

(2010) 11 KAR CK 0068
In the Karnataka High Court
Case No : STRP. No. 20 of 2009

Vijaya Samraj Hotels Pvt. Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 17 (4), 5 (3)

Citation : (2012) 47 VST 292

Hon'ble Judges : Manjula Chellur, J;K. Govindarajulu, J

Bench : Division Bench

Advocate : D. Sasidharan, for Kamath and Kamath, for the Appellant; S. Sujatha, AGA for R 1 and R 2, for the Respondent

Final Decision : Allowed

Judgement

1. The controversy in the present petition pertains to the assessment year 2001-2002.

2. The Petitioner herein is admittedly engaged in hotel business and for the year in question they had submitted their returns declaring their taxable turnover of Rs. 86,17,638/- [Rupees eighty six lakhs seventeen thousand and six thirty eight only]. The Respondents issued a notice proposing enhancement of turnover of Rs. 1,99,582/-[Rupees one lakh ninety nine thousand and five hundred eighty two only]. At that stage a revised return was filed submitting books of accounts and the taxable turn over shown at Rs. 86,16,833/-[Rupees eighty six lakhs sixteen thousand and eight hundred thirty three only]. The 2nd Respondent increased turn over and confirmed the proposal in the notice by his assessment order dated 8.3.2004. The assessing authority taking into consideration all the payments received as banquet receipts, subjected the same at the higher rate of tax at 10% under Sub-section (a) of Section 5 of the Karnataka Sales Tax Act (hereinafter referred to as the Act"). Aggrieved by the same, an appeal came to be filed before the Appellate Authority in KSTAP No. 113/2004-05. However the Appellate Authority dismissed the appeals upholding the orders of the

assessment.

3. Aggrieved by the same, the Petitioner herein filed STA No. 2576/2004 challenging the orders of the First Appellate Authority and the 2nd Respondent on the ground that inspire of number of books of accounts before the assessing authority, though there was no scope for estimation of turnover, the assessing authority arbitrarily bifurcated the total turn over into two parts -one for taxation purpose giving benefit of composition of tax under Sub-section (4) of Section 17 of the Act and the other one under Sub-clause (a) of Clause (3) of Section 5 of the Act.

4. According to the Appellant, the banquet hall remained part of the hotel, part and parcel of the same premises and all the foods prepared in one and the same kitchen are supplied to the banquet hall. Therefore, even banquet receipts have to be taxed giving benefit of composition of tax as permitted under Sub-section (4) of Section 17 of the Act. However, the Tribunal partly allowed the appeal remanding the matter back to the 2nd Respondent giving percentage of liability of composition scheme upholding the enhancement of turnover made by the Respondent/authorities. Aggrieved by the same, the present revision is filed.

5. According to the Petitioner, as the food stuff prepared in the same kitchen is supplied to the banquet hall within the premises of business, without taking any charges for the utilization of the hall and when the supply of food is made at the same rate as that of the hotel, it cannot be understood as catering service at any stretch of imagination. Therefore, he seeks for the orders of the three authorities to be set aside.

6. According to the revision Petitioner, the benefit available to the hotelier or restaurateur as the case may be is applicable to the present Petitioner as he does the business in the nature of hotelier as well as restaurateur. Therefore mere supply of food to the banquet hall will not take away him from the meaning of either hotelier or restaurateur.

7. As against this, learned Counsel for the Department submits that in the normal course of business either as a hotelier or a restaurateur, as per the demand of the guest of the hotel or the restaurant, food is supplied and so far as catering, it is not as per the demand of the people who eat the food in the banquet hall, but it is the same food supplied to all the members, who eat in the said hall. Therefore, there is a difference between food supplied in the restaurant and the food supplied in the banquet hall. Therefore the banquet receipts cannot have the benefit of composition of tax as contemplated u/s 17(4) of the Act. Sub-section (4) of Section 17 of the Act reads as under when the assessment in question for the 2001-02 came to be considered by the assessment officer:

17(4)(i): Notwithstanding anything contained in Sub-sections (1) to (3), but subject to such conditions and in such circumstances as may be prescribed, the assessing authority of the area may, if a hotelier or a restaurateur (other than a hotelier or a restaurateur engaged in reselling of goods purchased by him in the

course of inter-State trade or commerce or a dealer engaged in vending of liquor-including beer) or a Hotelier or a restaurateur operating in the same premises or a premises attached to a place where liquor including beer is served, a dealer running a sweet meat stall or ice cream parlour or a dealer catering food and drinks in places other than where liquor including beer is served (excluding in the premises of a club registered under the Karnataka Societies Registration Act, 1960) or a registered club including a dealer serving food and drinks in the premises of such club so elects, accept in lieu of the amount of tax payable by him under this Act during any year, by way of composition, an amount at the rate of four per cent of his total turnover.

(ii) Any hotelier or restaurateur or a dealer running a sweet meat stall or ice cream parlour or a dealer catering food and drinks or a registered club including a dealer serving food and drinks in such club may apply to the assessing authority to be permitted to pay the amount under Clause (i) and, on being so permitted, he shall pay the amount due in advance during the year in equal monthly installments on or before the 20th of the month following each month and for that purpose shall submit such statements or returns in such manner as may be prescribed:

(iii) The amount paid under Clause (ii) shall be subject to such adjustment as may be necessary on the completion of final assessment

8. The benefit of composition of tax at that time was applicable to a dealer being a woman catering food and drinks. The benefit was not extended to any caterer other than a woman caterer. By relying upon the said provision available at the relevant point of time, the learned Government Advocate contends that as the benefit was applicable only to a woman caterer who was supplying food and drinks, such benefit was not available to the present Petitioner, therefore the petition deserves to be dismissed. By reading Sub-section (4) of Section 17 of the Act, at the relevant point of time, it clarifies who are all entitled for composition of tax and who are excluded from claiming such composition of tax. By reading the above provision, no way one can understand that the benefit extended to hotelier and a restaurateur for composition of tax will not be available to such hotelier or restaurateur if he supplies food in the banquet hall by supplying food to a group of persons or a large number of persons.

9. Meaning of definition of either "hotelier" or "restaurateur" or a "caterer" is not defined in the Act in question. We have to go to the dictionary meaning of these three words in common parlance.

10. By looking into Chambers Twenty First Dictionary, a "hotel" means a commercial building providing accommodation, meals and other services to visitors for payment A "hotelier" is a person who owns or manages a hotel.

11. "Restaurant" is an establishment where meals may be bought and eaten. A "restaurateur" is the owner or manager of a restaurant. "Cater" means to supply food, accommodation or entertainment for them. "Caterer" means a person

whose professional occupation is to provide food, etc for social occasions. "Catering" means the provision of food.

12. By reading the above three definitions, though supply of food is common in all the three business, so far as "caterer" it refers to professional occupation i.e., a person whose profession is only to serve food.

13. In the present case, a restaurateur as well as hotelier are entitled for the benefit for the claim of composition of tax. The registration certificate in Form No. 1 of the Act given to the Petitioner herein refers to place of business and nature of business as well. The nature of business is boarding and restaurant. We are concerned with the banquet receipts where group of persons were not only supplied with food but accommodation was also provided. There was no separate charge for the said group of persons for providing the said hall and they were only charging for the food that was supplied to them. Similarly as a hotelier, he cannot charge separate charges for the place occupied by the guests to eat. the food because for the accommodation provided, he would be paying separately. Similarly in the restaurant, for the provision of table and chairs, a place to eat, there is no separate charges being paid by the guests and he pays only for the food he eats. In the banquet hall as well, no separate charges are being paid to the banquet hall but only for the food supplied, it is charges. It is not the case of the revenue that the banquet receipts pertain to taking the food to a place other than the place of business shown in the registration certificate. When the very business of the hotelier to supply food either to the rooms occupied by the guests or to the persons, who visit the restaurant, if he had supplied to the banquet hall, it. definitely cannot go out of the purview of Section 17(4) of the Act as the Petitioner never supplied the food outside the place of business and his main occupation is hotel and restaurant which is nothing but boarding and lodging as described in the registration certificate. Under these circumstances, the Respondent/ Authorities were not justified in splitting up the banquet receipts and the other receipts in the restaurant or the hotel contending that he has a catering business, therefore, the Petitioner is not entitled for the benefit available under Sub-section (4) of Section 17 of the Act.

14. Even at the relevant point of time, the benefit extended to a woman entrepreneur, who was doing catering of food and drinks, it does not indicate that she has to supply the food outside a particular place. It only refers to a woman catering food and drinks. When we look to the facts of the present case, we have to see the main business activity of the Petitioner or the dealer i.e., the hotel and the restaurant business of the Petitioner. Therefore, the hotel and the restaurant business of the Petitioner will not be changed by mere fact it also provides to its guests in the banquet hall. Therefore, the authorities were wrong in bifurcating the receipts of the Petitioner and categorising them for a portion u/s 17(4) of the Act and other portion to a tax at the rate of 10% u/s 6 of the Act.

15. So far as the total turnover tax of this revision Petitioner is concerned, we again have to see what is the total turnover of this dealer. So far as the case of

the present Petitioner, it attracts Sub-clause (b) of Clause (1) of Rule 6 of the KST Rules and the total amount paid or payable to the dealer as the consideration for the sale, supply or distribution of any goods other than those coming under Clause (a) where such sale, supply or distribution has taken place inside the State would be the total turn over and the authorities ought to have taken such total amounts as the turn over upon which the composition of tax as contemplated u/s 17(4) of the Act had to be levied.

16. Accordingly, the revision petition is allowed. The authorities are directed to work out the tax payable by the revision Petitioner in the light of the above observations.