(2009) 06 KL CK 0086

In the High Court Of Kerala

Case No : S.T. Rev. No. 23 of 2009

State of Kerala	APPELLANT
Vs	
Mukkadan''s Hotel	RESPONDENT

Date of Decision : 02-06-2009

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 2

Citation : (2009) 4 KLT 529 : (2011) 41 VST 500

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : Mohammed Rafiq, Government Pleader, for the Appellant; K.B. Mohammed Kutty and K.M. Firoz, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the revision filed by the State is whether the Tribunal was justified in holding that the charges for "amenities" collected by the respondent along with sale bill for sale of liquor and food in the bar hotel constitute turnover for the purpose of levy of turnover tax. We have heard Government Pleader appearing for the petitioner and Senior Counsel Dr. Mohammed Kutty appearing for the respondent.

2. Admittedly the respondent is a bar attached hotel with restaurant engaged in retail sale of liquor and food in the bar and restaurant provided in the hotel. Respondent''s claim is that the hotel has a lot of facilities like lawn, air-conditioning in the bar, restaurant, parking space for vehicles, shade trees for outside service etc., and so much so, they are entitled to collect additional charges for the amenities enjoyed by the customers. The case of the State is that no customer is charged for any amenity separately but all what respondent does is bifurcation of sale price showing substantial amount towards amenities only to avoid tax. Respondent''s Counsel produced certain bills before this Court to show that in one case out of Rs. 258/- charged for sale of liquor, soda and green salad, respondent has separated Rs. 73.50 towards charges for amenities

without mentioning which of the above amenities is enjoyed by the particular customer. Similarly on a small bill of Rs. 105/- where the respondent has charged only liquor and two bottles of soda, Rs. 22/- is shown as amenity charges. Again, on a small bill of Rs. 33/- which is only for one service of liquor, respondent has charged Rs. 12/- for amenities. The question to be considered is whether the amenities separately charged without any facility or service provided is to be excluded from turnover. The respondent has no case that separate tariff is provided in the hotel, one for those who do not want to avail special amenities and the other for those who want to avail so. On the other hand, what is shown is sale price bifurcated between cost and amenities and respondent is claiming exclusion of amenity charges from turnover for the purpose of levy of tax.

3. Turnover tax is payable on turnover which includes all amounts received for sale of goods. Necessarily sale of liquor in retail in a bar hotel and supply of cooked food in a hotel involves service and the charges levied for the supply of goods involves service rendered which covers facilities provided namely, air-conditioning, water supply, toilets etc. Even though hundreds of bar hotels are functioning in the State and invariably every hotel is air-conditioned, Government Pleader pointed out that no other party has found out such a contrivance to avoid tax. We find force in this because facilities in hotels are varying and depending on the facilities, tariff also varies. Higher the tariff, the incidence of tax is higher and customers who go to such hotels and restaurants with higher facilities are in a position to pay higher bills involving higher incidence of tax on them. We do not think the separation of sale price between cost and amenity charges can help the respondent from avoiding payment of tax on the turnover which includes charges levied for any service or amenity provided by the dealer. In fact, under Expln. 2 to Section 2(xxvii) "the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of, or before, the delivery thereof. We are of the view that "anything done" includes any service provided and therefore, the charges levied for amenities provided in a bar hotel or in the restaurant for the customer to enjoy the food or liquor, form part of the price for which goods are sold. In fact, the total collection under this head namely, amenity, by the respondent during the year is around Rs. 37 lakhs, whereas the total turnover is around Rs. 1.63 crores. The respondent could not correlate the charges levied and the amenity provided to any customer in any given case. Therefore, it is only a dubious method to evade payment of tax. In the same set of facts the Bombay High Court has in East India Hotels Ltd. v. State of Maharashtra 99 STC 197 held that luxury separately charged by a hotelier for supply of food and drink in the hotel forms part of turnover. We are of the view that the ratio of the decision of the Bombay High Court applies to this case also and the only difference is that respondent is bifurcating price under another head "amenities" as against the word "luxury" used by the hotelier in Bombay. We, therefore, allow the revision case on this issue by reversing the order of the Tribunal and that of the first appellate authority and by restoring the assessment of amenity charges as part

of turnover.