
(1989) 09 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Petition No's. 1826, 1827, 1829, 1830 and 1831 of 1989

R.L. Jain and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-09-1989

Acts Referred:

Citation : (1990) 81 CTR 36 : (1989) 39 DLT 463 : (1989) 180 ITR 643 : (1989) RLR 493 : (1989) 47 TAXMAN 458

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Mukul Rohatagi, B. Gupta, R.C. Pandey, Rakesh Sawhney and Shyam Kishore, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) Rule D.B. As the question involved in this bunch of writ petitions is a short one, we proceed to dispose of the writ petitions immediately.

(2) The petitioners are persons who are carrying on business in various hotels in Delhi in shops which have been taken by them either on hire or on license basis. The grievance of the petitioners is that on the money which is paid by them to the hotels in respect of the accommodation which is used by the petitioners no tax is payable under the provisions of the Expenditure Tax Act, 1987.

(3) In order to examine the aforesaid contention it is necessary to refer to a few provisions of the said Act.

(4) Section 4 is a charging section and this provides that there shall be charged a tax at a specified rate on the chargeable expenditure.

(5) Chargeable expenditure is explained in section 2(4) as meaning an expenditure which is referred to in Section 5. Section 5 reads as under :-

"5.Meaning of chargeable expenditure.--For the purposes of this Act, chargeable

expenditure means any expenditure incurred in, or payments made to, a hotel to which this Act applies in connection with the provision of .- (a) any accommodation, residential or otherwise; or (b) food or drink by the hotel, whether at the hotel or outside, or by any other person at the hotel; or (c) any accommodation in such hotel on hire or lease; or (d) any other services at the hotel, either by the hotel or by any other person, by way of beauty parlour, health club, swimming pool or other similar services. but does not include.- (i) any expenditure which is incurred, or the payment for which is made, in foreign exchange. (ii) any expenditure incurred by persons within the purposes " view of the Vienna Convention on Diplomatic Relations, 1961, or the Vienna Convention on Consular Relations, 1963; (iii) any expenditure incurred in any shop or in any office which is not owned or managed by the person who carries on the business of hotel; 465 (iv) any expenditure by way of any tax, including tax under this Act. Explanation For the purposes of this section,- (a) expenditure incurred or any payment made in Indian currency obtained by conversion of foreign: exchange into Indian currency shall in such cases and in such circumstances as may be prescribed be deemed to have been incurred or, as the case may be, made in foreign exchange; and (b) "foreign exchange" and "Indian currency" shall have the meanings respectively assigned to them in clauses (h) and (k) of section 2 of the Foreign Exchange Regulations Act, 1973 (46 of 1973)."

(6) The other relevant provision is Section 7, which pertains to collection and recovery of expenditure tax. The relevant portion of the same is as under:--

(I) if such expenditure relates to any of the services. specified in clauses (a) to (d) of section 5, provided by the hotel, the person who carries on the business of such hotel; and "(ii) if such expenditure relates to any of the services, specified in clause (b) or clause (d) of Section 5, provided by the other person referred to therein, such other person."

(7) It is clear that in order to determine whether a tax is chargeable or not, the important provisions are Section 5 and Section 7. These two provisions read together clearly show that tax is payable not on every expenditure, which is incurred in a hotel. Chargeable expenditure is what is contained in Section 5(a) to (d). This would include any money received by the hotel under clauses (a) to (d) and any money received under clauses 5 (b) and (d) by any other person in respect of the provisions contained therein. As far as the petitioners are concerned, they have obtained accommodation in the hotels. The payment in respect of the said accommodation is a chargeable expenditure by virtue of the provisions of Section 5(c) of the Act.

(8) It is contended by the learned counsel for the petitioners that having a shop is not an integral part of running of hotel. We are not here concerned with the question as to whether a shop is an integral part of a hotel or not, but we have to consider the Act as has been framed. Even if the shop is not an integral or necessary part of the hotel, nevertheless ,the Act provides for" tax being paid u/ s 5(a) on any accommodation, residential or otherwise, and further, in respect of

any accommodation in such hotel on hire or on lease u/s 5(c). The insertion of clause 5(c) in addition to 5(a) clearly shows that, clause 5(c) was meant to provide for chargeable expenditure, which was different than what was provided for under 5(a). Clause 5(a) clearly pertains to residential or other accommodation like hire charges for a banquet hall. Clause 5(c), on the other hand, is meant for providing tax to be levied on such portion of the accommodation of the hotel which was let out on hire or on lease. Even if clauses 5(a) and 5(c) overlap to some extent, there is no escape from the conclusion that clause 5(c) clearly covers the case of the petitioners.

(9) It was then contended by the learned counsel for the petitioners that no tax is livable in respect of any expenditure which is incurred in any shop, provided that shop is not owned or managed by the hotel. The submission was that the petitioners should be at liberty to pass on to their customers the expenditure tax which is levied on the petitioners in respect of the hire money or the license money which they pay. The Act does not expressly prohibit the passing on of the incidence of this tax on any other persons, including the customers of the petitioners and like any prudent businessmen, we are inclined to believe that in working out their costs and selling price, the petitioners must be doing so. However, the petitioners, like other taxes such as sales tax, may be at liberty to pass on the incidence of the expenditure tax to their customers, but we express no final opinion on this because what we are really called upon to do in this case is to interpret Section 5 and other relevant provisions of the Act. Section 5 makes it clear that expenditure incurred in any shop, which is not owned or managed by the person, who carries on the business of the hotel is exempt from tax.

(10) We find no merit in this petition. The petition is dismissed.