
(2000) 06 KL CK 0050

In the High Court Of Kerala

Case No : T.R.C. No's. 3, 11, 154, 163 and 167 of 1999

State of Kerala

APPELLANT

Vs

Hotel Amrutha

RESPONDENT

Date of Decision : 22-06-2000

Acts Referred:

Foreign Liquor Rules, 1968 — Rule 13(3)

Citation : (2000) 120 STC 28

Hon'ble Judges : S. Sankarasubban, J;G. Sivarajan, J

Bench : Division Bench

Advocate : V.V. Asokan, Special Government Pleader for Taxes, for the Appellant; K.B. Muhamed Kutty, for the Respondent

Final Decision : Dismissed

Judgement

S. Sankarasubban, J.—All these T.R.Cs. are heard together, because they arise from a common order. T.R.C, Nos. 3 and 11 of 1999 are at the instance of the assessee-Surendran, who is conducting a restaurant under the name and style "Kohinnur Restaurant" in the premises of "Hotel Amrutha", Thycaud, Thiruvananthapuram. T.R.C. No. 3 of 1999 is with regard to the assessment year 1988-89 while T.R.C. No. 11 of 1999 is with regard to the assessment year 1989-90. T.R.C. Nos. 154, 163 and 167 of 1999 are revisions filed by the Revenue. They relate to the assessment years 1988-89, 1989-90 and 1990-91. The assessee in those cases is Hotel Amrutha, Thycaud, Thiruvananthapuram. As a matter of fact, original proceedings in the above three T.R.Cs. were initiated u/s 19 of the Kerala General Sales Tax Act, 1963 (hereinafter referred to as "the Act") to the escaped turnover.

2. Hotel Amrutha is holder of FL3 licence issued under the Foreign Liquor Rules. FL3 licence is issued by the Excise Department under Rule 13 of the Kerala Foreign Liquor Rules, 1968. This licence is issued to the hoteliers to run a bar. The assessing authority originally completed the assessment for Hotel Amrutha for these years on May 5, 1990. At that time, it took the view that there has

been no sale of cooked food in Hotel Amrutha.

3. It was subsequently noticed that such assessment was wrong on materials. Hence, the proceedings were initiated u/s 19 of the Act to complete the assessment in the hands of the assessee. Notice was issued to Hotel Amrutha as to why the food served in the hotel should not be assessed under the Act. The assessee filed objection stating that no cooked food is being served by the hotel. But a restaurant is being conducted by one Surendran to whom the hotel had leased out space to run a restaurant. The food is prepared in the restaurant and is being served to the persons who reside in the hotel. Hence, the assessee took the contention that it cannot be taxed for the cooked food served in the hotel. The assessing authority did not accept the contention and added the turnover regarding cooked food in the account of the assessee-Hotel Amrutha. Appeals were filed against the assessment orders. Those appeals were allowed by the appellate authority. Against those orders, the Revenue went in appeal before the appellate authority as T.A. Nos. 130 of 1993 and 166 of 1993.

4. So far as Surendran is concerned, he is conducting Kohinnur Restaurant. For the assessment years in question, he contended before the assessing authority that the cooked food is not liable to tax as according to him, the turnover is less than Rs. 20 lakhs. According to him, it comes under entry 57, clause (i) of the First Schedule to the Act. But the assessing authority took the view that since the cooked food was being served in a bar attached hotel, it is liable to tax without any limit on the turnover. Thus, the assessment was completed taxing the cooked food. Against that assessment orders, appeals were filed before the appellate authority. The appellate authority took the view that so far as the assessee-restaurant is concerned, it is not a bar attached hotel and the assessee does not hold any licence for conducting a bar. Hence, the appellate authority took the view that it comes under entry 57, clause (i) of the First Schedule to the Act. As already stated, Revenue challenged the orders of the appellate authority before the Tribunal as T.A. Nos. 130 and 166 of 1993.

5. Since a common question was involved in the appeals filed by Hotel Amrutha and in the appeals filed by the State against Surendran, those appeals were heard together. The Appellate Tribunal took the view that cooked food was sold by Surendran in a bar attached hotel. Hence, those items are liable to be assessed under entry 57, clause (ii) of the First Schedule to the Act. So far as Hotel Amrutha is concerned, the Tribunal took the view that since there was no sale of cooked food, Hotel Amrutha was not liable to pay any tax on the cooked food. Thus, appeals T.A. Nos. 130 and 166 of 1993 filed by the State against Surendran were allowed. So also the appeals T.A. Nos. 806, 807 and 808 of 1993 filed by the State against Hotel Amrutha were dismissed.

6. Before we proceed to deal with the rival contentions of the parties, we shall extract entry 57 of the First Schedule to the Act :

"57. Cooked food including beverages not falling under entry 76A of this

Schedule sold or served in ?

At the point of first sale in the State by a dealer who is liable to tax u/s 5.

10 per cent."

(i) hotels and/or restaurants, the turnover in respect of which is twenty lakhs rupees and above ; and

(ii) bar attached hotels and/or restaurants.

Thus, as per entry 57, the hotels and restaurants which sold or served cooked food, the turnover in respect of which is Rs. 20 lakhs or more, are liable to pay tax at 10 per cent at the point of first sale in the State by a dealer who is liable to tax u/s 5 and cooked food sold or served in bar attached hotels and/or restaurants are liable to be taxed whatever may be the turnover.

7. There is no dispute with regard to the following facts : Hotel Amrutha is the holder of FL3 licence issued under Rule 13 of the Kerala Foreign Liquor Rules. Surendran is conducting a restaurant under the name and style "Kohinnur Restaurant". He is running the restaurant in the hotel premises of Hotel Amrutha. There is also no dispute that the cooked food that is being served in Hotel Amrutha is the food cooked in Kohinnur Restaurant.

8. First question is whether Hotel Amrutha is liable to be taxed for the cooked food served in the hotel. Admittedly, Hotel Amrutha is holding a FL3 licence issued under the Kerala Foreign Liquor Rules. The conditions of licence existed at the relevant assessment years were produced before us for our perusal. Condition No. 1 states as follows : "The privilege extends to the sale of foreign liquor for consumption within a room specifically approved for the purpose of residents in the hotel or boarding house for the use of those residents and that of their guests or to casual visitors partaking of meals cooked and served in European fashion". Condition No. 2 states as follows : "No liquor shall be sold under this licence for removal from the approved room". The licence shows the particulars of the side room approved for drinking purpose, the details of which is as follows:

"Particulars of the side room approved for drinking purpose

Details of the side room

Bounded on the

North by

East by

South by

West by

Thycaud, Thiru-vananthapuram

Main entrance of the hotel

Hall of Kohinnur restaurant.

Channel mosaic hall

Hall of Kerala Engineering Works."

It is seen that the approved room is situated on the western side of Kohinnur Restaurant. Revenue further brought to our notice the guidelines issued by the Government of India, Department of Tourism for approval of Two Star or Three Star Hotels. The case of the Revenue is that as per the guidelines issued by the Government of India, for Two Star Hotel, the following facilities are necessary : There should be a reception counter with a telephone. There should be a telephone or call bell in each room and there should be a telephone on each floor unless each room has a separate telephone. There should be a well maintained and well equipped dining room/restaurants serving good clean wholesome food and a clear, hygienic and well equipped kitchen and pantry. Thus, learned counsel for the Revenue contended that Two Star Hotel has to provide good restaurant and further it was submitted that the licence conditions also state that liquor should be provided not only for the residents, but also to those visitors partaking of meals cooked and served in European fashion. On the basis of this, learned counsel for the Revenue contended that it is one of the conditions of the licence as well as for the conduct of Two Star Hotel that the hotel itself should provide restaurant and serve food. Learned counsel for the assessee contended that this contention is not correct. According to him, this condition only says that facilities should be available in the hotel and it is not necessary that the facilities should be done directly by the hotel itself. Further, he said that even if there has been any violation of the Foreign Liquor Rules or guidelines for conducting Two Star Hotel that should weigh with the assessment proceedings.

9. After hearing both sides, we are of the view that we cannot accept the contention of the Revenue. It is seen from the guidelines that what is required is that there should be a well maintained dining room/restaurant serving good clean wholesome food and a clean, hygienic and well equipped kitchen. From this, it cannot be inferred that the restaurant should be directly run by the hotel itself. There is no restriction in the restaurant being conducted by another person. But the only thing is that the food served should be clean wholesome food and a clean, hygienic and well equipped kitchen. The other contention is with regard to condition No. 1 in the licence, which has already been extracted above. This condition only says that there should be a separate room for consumption of liquor and it should be served to the residents in the hotel or their guests or to casual visitors partaking of meals cooked and served in European fashion. From this, it cannot be inferred that cooked food also should be served along with liquor or that the food also should be cooked and served by the licensee himself.

10. Learned counsel for the Revenue then brought to our notice the following

condition in Rule 13(3) of the Foreign Liquor Rules : "The cost of liquor shall be billed along with the cost of meals. The cost of liquor shall be shown separately in the bill and the duplicate copies thereof shall be retained for inspection by the Officers of the Excise Department". Learned counsel for the Revenue submitted that on the basis of this, meals should also be supplied by the licensee. We are of the view that this also does not insist that the food should be cooked and served by the hotel itself. Further, we are of the view that even if there is violation of the Foreign Liquor Rules, that cannot be taken advantage. Thus, the revisions filed by the Revenue, viz., T.R.C. Nos. 154, 163 and 167 are dismissed.

11. So far as the other two revisions, T.R.C. Nos. 3 and 11 of 1999 are concerned, the assessee has come in revision. His contention is that he is running a separate restaurant in the name and style "Kohinnur Restaurant". According to him, Kohinnur Restaurant has no connection with Hotel Amrutha. Further, he contended that Kohinnur Restaurant does not possess FL3 licence and hence, it is not a bar. It is a restaurant. Hence, he contended that the returns are less than Rs. 20 lakhs and the items served are not liable to sales tax. Learned counsel for the Revenue submitted that the question is not whether the assessee has got licence under the Foreign Liquor Rules. The question is whether the cooked food is sold or served in a bar attached hotel or restaurant. Learned counsel tried to argue that the restaurant has no connection with the hotel. But then an agreement dated November 17, 1975 entered into between the Managing Director of Hotel Amrutha and the assessee-Surendran was brought to our notice. It shows that the assessee has offered to conduct a restaurant in the hotel premises known as "Hotel Amrutha" and for that purpose requested the first party to allow him to make use of the said movable for the running of the restaurant and the first party having agreed to give the said movables for the use of the second party on certain conditions. Thus, it can be seen that the assessee-Surendran is running a restaurant within the hotel premises of Hotel Amrutha making use of the movables belonging to Hotel Amrutha. What is necessary under entry 57 is that cooked food should have been sold or served in a bar attached hotel. There is no dispute in this case that the assessee-Surendran is selling cooked food in Hotel Amrutha, which is a bar attached hotel.

12. In the above view of the matter, we are of the opinion that the order of the Tribunal is correct. Hence, the revisions filed by the assesseees are dismissed.