(1991) 04 MAD CK 0051

In the Madras High Court

Case No : T.C. (Appeal) No. 23 of 1982

Hotel Swagath APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 10-04-1991

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 3, 7A

Citation : (1991) 04 MAD CK 0051

Hon'ble Judges : Raju, J;A.S. Anand, J

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; R. Lokapriya, Government Advocate (Taxes), for the Respondent

Judgement

Raju, J.—The assessee has filed the above tax appeal challenging the order of the Joint Commissioner, Commercial Taxes, Madras, made in exercise of his suo motu power setting aside the order of the appellate authority and directing the assessment of the assessee on a turnover of Rs. 1,91,166 u/s 3(1) of the Tamil Nadu General Sales Tax Act, 1959 and Rs. 50 u/s 7-A of the said Act. The appellant is running a hotel and on the basis of some materials secured by certain inspections as regards the records made available, a best judgment assessment was made on the assessee determining the total taxable turnover at Rs. 3,65,352.17. A penalty of Rs. 4,304 was also levied u/s 12(3) of the Act. Aggrieved, the assessee filed an appeal before the Appellate Assistant Commissioner. The appellate authority found that in view of the judgment of the Supreme Court reported in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [1978] 42 STC 386 that food and drinks supplied are in the nature of service and not sales and, therefore, the assessee was not liable to pay tax. The appellate authority also found that in any case, if the assessee had to be assessed the turnover would be fixed at Rs. 1,91,116 only and thereby disapproved the estimate made by the assessing authority. It is the said order of the appellate authority that has been the subject of the suo motu revision by the Joint Commissioner.

2. The Joint Commissioner considered that in the light of the subsequent decision of the Supreme Court in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [1980] 45 STC 212, each case has to be decided with reference to the nature of the transactions conducted by the hotelier concerned to decide about whether the transactions are such which fall within the provisions of the Act. While proposing to revise the order of the appellate authority the Joint Commissioner also proposed to assess the appellant on a turnover of Rs. 50 said to represent the purchase from non-assessee and levy tax u/s 7-A. The assessee objected to the proposals. Overruling the objections, the Joint Commissioner confirmed the proposals. The Joint Commissioner, while confirming the proposals, came to the conclusion that the substance of the transaction of the assessee had its dominant object as sale of food and that rendering service was merely incidental unlike the case considered by the Supreme Court. Aggrieved, the above tax appeal has been filed.

3. After hearing learned counsel appearing on either side, we are of the view that the order of the Joint Commissioner cannot be sustained. No doubt, it was open to the Joint Commissioner to factually ascertain the nature of the transactions in the light of the principles laid down by the Supreme Court in the decisions referred to supra. But we find that instead of considering any material and rendering an objective finding the Joint Commissioner arrived at conclusions more on conjectures and surmises rather than on factual details. The order of the Joint Commissioner, therefore, cannot be sustained and is liable to be set aside.

4. But at the same time we are of the view that the matter requires to be remitted for fresh consideration to the assessing authority. As has been pointed out supra, the Supreme Court in the decision reported in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [1980] 45 STC 212 has clearly held that the taxability of the transactions of a hotelier required to be considered with reference to the facts of each case. Keeping in view the principles laid down by the apex Court as well as by this Court in the decision reported in Sree Annapoorna v. State of Tamil Nadu [1986] 63 STC 18 the assessing authority is, therefore, directed to consider the matter afresh in the light of the principles laid down in those decisions and decide the question regarding the taxability or otherwise of the transactions of the appellant. It may also be made clear that so far as the quantum of turnover is concerned, the assessing authority is bound to accept the quantum fixed by the Appellate Assistant Commissioner at Rs. 1,91,116 which has also been accepted by the Joint Commissioner to be correct. In respect of the addition sought to be made by the Joint Commissioner in a sum of Rs. 50 to the taxable turnover under the category of section 7-A the assessing authority is directed to consider the same with reference to the relevant materials, the correctness of the claim and render its conclusions also after hearing the assessee.

5. The tax appeal is consequently allowed, and the matter is remitted to the assessing authority to be considered afresh in the light of the observations

contained in this judgment. There shall, however, be no order as to costs.

6. Appeal allowed.