

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2936 OF 2009
(Arising out of S.L.P. (C) No. 19982 of 2007)

M/s M.R. Tourist Home & Ors.

... Appellant(s)

Versus

Sales Tax Officer & Ors.

... Respondent(s)

WITH

Civil Appeal No. 2935/09 @ S.L.P.(C) No. 19626/07
Civil Appeal No.2939/09 @ S.L.P.(C) No. 20592/07
Civil Appeal Nos.2937-38/09 @ S.L.P.(C) No. 20585-20586/07
Civil Appeal Nos.2940-41/09 @ S.L.P.(C) No. 20601-20602/07

ORDER

Leave granted.

In this batch of Civil Appeals two questions which arise for determination are: whether Section 7(b) of Kerala General Sales Tax Act, 1963 (for short “1963 Act”) introduced on 24.10.2006 with retrospective effect from 1.7.2006 could be applied to those dealers who had contracted for payment of turnover tax at the compounded rate under the alternate method of taxation provided for under the unamended Section 7 for the assessment year 2006-07? The second and more important question which arises for determination is whether Section 7(a) and Section 7(b) operate in different spheres and if not whether the said amended section violates Article 14 and Article 19(1)(g) of the Constitution as contended in the writ petition?

For the sake of convenience, we reproduce hereinbelow facts in M/s M.R. Tourist Home & Ors. v. Sales Tax Officer & Ors. (Civil Appeal arising out of S.L.P.(C) No. 19982/07).

Appellants conduct bar-attached-hotels, where liquor is supplied to customers. Sales tax on liquor is governed by the 1963 Act. Section 7 provides for payment of tax at compounded rate in the case of bar-attached-hotels.

The dispute relates to the imposition of additional liability by the Legislature for part of the assessment year 2006-07 over and above the tax already compounded and paid on the basis of the law as it existed on April, 2006.

We quote hereinbelow Section 7 of the 1963 Act, as it stood on 1.4.2006:

“7. Payment of tax at compounded rates: Notwithstanding anything contained in sub-section (2) of Section 5, any bar attached hotel, not being a star hotel of and above three star hotel, heritage hotel or club, may, at its option, instead of paying turnover tax on liquor in accordance with the provisions of the said sub-section, pay turnover tax at the rate specified under the said sub-section on the turnover of foreign liquor calculated at the following percentage of the purchase price of such liquor, namely:

- | | | |
|-----|---|--------------------------------------|
| (a) | in the case of those situated within the area of a municipal corporation or municipal council or cantonment | One hundred and forty percent |
| (b) | in the case of those situated in any other place | One hundred and thirty five percent” |

We also quote hereinbelow Section 7 of the 1963 Act after its amendment from 1.7.2006:

“7. Payment of tax at compounded rates: Notwithstanding anything contained in sub-section (2) of Section 5, any bar attached hotel, not being a star hotel of and above three star hotel, heritage hotel or club, may, at its option, instead of paying turnover tax on foreign liquor in accordance with the provisions of the said sub-section pay turnover tax on the turnover of foreign liquor calculated:

- (a) at one hundred and forty percent of the purchase value of such liquor, in the case of those situated within the area of a municipal corporation or a municipal council or a cantonment, and at one hundred and thirty five percent of the purchase value of such liquor, in the case of those situated in any other place; or
- (b) at one hundred and fifteen percent of the highest turnover tax payable by it as conceded in the return or accounts or the turnover tax paid for

any of the previous consecutive three years, whichever is higher."
(emphasis supplied)

We also quote hereinbelow Circular No. 44 of 2006 dated 27.11.2006 issued by the Commissioner of Commercial Taxes, which reads as follows:

- “(1) Compounding is an option to be exercised on a yearly basis. So the effective date of operation of this option will be from 1st April 2006.
- (2) As per the amended provision under Section 7 of the KGST Act, 1963, any bar attached hotels other than star hotels of and above three star classification heritage hotel or club are, at their option, eligible to pay turnover tax on the sale of foreign liquor at compounded rate calculated at the following rates, whichever is higher:
- (i) At 140% of the purchase value of liquor, in the case of business places situated within a municipal corporation or municipal council or a cantonment and at 135% in the case of business place situated at other places, or
 - (ii) at 115% of the highest turnover tax payable for any of the previous consecutive three years immediately preceding the year to which the option relates.
- (3) When an option for compounding under the above section is accepted, the assessing authority shall compute monthly tax liability worked out on an average basis, in accordance with item (ii) above. He shall then compare the said figure with figures worked out under item (i) based on the details conceded as per the return. The tax payable for a month will be the higher amount so worked out. This will be subject to revision based on the annual figures.”
(emphasis supplied)

At the outset, we may state, that, both the above questions are interconnected.

As regards the first question, it may be stated that a similar question arose before us in the case of M/s Varkisons Engineers v. State of Kerala & Anr. (S.L.P.(C) No. 1471/08). By Order dated 23.4.2009 we have remitted the case for reconsideration in accordance with law.

For the reasons given in our Order dated 23.4.2009 in the case of M/s Varkisons Engineers (supra), we set aside the impugned judgment dated 28.9.2007 in Writ Appeal No. 1876/07 and we accordingly restore the said Writ Appeal on to the file of the High Court

for fresh consideration in accordance with law.

As regards the second question, we want the High Court to consider whether Section 7(a) and Section 7(b) operate in different spheres or in the same sphere and if they operate in the same sphere whether they obliterate the difference between normal method of taxation under Section 5 and alternate method of taxation under Section 7 (as amended).

In this batch of Civil Appeals, the High Court also needs to consider the question as to whether Circular No. 44 of 2006 dated 27.11.2006 issued by the Commissioner of Commercial Taxes was at all binding on the appellant(s). It is well settled that, circulars issued by the Commissioner binds the Department and not the assessee and the answer to that question would also depend upon the answer to the above two questions.

Lastly, we may state that if the High Court finds that to decide the above questions, foundational facts need to be established it may direct the appellant(s) to move the Assessing Officer by filing Returns in accordance with law before adjudicating upon the constitutional question(s) on the validity of the amended Section 7.

Since above questions have not been answered, we set aside the impugned judgment and we remit the matter to the High Court for fresh consideration in accordance with law and accordingly Civil Appeals are disposed of with no order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(HARJIT SINGH BEDI)

New Delhi,
April 23, 2009.

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (Civil) No(s).19626/2007

**(From the judgment and order dated 28/09/2007 in WA No.1861/2007
of the HIGH COURT OF KERALA AT ERNAKULAM)**

M/S. HOTEL ALAKANANDA & ANR.

Petitioner(s)

VERSUS

COMMERCIAL TAX OFFICER & ORS.

Respondent(s)

(With appln. for permission to file addl. documents, stay and with prayer for interim relief)(For final disposal)

WITH

SLP(C) NO. 19982 of 2007 – With appln. for exemption from filing c/c of the impugned judgment and with prayer for interim relief & O/R

SLP(C) NO. 20585-20586 of 2007 – With prayer for interim relief and office report

SLP(C) NO. 20592 of 2007 – With prayer for interim relief and office report

SLP(C) NO. 20601-20602 of 2007 – With appln. for exemption from filing c/c of the impugned judgment and with prayer for interim relief & O/R

Date: 23/04/2009 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE HARJIT SINGH BEDI

**For Petitioner(s) Mr. Venkat Subramanian T.R., Adv.
Mr. Romy Chacko, Adv.**

**Mr. M.P. Vinod, Adv
Mr. Dillep Pillai, Adv.
Mr. Ajay Kumar Jain, Adv.**

**For Respondent(s) Mr. T.L.V. Iyer, Sr. Adv.
Mr. R. Sathish, Adv.**

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeals are disposed of with no order as to costs.

(S. Thapar)
PS to Registrar

(Madhu Saxena)
Court Master

The signed order is placed on the file.

