(2011) 08 AHC CK 0242

In the Allahabad High Court

Case No : Misc. Bench No. 3663 of 2001

The Taj Mahal Hotel APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:
Constitution of India, 1950 — Article 265

Citation : (2011) 08 AHC CK 0242

Hon'ble Judges : Satish Chandra, J;Devi Prasad Singh, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the Petitioner and Sri H.P. Srivastava learned Additional Chief Standing Counsel.

2. The question involved in both the writ petitions relates to payment of entertainment tax by Hotel owner for cable T.V. operation.

3. It has been submitted by the Petitioner''s counsel that the Petitioner is not liable to pay tax.

Attention has been invited by Sri H.P. Srivastava, learned Additional Chief Standing Counsel, that the question involved is No. more res-integra and the matter has been finally adjudicated by a Division Bench judgment of this Court in the case of Hotel Taj Ganges Nadesar Palace, Varanasi and Anr. v. State of U.P. and Ors. reported in 2003 (51) ALR 579.

4. In the own case of Petitioner (Varanasi Branch), while adjudicating the controversy with regard to payment of tax, the Division Bench held that the Hotel shall be liable to pay tax after the amendment made by U.P. Act No. 15 of 2001, which came into force on 05.03.2001. The relevant portion of the judgment is reproduced as under:

In fact the legislature itself realized that the service of the kind rendered by the Petitioner''s hotel is not covered by the Act even after its amendment in 1995, and hence, further amendment was made in the Act by U.P. Act. No. 15 of 2001, which came into force from 05.03.2011 vide Section 1(2) of the Amending Act. Hence, it is only after 05.03.2001 that the Petitioner had to pay entertainment tax and not for the period before 05.03.2001.

The statement of objects and reasons of the Amending Act of 2001 clearly indicate that since there were No. specific provisions in the Act for levy and payment of tax on entertainment by hotel owners who provided cable service through their own T.V. set hence this Amendment had to be introduced before any such tax could be levied.

A perusal of the above amendment shows that now the legislature has clearly provided that even hotels which provide their own cable television network have to pay entertainment tax. Thus, it is clear that the Petitioner was not liable to pay such tax prior to 05.03.2001, and hence levy and realization of the tax prior to this date was violative of Article 265 of the Constitution.

In the result, these writ petitions are allowed. The impugned orders are quashed. The Respondents are directed to refund the amounts they have illegally collected as entertainment tax from the Petitioners for the period prior to 05.03.2001 within two months of production of copy of this order before the Respondent No. 3.

5. In view of settled proposition of law, the Petitioner shall be liable to pay the Tax from the date when the amending act came into force i.e. 05.03.2001 with regard to use of cable TV. However, for the earlier period, i.e. prior to 05.03.2011, the Petitioner shall not be liable to pay the Tax.

6. Accordingly, the writ petition is disposed of finally in terms of the aforesaid judgment.

