the service charges so collected byway of paying 50 per

cent thereof immediately to the employees and appropriating the other 50 per cent to increase the wages and food allowance of the employees and

also to introduce a provident fund scheme for the employees, that, therefore, the service charges so collected do not stand on a footing different

from the tips previously collected by the employees and that, consequently, the same cannot be included in the taxable turn-over. In our opinion,

the Tribunal very rightly rejected this contention of the petitioner and, while doing so, it followed the judgment of the Bombay High Court in Sun-

N-Sand Hotel Private Ltd. v. State of Maharashtra [1969] 23 S.T.C. 507 where an identical question was decided by the Bombay High Court. In

that case, the Bombay High Court observed:

In the case of service charges, the customers have no option but to pay these charges when demanded by the assessee, irrespective of the fact

whether the employees were serviceable or had rendered useful service. In as much as in the case of demand for tips, it is entirely a voluntary

payment and the customer may or may not pay a tip to the particular servant who attends on him according as he is satisfied with the service of that

particular employee or not. The Tribunal has also pointed out that the service charges of 10 per cent for the services rendered are for the execution

of the order that is placed by the customer. In other words, the service charges are entirely dependent on the food consumed by the customer after

placing an order. It is because there is a sale of the food ordered by the customer that the service charges are collected ; it is because the price of

the food and service charges are inseparably wedded together that it is not possible to view one without the other. In other words, service charges

had no independent existence of their own. So far as the customer is concerned and for all practical purposes, the price of the food ordered by the

customer is what he pays there for. If the customer is required to pay what is stated as tariff plus 10 per cent over and above that tariff, then the

price, so far as the customer is concerned, for the food supplied and served to him in the establishment will be the total amount of the bill that is

charged including the so-called service charges. The Tribunal has also held that it is not possible for the customer to enter into the contract only for

doing service in the manner in which the service charges are sought to be interpreted apart from the food which is supplied. It is not as if one can

take one's food from outside and order it to be served in the hotel for which any charge will be payable. There is no choice to a customer whether

to pay the service charges or not to pay the service charges, distinguishing it thus from a demand by way of a tip made by an individual servant.

2. Just as in the case before the Bombay High Court, before us also, the learned counsel for the petitioner contended that what the management

has done by collecting service charges is to channelise the tips previously received by the employees from the customers individually. The Bombay

High Court dealing with this argument observed :

The contention of the assessee that it merely acts as if it were a channel or conduit through which the benefits flow from the collection of this

amount for the purpose of distribution to its employees, cannot be accepted. For one thing there is no direct nexus between the whole body of

employees to whom the benefits go and the customer who is served by an employee. In the case of a tip, it is a direct payment for satisfactory

service rendered by a particular employee who serves the customer. For aught one knows, the customer may not know the number of employees

in the establishment, their grades or salaries and what services they actually render. If the charges were only for the services rendered to the

customer, the matter would be on a different footing. Here the service rendered are rendered by the totality of employees in the establishment

; some of them may be in the kitchen and some of them may be at other places. In other words, they may be employed in the task with which the

customer is not directly concerned at all. It will, therefore be seen that what is charged as service charges and required to be paid by the customer

is in effect an addition to the price which he has to pay and is properly to be considered as sale price of the food ordered by him in that

establishment.

3. If we may say so, with respect, we entirely agree with the above reasoning and conclusion of the Bombay High Court. In view of this, we are of

the opinion that the conclusion of the Tribunal in this case in including the service charges in the taxable turnover of the assessee is correct. Hence

the tax revision cases fail and they are dismissed. The respondent is entitled to its costs-counsel's fee Rs. 250 (rupees two hundred and fifty only)

one set.