

(2002) 09 KAR CK 0019

In the Karnataka High Court

Case No : W.A. No's. 5852-63 of 1998, 387, 432, 437-438, 1653, 1737, 1800-1806, 2030, 2307, 3771, 31791 and 31228 of 1999 and 1564 of 2000

Piem Hotels Ltd.

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Tax on Luxuries (Hotels and Lodging Houses) Act, 1979 — Section 2 (1), 3, 3 B, 3 C

Citation : (2002) 4 KCCR 365 SN : (2003) 129 STC 373

Hon'ble Judges : Kumar Rajaratnam, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : Murthy and Kumar, in W.A. Nos. 5852-63 of 1998 and W.P. No. 31228 of 1999, Nanjunda Reddy, in W.A. No. 3771 of 1999, Padubidri Raghavendra Rao, in W.A. Nos. 437-438 of 1999, G.K.V. Murthy and M.S. Srinivasa, in W.A. No. 387 of 1999, Vasan Associates in W.A. No. 432 of 1999, S. Narayana, in W.A. Nos. 1804, 1806, 1653 and 2307 of 1999, B. Anand, Government in W.A. Nos. 1737, 1803 and 1805 of 1999 and 1564 of 2000, King and Partridge in W.A. No. 31791 of 1999 and Sriyuthus Murthy and Kumar, in W.A. No. 2030 of 1999, for the Appellant; Kiran S. Javali in W.A. Nos. 2030 of 1999 and 1564 of 2000, Kishore Mallia in W.A. No. 1737 of 1999, Padubidri Raghavendra Rao and R. Rama Murthy, in W.A. Nos. 1800-1806 of 1999, Rammohan Rao in W.A. No. 1803 of 1999, G.K.V. Murthy in W.A. No. 1805 of 1999, B. Anand, Government Advocate in W.A. Nos. 387, 432, 437-438, 1653, 1804, 1806, 2030, 2307 and 3771 of 1999, B. Anand, Government Advocate in W.A. No. 31791 of 1999 and B. Anand, Government Advocate in W.A. No. 31228 of 1999, for the Respondent

Judgement

Kumar Rajaratnam, J.—What is challenged in these writ appeals is the inclusion of outgoing telephone calls and laundry charges to a separate luxury tax apart from levy on luxuries provided in hotels and lodging houses.

2. The Karnataka Tax on Luxuries Act, 1979 (hereinafter referred to as "the Act")

makes provision for a levy on luxury provided in a hotel u/s 3 of the Act.

3. What is relevant for the purpose of this case are Sections 3, 3-B, 3-C. These are the charging Sections. Sections 3, 3-B, 3-C read as follows :

"3. Levy and collection of tax on luxury provided in a hotel.--(1) Subject to the provisions of this Act, there shall be levied, and collected a tax on the luxury provided in a hotel in respect of every room (to be known as "luxury tax") at the following rates, namely :

W.P. No.

Name

Date of signing the Roll

Date on which deemed to have become an Advocate

1054 of 2002

S. Ramu

5-2-1999

29-11-1997

1120 of 2002

T.K Shridevi

4-9-1998

4-9-1997

1121 of 2002

R. Manjuladevi

23-10-1998

18-10-1997

1122 of 2002

R. Rekha

6-11-1998

15-3-1997

1315 of 2002

Pramodha

9-1-1998

24-10-1996

1316 of 2002

Ganapati

29-8-1998

23-8-1997

Provided that where charges for lodging are payable otherwise than on a daily basis, then, for the purposes of determining the tax liability under this section, the charges shall be computed as for a day, based on the period of lodging for which the charges are payable :

Provided further that where any charges for lodging are paid by any person who is a member of a Foreign Diplomatic Mission in India, then such person shall be exempt from the payment of tax,--

(1-A) Tax levied under Sub-section (1) shall be paid by every proprietor.

(1-B) Notwithstanding anything contained in Sub-section (1), no tax shall be levied and collected from a hotelier to the extent of tax not collected by him during the period from the 1st day of August, 1985 to the 31st day of March, 1986.

(3) In computing the amount of tax payable under this section, the amount shall, if it is not a multiple of five paise, be increased to the next higher multiple of five paise.

3-B. Tax on luxuries like health club, etc.--There shall be levied and collected a tax at the rate of twenty per cent on the charges collected for luxuries provided 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.

3-C. Levy and collection of tax on charges for marriage hall.--Subject to the provisions of this Act, where charges for luxury provided in a marriage hall are not less than two thousand rupees per day there shall be levied and collected a tax at the rate of fifteen per cent of such charges."

4. We are only concerned with Section 3 (which is the charging section) which deals with tax on luxury provided in a hotel in respect of every room. Section 3-B is the charging section on luxuries like health club, beauty parlour, swimming pool, conference hall for which charges are collected separately from both residents as well as non-residents. Section 3C is the charging section for marriage halls. We are not concerned with Sections 3-B, 3-C. They are separate charging sections and they have no application in the present cases.

5. Charges for lodging is incorporated in the definition section. Section 2 is the definition section. Sub-section (1) of Section 2 reads as follows :

""charges for lodging" include charges for air-conditioning, telephone, television, radio, music, extra beds and the like but do not include any charges for food,

drink (telephone calls, laundry or other amenities) ; Substituted for the words "or other amenities" by Act No. 5 of 2000 with effect from April 1, 2000.

Explanation.--If any question arises whether any charges are charged for lodging, such question shall be referred to the State Government and the decision of the State Government shall be final and shall not be called in question in any court ;"

6. Sub-section (5) of Section 2 deals with luxury provided in a hotel, Sub-section (5) of Section 2 reads as follows :

" "Luxury provided in a hotel" means,--

(i) accommodation for lodging provided in a hotel, the rate of charges for which (including charges for air-conditioning, telephone, television, radio, music, extra beds and other amenities for which charges are compulsorily payable, but excluding charges for food and drinks) is not less than one hundred and fifty rupees per room per day ;

(ii) provision in hotels, whether to resident or others of such facility as health club, beauty parlour, swimming pools, conference hall and the like for which charges are separately made."

7. The challenge by the appellants is for the inclusion of out-going telephone calls and laundry charges to luxury tax under the provisions of Section 3(1) of the Act. That is under challenge in these writ appeals.

8. Before we deal with this matter any further it would be necessary to state that the Revenue in its circular had instructed the Commercial Tax Officers to the effect that telephone charges are not liable to luxury tax. This circular is dated February 15, 1983 and has been in force till it was quashed by the learned single Judge.

9. It is also common ground that this circular was acted upon by the Revenue and no tax was levied in the past and no proposition notice was issued. The circular was not withdrawn and the hotel owners were not subjected luxury tax with respect to telephone charges in view of this circular.

10. It would not be out of place to mention that telephone calls, laundry and other amenities were subsequently excluded during the pendency of the writ appeals u/s 2(1) (definition section) under the head "charges for lodging" by Act 5 of 2000 which came into force on April 1, 2000. This amendment has some bearing on these cases to determine the intention of the Legislature.

11. When the writ petitioners challenged the imposition of luxury tax on outgoing telephone calls and laundry, the learned single Judge dismissed the writ petitions and also quashed the circular dated February 15, 1983, holding that it was not in accordance with the provisions of the Act. It is another matter that nobody challenged the correctness of the circular dated February 15, 1983. The learned single Judge held that luxury tax on telephones and laundry is valid but however

held that the assesseees are liable to pay luxury tax on outgoing telephone calls prospectively that is after the circular was quashed by the learned single Judge.

12. Mr. Anand, the learned counsel for the State, strenuously submitted that the circular issued by the Commissioner of Commercial Taxes dated February 15, 1983 though acted upon is not binding on the Revenue. As stated earlier the circular clearly excludes telephone calls from luxury tax.

13. It is important to know what was the stand of the Commissioner in the circular while interpreting Section 2(1) which defines charges for lodging. Paragraph 2 of the circular reads as follows :

"The provisions of Section 2(1) define "charges for lodging" to include, among others, the amount charged by the proprietor for providing telephone in the room. Therefore, the telephone call charges are not charges for lodging and are, therefore, not liable to luxury tax."

14. Paragraph 4 of the circular states that all the Commercial Tax Officers are instructed to follow these instructions carefully.

15. In fact subsequently Section 2(1) of the Act was amended with effect from April 1, 2000 excluding laundry charges and charges for telephones from the definition of "charges for lodging". In effect from April 1, 2000 the statute itself provides that no luxury tax would be leviable on charges for telephone calls and laundry separately. Such an amendment is in line with the circular dated February 15, 1983 issued by the Commissioner.

16. The learned single Judge was pleased to quash the circular without there being a prayer for quashing the same.

17. Section 2-A of the Act reads as follows :

"2-A. Instructions to subordinate authorities.--(1) The State Government or the Commissioner may, from time to time, issue such orders, instructions and directions to all officers and persons employed in the execution of this Act as they may deem fit for the administration of this Act, and all such officers and persons shall observe and follow such orders, instructions and directions of the State Government and the Commissioner :

Provided that no such orders, instructions, or directions shall be issued so as to interfere with the discretion of any appellate authority in the exercise of its appellate functions.

(2) All officers and persons employed in the execution of this Act, shall observe and follow such administrative instructions as may be issued to them for their guidance by the Joint Commissioner within whose jurisdiction they perform their functions."

18. It is common ground that this circular was very much in force. The learned single Judge also recognises that the circular was in force but suo motu by

exercising powers under Article 226 of the Constitution quashed the circular as being contrary to the provisions of the Act.

19. A larger question before the court is whether the learned single Judge was correct in quashing a circular when such a prayer was not sought for even orally by the Revenue who were respondents in the writ petitions. The law is clear that the circulars issued are binding on the Revenue.

20. The Supreme Court in *M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise*, held that the whole objective of such circulars is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty. It does not lie in the mouth of the Revenue to repudiate the circular issued by the Board on the basis that it is inconsistent with a statutory provision. Consistency and discipline are of far greater importance than the winning or losing of court proceedings.

21. In the light of the observations of the Supreme Court it would be necessary to appreciate whether a court can suo motu quash a circular validly issued. It is nobody's case that the circular was outside the purview of the power of the Commissioner to issue such circular. It is also nobody's case that the circular went beyond the provisions of the Act. The Revenue did not seek for quashing of the circular and certainly the petitioners in the writ petitions did not seek for such a prayer.

22. The Supreme Court in *The State of Andhra Pradesh and Another Vs. K. Jayaraman and Others*, pronounced as follows :

" 9. We think that the High Court was wholly in error in declaring the rule invalid suo motu, against the common case of both sides, found in the petition and the returns filed before the High Court, that the A.T.A. Rule was valid. No cogent reason could be advanced before us for holding, on merits, that the rule was really invalid. We, however, refrain from deciding the question of its validity as that was not put in issue by the averments made by the parties to the case. It was not, we think, a pure question of law. The invalidity of the A.T.A. Rule, could not, for the reasons given above, be urged on the writ petition before the High Court without even an amendment of the petition so as to give the respondents an opportunity to meet a case of alleged invalidity of the rule."

23. The Supreme Court in *Krishna Priya Ganguly and Others Vs. University of Lucknow and Others*, held as follows :

"6. Before dealing with the individual cases of the appellants/ respondents, it may be necessary for us to adjudicate on the validity of the circulars passed by the Government and the rules and regulations framed by the Medical Council of India, to put the matter beyond controversy so that a consistent test may be applied to all candidates desiring admission and unless rules are adhered to, admissions would be denied in which case this Court will not interfere in the absence of a plea of prejudice or bias which would be naturally for the candidates

to establish."

24. The Supreme Court took a similar view in *Dena Nath and others Vs. National Fertilisers Ltd. and others*, . The Supreme Court at paragraph 22 held that it is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is for the Government to decide such matters.

25. The Supreme Court while dealing the power under Article 226 in the case of *Chandigarh Administration and another Vs. Manpreet Singh and others*, took the view that under Article 226 the High Court does not sit as an appellate authority over orders of separate authorities or Tribunals.

26. The Supreme Court in *UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal*, held that a circular is meant for a uniform application of the law in a specified circumstances.

27. The Constitutional Bench of the Supreme Court in a recent judgment reported in *Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries*, pronounced as follows :

"We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue." (All emphasis* by the court).

28. Therefore, it is clear that the circular is binding on the Revenue and the learned single Judge fell in error in quashing the circular as being contrary to the provisions of the Act. If the circular is revived the question will have to be answered in favour of the assessee.

29. The dispute before the court is whether the hotels are liable to pay a separate tax in the form of luxury tax on charges collected from the clients on the use of outgoing calls and for bills on laundry charges. The hotels do not charge for incoming calls or internal calls. Only outgoing calls are charged. It is not compulsory for the guest to use the telephone for outgoing calls or for dry cleaning the clothes. Whether these separate bills on laundry and outgoing telephone calls are exigible to luxury tax de hors of a tax on the hotel for providing luxury which includes the provision for a telephone and which is compulsorily payable is the only question to be answered by this Court. The circular referred to above clearly says that telephone calls are not exigible to luxury tax.

30. The appellants before us do not question the constitutional validity of sub-sections (1) and (5) of Section 2. They also do not question the constitutional validity of Section 2(1) which is the charging section.

31. The main crux of the argument of the learned counsel for the appellants is that Section 2(1) read with Sub-section (5) is a comprehensive section and has to be read in consonance with the charging section, viz., Section 3.

32. Section 3 would indicate that subject to the provisions of the Act there shall be a levy of luxury provided in a hotel in respect of every room known as luxury tax. Section 3 also provides for a slab. Where charges for lodging are not less than Rs. 150 but less than Rs. 200 the levy is 5 per cent of such charges. Similarly where charges for lodging are not less than Rs. 250 but less than Rs. 400 the levy is 10 per cent of such charges. Where charges are not less than Rs. 400 the levy is 12 1/2 per cent of such charges. The relevant words are "such charges".

33. We shall deal with the definition of "luxury" provided in a hotel as contained in Sub-section (5) of Section 2. A careful reading of Sub-section (5) of Section 2 would indicate that the meaning of "luxury provided in a hotel" is accommodation for lodging provided in a hotel where the rate of charges is not less than Rs. 150 per room per day. What is very important is the words "in the bracket" in Sub-section (5), The words in the brackets are "including charges for air-conditioning, telephone, television, radio, music, extra beds and other amenities for which charges are compulsorily payable, but excluding charges for food and drinks". The luxury provided in a hotel includes such charges for air-conditioning, telephone, television, radio, music, extra beds and other amenities which are compulsorily payable but excludes charges for food and drinks.

34. Whether the resident of the hotel uses the telephone or not, television or not or air-conditioner or not the charges are compulsorily payable. The only exclusion in Section 2(5) is food and drinks. The charges are paid for the luxury provided in the hotel and a comprehensive luxury tax is liable to be paid u/s 3(1) on a slab system on such charges.

35. Sub-section (1) of Section 2 is more or less on similar lines. Section 2(1) relates to charges for lodging. Charges for lodging include charges for air-conditioning, telephone, television, radio, music, extra beds and the like, but do not include any charges for food and drinks. Therefore Sub-section (1) of Section 2 has to be read harmoniously with Sub-section (5) of Section 2. Sub-section (5) of Section 2 relates to those charges which are compulsorily payable. The telephone instrument whether one uses it or not is compulsorily subjected to payment of luxury tax and the charging section speaks about luxury provided in a hotel in respect of every room and levy is payable at a particular proportion. The words "such charges" cannot but include telephone instrument as well. It could not be the intention of the Legislature to have a separate charge for outgoing telephone calls for the simple reason that telephone is an amenity and it is a luxury provided in a hotel and it is compulsorily payable whether you like it or not.

36. Radio is also one other component. Television is yet another component for

which charges are compulsorily payable. Once the statute holds these luxuries as part of the accommodation for lodging as compulsorily payable it cannot be the intention of the Legislature to dissect each component and levy luxury tax on each item separately unless the Legislature expressly provides for the same and the charging section provides for a separate luxury tax on each item.

37. In fact Clause (ii) of Sub-section (5) of Section 2 provides for such contingency where a separate luxury tax is contemplated for those persons whether they are residents or not to use the facilities such as health club, beauty parlour, swimming pool, conference hall and the like for which charges are separately made. Clause (ii) of Sub-section (5) of Section 2 reads as follows :

"Provision in hotels, whether to residents or others of such facilities as health club, beauty parlour, swimming pool, conference hall and the like for which charges are separately made;"

38. This clause has to be read separately with the charging section which is not Section 3(1), but Section 3-B. Section 3-B reads as follows :

"3-B. Tax on luxuries like health club, etc.--There shall be levied and collected a tax at the rate of twenty per cent on the charges collected for luxuries provided 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."

39. There is a specific charging section where the tax is at 20 per cent on the charges levied for residents and non-residents who use the facilities of a hotel such as health club, beauty parlour, swimming pool, conference hall and the like when such charges are collected separately.

40. It is not the case of the Revenue that levy on outgoing telephone calls and laundry was on the basis of Section 3-B of the charging section. It was submitted that it was only u/s 3(1).

41. Similarly, the charging section to levy and collection of tax on charges for marriage halls is Section 3-C. A reading of Sections 3, 3-B and 3-C indicates that it was the intention of the Legislature to have three different charging sections on the basis of three different rate cards in each category.

42. Section 3 stipulates that luxury tax will be levied on the luxury provided in a hotel. Section 2(5) is the definition of luxury provided in a hotel. It has three elements : (1) Rate of charge, i.e., the rate card and not the actual charges ; (2) rate of charges including telephone ; (3) such charges being compulsorily payable. The rate paid by the customer is based on the rate card according to Section 3(4) and even if a concession is given by the hotel the tax will be levied and collected as if full charges for such luxury were paid to the proprietor of a hotel. If it was the intention of the Legislature that each charge made for each of the luxury provided in a hotel is to be separately charged, it must find a separate place in the charging section. For example Section 3-B indicates that there is a separate charge on luxuries like health club and other items. Equally Section 3-C

speaks about luxury tax on marriage hall. Therefore, it is clear that Section 3 deals with a comprehensive tax on the luxury provided in a hotel which is compulsorily payable and the use of a telephone is taken care of since it is compulsorily payable.

43. It is not possible for us to dissect each item provided in a hotel separately since the charging section indicates that the luxury tax is payable on such charges on the basis of the rate card which (happens to include luxuries which are compulsorily payable). The words "such charges" in Section 3(1) would show that it was the intention of the Legislature that luxury tax should be on such charges based on the rate card.

44. The circular issued by the Commissioner of Commercial Taxes was also of the clear opinion that telephone charges are not liable to luxury tax. The circular cannot be faulted since the Revenue understood Section 3 not to include telephone charges as luxury tax.

45. We are also of the view that charging section does not contemplate inclusion of laundry charges since it is not compulsorily payable by the client. Apart from this, laundry cannot be by any stretch of imagination be termed as a luxury. Luxury is defined in the Schedule to the Act and it includes items like tobacco, cigarettes, cigars, gutkha excluding beedies and snuff but does not include laundry charges. We have already held that the charging section only speaks of the rate card and the tax is on such charges. The words "such charges" must necessarily mean the charges on the basis of the rate card. No more and no less.

46. It was finally submitted by the learned counsel for the appellants that an amendment came into force with effect from April 1, 2000 excluding telephone charges, laundry and other amenities from Section 2(1). The amendment was by virtue of Karnataka Act No. 5 of 2000 with effect from April 1, 2000. Section 2(1) now excludes telephone calls, laundry and other amenities from the definition of "charges for lodging". Before the amendment only charges for food and drinks was excluded; after the amendment telephone calls, laundry and other amenities were also excluded.

47. Therefore, after the amendment no separate luxury charge can be levied on telephone, laundry and other amenities with effect from April 1, 2000. In other words the effect of the circular issued in 1983 has become part of the statute. The question is whether the amendment by Act No. 5 of 2000 can be looked into to determine what was the intention of the Legislature before the amendment.

48. The circular referred to by us earlier indicated the exclusion of telephone charges and that was quashed by the learned single Judge.

49. It is perhaps to overcome the judgment of the learned single Judge the Legislature thought it fit to make necessary amendments to exclude telephone and laundry charges from the purview of luxury tax u/s 3(1) in conformity with the circular which was quashed by the learned single Judge. The statute as it

stands today is loud and clear that these items are not exigible to luxury tax u/s 3(1). While the writ appeals were pending these amendments came into force by Act No. 5 of 2000 with effect from April 1, 2000.

50. Can it be said that the amendment was in the nature of a declaratory statute of the existing law ? We are primarily concerned with the period from April 1, 1998 to March 31, 2000, since after April 1, 2000 the statute itself provides that no luxury tax would be leviable on telephone calls and laundry charges.

51. A declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The reason for passing a declaratory Act is to set aside what Legislature deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well-settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended.

52. In Crawford's Statutory Construction it is stated that the declaratory statutes generally speaking can be divided into two classes :

- (1) those declaratory of the common law, and
- (2) those declaring the meaning of an existing statute.

Obviously, those declaratory of the common law should be construed according to the common law. Those of the second class are to be construed as intended to lay down a rule for future cases and to act retrospectively. They closely resemble interpretation clauses, and their paramount purpose is to remove doubt as to the meaning of existing law, or to correct a construction considered erroneous by the Legislature.

53. In an old English case which has the approval of the Supreme Court states the position rather clearly. Lord Stern Abe in *Cape Brandy Syndicate v. Inland Revenue Commissioners* reported in [1921] 2 KB 403 pronounced as follows :

"I think, it is clearly established.....that subsequent legislation on the same subject may be looked into in order to see what is the proper construction to be put up on an earlier Act where that earlier Act is ambiguous.....if there be any ambiguity in the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier."

54. It is a well-recognized rule of interpretation that an amendment which is by way of a clarification of an earlier ambiguous provision can be a useful aid in construing the earlier provision even though such amendment is not given retrospective effect [see *Jogendra Nath Naskar v. Commissioner of Income Tax and Thiru Manickam and Co. Vs. The State of Tamil Nadu*, .

55. Although the amendment was brought into force with effect from April 1,

2000 it can be safely said that the object of the amendment was only to restate what was contained in the circular which was quashed by the learned single Judge. The amendment as stated earlier came into force during the pendency of the writ appeals.

56. Accordingly, it was the intention of the Legislature to exclude telephone charges and laundry charges from the provisions of the Act for the purposes of luxury tax. In any event neither telephone charges nor laundry charges are compulsorily payable u/s 2(5) of the Act and therefore cannot be brought within the charging section, i.e., Section 3(1).

57. In the result we hold that the telephone charges and laundry charges are not exigible to luxury tax separately in the absence of a charging section. Consequently, the order of the learned single Judge is set aside.

58. Following the judgment of the Supreme Court in *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, and for the reasons stated therein, it would be up to the appellants to establish before the authorities that the charges have not been passed on to their clients and if they have been passed on to their clients the monies shall remain with the State and if established before the assessing authorities that charges have not been passed on to their clients then the appellants would be entitled to adjustment in future assessment. Writ appeals are disposed of accordingly. No costs.

59. The referred Writ Petition Nos. 31791 of 1999 and 31228 of 1999 are also disposed of in terms of this judgment.

60. The State has also preferred Writ Appeal Nos. 1564 of 2000, 1737 of 1999 and 1800-1806 of 1999 against the order of the learned single Judge.

61. These are curious and strange writ appeals. The State's contention is that the learned single Judge rightly quashed the circular, but erroneously held that the assesseees are liable to pay luxury tax on telephone charges and laundry only prospectively. It ought to be retrospective. We are not able to understand how the Revenue can take such a stand and state that the Commissioner of Commercial Taxes has wrongly issued the circular when the Commissioner of Commercial Taxes is himself one of the appellants in the State appeals. It does not lie in the mouth of the State to say that they have issued the circular wrongly which has been in force since 1983 without any demur.

62. The Supreme Court in *Collector of Central Excise, Patna Vs. Usha Martin Industries, etc.*, pronounced that the Revenue cannot be permitted to take a stand contrary to the instructions issued by the Board. It is a different matter that an assessee can contest the validity or legality of a departmental instruction. But, that right cannot be conceded to the department, more so when others have acted according to such instructions.

63. Accordingly, writ appeals preferred by the State are dismissed.

64. No order as to costs.