

Rajasthan Tax Board, Ajmer

Appeal No. 2048/2015/Udaipur
Appeal No. 2049/2015/Udaipur
Appeal No. 2050/2015/Udaipur
Appeal No. 2051/2015/Udaipur

M/s EIH Associated Hotels Ltd.,
Udaipur

...Appellant

VERSUS

1. Additional Commissioner
(Appeals), Commercial Taxes,
Udaipur
2. Commercial Taxes Officer,
Circle-D, Udaipur

.....Respondents

D.B.

SHRI NATHU RAM, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri R.C. Vijayvargiya &
Shri Rakesh Mehta, Advocates

for Appellant

Shri R.K. Ajmera,
Dy. Govt. Advocate

for Respondents

Dated : 01/08/2018

JUDGMENT

1. These appeals have been filed by the appellant hotelier (hereinafter called the "appellant"), against order of the Additional Commissioner (Appeals), Udaipur (hereinafter called the "appellate authority") who has partly accepted the appeals filed by the appellant against orders of the Commercial Taxes Officer, Circle-D, Udaipur (hereinafter called the "assessing officer" or "AO") passed under section 17(1)&(2), 20, 21(5) and 26 of the Rajasthan Tax on Luxuries (in Hotels and Lodging





Houses) Act, 1990 (hereinafter called the "Act"), details thereof is given as under:

Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Authority's order Details (Amount disputed in present Appeals)			
		Appeal No.	order dated	order dated	Tax	Interest	Total
2048/15	2010-11	194/LTH/14-15	19.10.2015	12.12.2014	6,30,899	6,68,753	12,99,652
2049/15	2011-12	195/LTH/14-15	19.10.2015	12.12.2014	7,31,048	6,14,080	13,45,128
2050/15	2012-13	196/LTH/14-15	19.10.2015	12.12.2014	6,84,662	4,10,794	10,95,456
2051/15	2013-14	197/LTH/14-15	19.10.2015	12.12.2014	12,63,812	9,09,944	21,73,756

2. As the common issues are involved in all these appeals, therefore, these are disposed off by a common order. Copy of the order be placed on each relevant appeal file.
3. Brief facts leading to the present appeals are that the appellant is a hotelier as defined u/s 2(h) of the Act and operates a hotel called 'Trident' in the city of Udaipur. The Commercial Taxes Officer, Anti-Evasion, Udaipur surveyed the business premises of the hotel on 06.05.2014 and it was found that the hotelier was not paying tax on some of the luxuries provided to its customers i.e. Laundry Service, Spa Service, Internet Service, Telephone Service, Saloon Service etc. After completion of the enquiry, the matter was transferred to the adjudicating officer i.e. Commercial Taxes Officer, Circle-D, Udaipur. The said AO after issuing the notice and taking reply of the hotelier on record, levied tax, interest and penalty on the turnover of luxuries provided by the hotelier on which no tax was paid earlier.
4. Aggrieved of the assessment orders, the appellant preferred appeals before the appellate authority who vide his common order dated 19.10.2015 upheld the levy of tax and interest on the luxuries in question provided in the hotel and set aside the penalty as imposed in the assessment orders. Though for the off-season period, the tax liability was reduced to half in light of

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the Government notification dated 04.12.2004. Being aggrieved of this appellate order, these appeals have been preferred before the Tax Board u/s 28 of the Act.

5. Learned advocates appearing for the appellant raised some preliminary issues of technical nature and submitted that the permission for survey of the business premises of the hotelier was granted by the Deputy Commissioner (Adm) u/s 77 of the RVAT Act, 2003 whereas a separate permission was required to be granted for the Luxury Tax Cases. Secondly, it was argued that the cases made by the enquiry officer cannot be transferred by the Deputy Commissioner invoking provisions of the RVAT Act. It was further argued that section 26 empowers the Commissioner, Commercial Taxes (hereinafter called the "Commissioner") to authorize any Officer to conduct any inquiry in the matters of Luxury Tax, however, there was no such authorization given by the Commissioner in the present matter, therefore, the whole proceeding was illegal. He further argues that the luxuries as taxed by the Assessing Officer were in fact not taxable under provisions of the Act of 1990, therefore, the levy deserves to be set aside and appellate orders on this issue too may be set aside.
6. Per contra, the learned Deputy Govt. Advocate submits that the issues as raised on behalf of the appellant have already been decided by the Division Bench of the Rajasthan Tax Board in Appeal No. 2052-2055/2015/Udaipur, order dated 19.06.2017, therefore, the present appeals deserve to be dismissed.
7. We have heard the rival submissions and perused the relevant record. So far as the issue of giving permission to conduct survey in light of the provisions as contained in the RVAT Act, 2003 is concerned, the Rule 9 of the Rajasthan Tax on Luxuries (in Hotels and Lodging Houses) Rules, 1997 (hereinafter called the "Rules") specifically provides that the provisions of the RST Rules, 1995/RVAT Rules, 2006 shall apply *mutatis mutandis* to

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all the matters which may arise and to all the issues which may crop up while administering the Act. So, the issue raised by the appellant about modalities to accord sanction for survey under provisions of the RVAT Act, does not hold any legal ground and therefore deserves to be summarily rejected, hence rejected. For the other issue of transfer of the case to another authority is concerned, it is important to note that the State Government in its budget speech for the year 2009-10 had enunciated the principle of 'prosecutor should not be a judge', whereby a case was to be transferred to the another Officer for adjudication and as per the Commissioner's Circular No. 13/2009, it has been categorically mentioned that the principle of 'prosecutor should be a judge' shall also apply in the cases the other Acts administered by the Commercial Taxes Department and that these instructions shall also apply in the cases of Anti-Evasion. In light of these specific provisions we find no irregularity of any kind in granting permission to conduct survey or to transfer the case file to another officer for adjudication. Accordingly, the technical objections as raised by the appellant are over-ruled.


8. The next issue pertains to the levy of tax on various luxuries provided by the hotelier in general or in the instant case by the appellant in particular. In this regard, the definitions of the term 'business' and 'luxury provided in a hotel' as given u/s 2 of the Act, are worth mentioning and the same are reproduced hereunder:

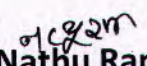
"(aa) "business" includes the activities of providing residential accommodation or any place for the purpose of organising parties, ceremonies or functions and any other service in connection with, or ancillary to, such activities or monetary consideration, whether or not such activities are carried on with motive to make gain or profit and whether or not any gain or profit accrues from such activities;

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(i) "Luxury provided in a hotel" means accommodation (such as room or other place or lawn etc. by whatever name called) and other services including air-conditioning, coolers, heaters, geysers, television, radio, music, entertainment, [Spa, massage] extra beds, linen articles **and the like** in a hotel, for which the rate of charges per day of part hereof is seven hundred fifty rupees or more;"

9. On bare perusal of the above definition as given under Clause (i) of the section 2(1) of the Act, it transpires that the term 'Luxuries provided in a hotel' is wide enough and it not only means providing an accommodation but also includes within its ambit, the other services which are connected to the main service or which are ancillary to such activities of providing accommodation or luxury. So, the services provided by the appellant on which the AO has levied tax, squarely fall under ambit of the luxury tax. Learned Division Bench of the Tax Board in a similar matter of M/s EIH Limited (unit Udai Vilas) V/s Additional Commissioner (Appeals), being appeal number 2052/2015/Udaipur, order dated 19.06.2017, has upheld the levy of luxury tax on Laundry, Spa, Internet, Board Riding, Beauty Saloon and other services. Accordingly, the luxury tax in the instant case on the services of Laundry, Spa, Internet, Saloon etc. has rightly been levied by the AO and order of the appellate authority deserves to be confirmed.
10. Resultantly, the impugned appellate orders are confirmed, and all the appeals are rejected.
11. Order pronounced.


01.08.2018
(Omkar Singh Ashiya)
Member


(Nathu Ram)
Member