
(2011) 01 KL CK 0039
In the High Court Of Kerala
Case No : S.T. Revision No. 108 of 2009

State of Kerala

APPELLANT

Vs

Yenkay Complex Pvt. Ltd.

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2011) 2 ILR (Ker) 555 : (2011) 2 KLJ 734 : (2011) 2 KLJ 732 : (2012) 47 VST 288

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : Mohammed Rafeeq, for the Appellant; M.K. Damodaran Gilbert George Correya, C.E. Unnikrishnan and Anitha Mathai Muthirenthu, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the revision petition filed by the State is whether the Sales Tax Appellate Tribunal was justified in holding that the Respondent hotel, which got classification as a Three Star Hotel with effect from 11-9-2002, is not liable to pay tax on cooked food and beverages sold in the hotel @ 8% under Entry 46 of the First Schedule to the Kerala Government Sales Tax Act (hereinafter referred to as the Act for short) for any period prior to the date of granting star classification.

2. We have heard learned Government Pleader for the State and Shri C. Unnikrishnan, learned Counsel appearing for the Respondent Assessee.

3. The Respondent is a resort hotel which was carrying on business during the whole financial year 2002-03. The application filed by the Respondent before the Central Tourism Department for classification of its hotel as a Star Hotel was allowed by the Regional Director and Convener, HRACC (Hotel Approval And Classification Committee), India Tourism, Chennai with effect from 11-9-2002. The case of the Respondent is that its liability for payment of tax on cooked food

@ 8% under Entry 46 of the First Schedule to the Act starts with effect from 11-9-2002 and not for any period prior to the same. Therefore, the Respondent paid licence fee u/s 5B of the Act up to 10-9-2002 and thereafter from 11-9-2002 onwards the Respondent started paying tax on sale of cooked food @ 8%. However, the Assessing Officer treated the classification as Star Hotel with effect from the beginning of the financial year and levied tax on the entire turnover for the year 2002-03 @ 8%. Even though appeal at the first level was unsuccessful, on second appeal filed by the Respondent the Tribunal allowed the claim holding that classification of the Respondent hotel being made effective from 11-9-2002, the Respondent was liable to pay tax on the turnover of cooked food and beverages other than liquor @ 8% with effect from 11-9-2002. It is against this order of the Tribunal, the State has filed this revision petition for a declaration that the Respondent, which is running hotel even prior to the date of receipt of classification order as a star Hotel, is liable to pay tax at the rate provided under Entry 46 for the whole year 2002-03.

4. Since the dispute is on the applicability of Section 5B of the Act and Entry 46 of the First Schedule to the Act for the period commencing from 1-4-2002 to 10-9-2002, we extract hereunder Section 5B and Entry 46 of the First Schedule to the Act.

5B. Levy of license fee on cooked food.--Any dealer in cooked food, including beverages sold or served not falling under the entries against (Serial No. 46 and 60 of the First Schedule) whose turnover in a year exceeds five lakh rupees, shall pay annual license fee at the rate of (five hundred rupees) for every one lakh rupees or part thereof in excess of five lakh rupees, in such manner as may be prescribed:

Provided that such dealer shall not be liable to pay tax under Sub-section (1) and (2) of Section 5 and u/s 5A."

"Entry 46 in the First Schedule to the KGST Act.

46. Cooked food, including beverages, not falling under Entry 60 of this Schedule, sold or served in bar attached hotels and / or star hotels.

5. The contention of the learned Government Pleader is that the Respondent is a resort hotel which was maintaining a class Hotel from the beginning. According to him, classification of the hotel as Star Hotel takes a long process and time and during this period the hotel was retaining same quality and therefore on the factual position, the Respondent was entitled to treat the hotel as a Star Hotel from the beginning, no matter classification is granted by the Committee only with effect from 11-9-2002. The contention of the learned Counsel for the Respondent is that "star" is a classification granted to hotels and restaurants by the Tourism Department of Central Government based on norms. According to him, only if the facilities in the hotel are such as to bring it in the Star category, the hotel will get star classification. While the contention of the learned Government Pleader is that even during the pendency of the application for

classification, the Respondent maintained same quality for the Hotel which answers the description of Star Hotel, the contention raised by the Respondent Assessee is that requirements for classification as Star Hotel need be provided only when the inspection team comes for verification before granting approval. So much so, according to him, there is no presumption that the hotel has all the facilities, which entitles for Star classification for any period prior to the date on which the decision is taken by the Classification and Approval Committee. The contention raised by the learned Government Pleader is that "star hotels or restaurants" referred to in Entry 46 does not have any technical meaning and going by common parlance it only means hotel or restaurant is a class of a superior quality.

6. We are unable to accept the Government Pleader's contention because the Act does not contemplate any Sales Tax authority to recognise, determine or confer star status to hotels or restaurants. On the other hand, the Tourism Department of the Government of India is the agency constituted to declare star status for a hotel. In fact, there are several type of star hotels, and number of stars of the hotel increases when facilities provided are increased. Therefore, in our view, star hotels referred to in Entry 46 only mean hotels classified to be a Star Hotel by the Approval and Classification Committee constituted by the Government of India. Admittedly, the Appellant could not have collected tax @ 8% for any sale of cooked food or beverages prior to 11-9-2002. In fact, if tax was collected under Entry 46 for any period prior to 11-9-2002 then the Appellant would have been liable for penal action. So much so, we feel that the star classification referred to in Entry 46 is the star classification provided by the Tourism Department for recognition and approval of star hotels.

7. Liability for tax on cooked food which is generally served in hotels is fixed under the statute with reference to the classification of hotels. In fact, only bar attached hotels and star hotels are specifically covered by Entry 46. However other hotels engaged in sale of cooked food or beverages are covered by Section 5B, which provides for collection of licence fee. In view of the provisions as above, we feel the Respondent is liable for payment of tax @ 8% under Entry 46 from 11-9-2002 onwards, when the approval by the Classification Committee is made effective. For the periods until then, the Respondent not being a Star Hotel is liable to pay licence fee u/s 5B of the Act.

8. We therefore uphold the order of the Tribunal and dismiss the Sales tax Revision case filed by the State.