

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Sales Tax Revision / Reference No. 63/2020

Commercial Taxes Officer, Anti-Evasion, Zone-Iii, Jaipur

----Petitioner

Versus

M/s Chokhi Dhani Resorts Pvt. Ltd., S-8, Shyam Nagar, Civil Lines, Jaipur

----Respondent

Connected With

S.B. Sales Tax Revision / Reference No. 64/2020

Commercial Taxes Officer, Anti-Evasion, Zone-Iii, Jaipur

----Petitioner

Versus

M/s Chokhi Dhani Resorts Pvt.ltd., S-8, Shyam Nagar, Civil Lines, Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 72/2020

Commercial Taxes Officer, Anti-Evasion, Zone-Iii, Jaipur

----Petitioner

Versus

M/s Chokhi Dhani Resorts Pvt.ltd., S-8, Shyam Nagar, Civil Lines, Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 73/2020

Commercial Taxes Officer, Anti-Evasion, Zone-Iii, Jaipur

----Petitioner

Versus

M/s Chokhi Dhani Resorts Pvt.ltd., S-8, Shyam Nagar, Civil Lines, Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 74/2020

Commercial Taxes Officer, Anti-Evasion, Zone-Iii, Jaipur

----Petitioner

Versus



M/s Chokhi Dhani Resorts Pvt.Ltd., S-8, Shyam Nagar, Civil Lines,
Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 75/2020

Commercial Taxes Officer, Anti-Evasion, Zone-Iii, Jaipur

----Petitioner

Versus

M/s Chokhi Dhani Resorts Pvt. Ltd., S-8, Shyam Nagar, Civil
Lines, Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 76/2020

Commercial Taxes Officer, Anti-Evasion, Zone-Iii, Jaipur

----Petitioner

Versus

M/s Chokhi Dhani Resorts Pvt. Ltd., S-8, Shyam Nagar, Civil
Lines, Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 77/2020

Commercial Taxes Officer, Anti-Evasion, Zone-Iii, Jaipur

----Petitioner

Versus

M/s Chokhi Dhani Resort Pvt Ltd., S-8, Shyam Nagar, Civil Lines,
Jaipur

----Respondent

For Petitioner(s) : Mr. Punit Singhvi with Mr. Ayush
Singh, Adv.
For Respondent(s) : Mr. Mahendra Gargeiya with Mr.
Devang Gargeiya, Mr. Aurnabh Dey,
Adv.

HON'BLE MR. JUSTICE SAMEER JAIN
Judgment

Reserved On: **04/05/2023**
Pronounced On: **02/06/2023**

1. The present Sales Tax Revisions/References (for short "STRs") have been filed by the revenue, under Section 84 of the Rajasthan Value Added Tax Act, 2003 (for short "RVAT Act") read with Section 86 of the Rajasthan Sales Tax Act, 1994 (for short "RST Act"), assailing the impugned order dated 23.18.2019 passed by the Rajasthan Tax Board, Ajmer and involves the following question of law:

"i) Whether in the facts and circumstances of the case the Rajasthan Tax Board was justified in law in holding that the expenses charged are separate than the food charges despite only one coupon of composite amount issued at the entry by the respondent.

ii) Whether in the facts and circumstances of the case the Rajasthan Tax Board was justified in law in deleting the tax and interest without appreciating the provisions pertaining to "Sale" as contemplated u/s 2(35) of the Act and "Sale Price" as contemplated u/s 2(36) of the Act."

2. Since common issue is involved in all these STRs, STR No. 63/2020 is taken as lead file to peruse the facts and with the consent of the parties, all these STRs were heard together.

3. Learned counsel for the revenue submits that a survey was conducted of the premises of the assessee on 14.07.2010 wherein it was discovered that the assessee, which is engaged in the business of restaurants and resorts, was issuing 'entry coupon' at the entry gate of the premises to its customers and charging Rs. 350/- per adult and Rs. 175 per minor. The said charge, as per the entry coupon, is only adjustable against food. However, the assessee was only paying VAT on Rs. 250 (in case of adults) or Rs. 125 (in case of children) and the remaining amount, i.e. Rs. 100 (in case of adults) and Rs. 50 (in case of children) was reflected separately in the assessee's books of accounts under the head

'Charges for generation of Cultural Receipts, Staff, Maintenance, Adm. Expenses' and no VAT was being paid on the same, which amounts to evasion of tax. Accordingly, the Assessment Order dated 25.02.2011 was passed and tax along with interest and penalty was imposed upon the assessee. Upon appeal, the Deputy Commissioner (Appeal), vide order dated 23.03.2012, maintained the levy of tax and interest but deleted penalty imposed under Section 61 of RVAT Act. Thereafter, the Tax Board allowed the appeal filed by the assessee and set aside the levy of tax and interest also.

4. Learned counsel for the revenue submits that the assessee was separately charging for other services, like animal riding, astrology services and other recreational activities, inside the premises and the entry coupon specifically contained the words "adjustable in food only". Therefore, relying upon definition of 'sale' as contained in Section 2 (35) and definition of 'sale price' as contained in Section 2 (36) of the RVAT Act, learned counsel for the revenue contends that VAT is payable on the entire amount (Rs. 350 for adults and Rs. 175 for children) and that the assessee cannot split up the amount charged for sale of food, even if the assessee provides certain services in addition to food as VAT has to be paid on total amount charged.

5. Learned counsel for the revenue has also emphasized the fact that the assessee was not issuing invoices to the customers in the regular course of business and only issued the invoices when the customer specifically demanded it.

6. Learned counsel for the revenue has relied upon Apex Court judgments of **K. Damodarasamy Naidu and Bros. and Ors. vs. The State of Tamil Nadu and Ors.: (2000) 1 SCC 521** and **Idea Mobile Communication Ltd. vs. C.C.E. and C., Cochin: (2011) 12 SCC 608** in support of his contention that VAT is payable on total amount charged for food, even if some bundled services, like recreational activities, music and dance shows etc., are provided along with food.

7. *Per contra*, learned counsel for the assessee submits that the entire case of the revenue proceeds on a wrong factual premise that the coupons were issued in lieu of invoice. The coupons were issued merely for administrative convenience of the assessee and the assessee was always issuing invoices/bills/receipts separately. Copies of such invoices, left by some customers, was also taken by the survey team of department. The Tax Board has also taken note of the fact that the assessee was indeed issuing invoices in which charge towards food and entertainment services were separately reflected.

8. Learned counsel for the assessee contends that in view of the undisputed fact that the assessee was preparing invoices showing amount being charged separately towards sale of foods and towards entertainment supply, the coupon cannot be made a basis to reach a basis to reach a conclusion against the assessee as the coupons were being issued merely for administrative and managerial purposes to keep control over various daily activities. The mere mentioning of the term 'adjustable in food only' in such coupon is not conclusive and cannot be read in isolation and such

phrase was only used to avoid any possibility of misuse by a customer towards another chargeable entertainment activity.

9. Learned counsel for the assessee further submits that the case of the assessee cannot be equated with any another restaurant serving food as the assessee is not strictly engaged in the hospitality or restaurant business, but is rather predominantly engaged in entertainment business. It is submitted that the assessee aims to provide a traditional Rajasthani cultural experience to all its customers and food is just a small part of that experience. The entire tour of the assessee's premises along with the several activities, which are separately chargeable, would normally take 3-4 hours and the customer only comes to the premises of the assessee to get amused/entertained and to experience the local culture. It is contended that no one would travel 20+ kms away from the city for the sole purpose of having food, when they can have food, sometimes even better quality food, in their own cities. The substance always prevails over the form and if totality of facts and circumstances are considered, it would be obvious to gather that the customer basically comes to Chokhi Dhani to get entertained, and in the meanwhile takes food. The rendering of entertainment impliedly and inherently includes service element, which is beyond the competence of the State for imposing tax under RVAT Act. Learned counsel for the assessee has also emphasized the fact that the customer is not allowed to pay and enter just for food or just for entertainment, which clearly implies that customer is paying towards food as also towards entertainment separately.

10. Learned counsel for the assessee has also relied upon Apex Court judgment of **Bharat Sanchar Nigam Ltd. and Ors. vs. Union of India (UOI) and Ors.:(2006) 3 SCC 1**. Learned counsel further submits that the judgment of **K. Damodarasamy Naidu and Bros. (supra)**, relied upon by learned counsel for the revenue, is distinguishable as that case was pertaining to mutant sale under Article 366(29A) of Constitution of India to supply food and drinks in hospital, whereas in the present case, dominant intention is to provide entertainment with which food is also provided, but the same are being charged separately through invoices. The said case was also distinguished by this Court in **Assistant Commissioner, Anti Evasion, Kota and Ors. vs. Kota Eye Hospital And Research Foundation and Ors.** (D.B. STR No. 139/2019; decided on 25.08.2022; Neutral Citation: 2022/RJJP/002174).

11. Heard the arguments advanced by both the sides, scanned the record of the STR and considered the judgments cited at Bar.

12. In the instant case, the following are undisputed:

a.) That the assessee used to issue entry coupon of Rs. 350/- per adult and Rs. 175/- per child. A sample coupon for illustrative purpose is reproduced as under:

"चौखी ढाणी

न		दिनांक
Entry Coupon		
Name(जिस पर ग्राहक का नाम लिखा जाता है)		
Adult	@Rs. 350/-	
Children	@Rs. 175/-	
(3 to 8 years)		
Total Amount received Rs.		
NOT REFUNDABLE		
ADJUSTABLE IN FOOD ONLY		
VALID FOR THE DATE OF ISSUE ONLY"		

- b.) That out of the total amount mentioned in the entry coupon, and collected from the customers by the assessee for food, the assessee was only paying VAT on Rs. 250 (for adults) and Rs. 125 (for children), even though the entry coupon specifically mentioned 'adjustable in food only'.
- c.) That the assessee charges separately from the customers for additional services provided inside the premises.
- d.) That as a standard practice, invoice is not provided to the customers in regular course and is only provided in case some customer specifically requests it, as an exception.
- e.) That in their books of accounts, the assessee were bifurcating the amount charged while issuing entry coupon under two heads; one for food and another for generation of cultural receipts, admin expenses, maintenance, etc.
- f.) That the invoices purportedly issued were only produced for the first time before the Tax Board and were never produced before assessing officer or the appellate authority.

13. The first and foremost thing that is noted is that the assessee was issuing entry coupon which contained the specific note that the amount so charged in the coupon is adjustable only against food. However, against the contents of their own coupons, the assessee adopted window dressing deliberately, with intention to evade tax, by bifurcating the amount so charged from the customers that was adjustable only against food into separate entries, including the one for cultural receipts, admin expenses, maintenance etc. For all intent and purposes and in the facts of the case, the entry coupon was represented as invoice only.

14. At this point, it would be apt to consider the definition of sale and sale price, as provided under the RVAT Act.

"Section 2(35) "Sale" with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another for cash, deferred payment or other valuable consideration and includes;

(i) a transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) any delivery of goods on hire-purchase or other system of payment by instalments;

(iv) a transfer of the right to use goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) a supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and

(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply shall be deemed to be a sale and the word "purchase" or "buy" shall be construed accordingly;

Explanation:- Notwithstanding anything contained in this Act, where any goods are sold in packing, the packing material in such case shall be deemed to have been sold with the goods;

Section 2(36) "sale price" means the amount paid or payable to a dealer as consideration for the sale of any goods less any sum allowed by way of any kind of discount or rebate according to the practice normally prevailing in the trade, but inclusive of any statutory levy or **any sum charged for anything done by the dealer in respect of the goods or service rendered at the time of before the delivery thereof**, except the tax imposed under this Act;

Explanation 1:- In the case of a sale by hire purchase agreement, the prevailing market price of the goods on the date on which such goods are

delivered to the buyer under such agreement, shall be deemed to be the sale price of such goods;

Explanation 2:- Cash or trade discount at the time of sale as evident from the invoice shall be excluded from the sale price but any ex post facto grant of discounts or incentives or rebates or rewards and the like shall not be excluded;

Explanation 3:- Where according to the terms of a contract, the cost of freight and other expenses in respect of the transportation of goods are incurred by the dealer for or on behalf of the buyer, such cost of freight and other expenses shall not be included in the sale price, if charged separately in the invoice;"

15. On a conjoint reading of the above two definitions, it is abundantly clear that the assessee cannot split up the amount charged for the sale of food, even if assessee provides certain services in addition to the food, and VAT has to be paid on the entire consideration charged for the food. The assessee, undisputedly, issued coupons that were adjustable against food only and therefore the assessee is liable to pay VAT on the entire consideration charged from its customers for supply of food. This position of law is well settled now and explained in great detail by the Hon'ble Apex Court in the case of **K. Damodarasamy Naidu and Bros. (supra)**, the relevant part of which is reproduced as under:

"8. Learned Counsel next contended, relying upon the judgments aforementioned, that, in the eye of the law, the tax on food served in restaurants could not be levied on the sum total of the price charged to the customer. In his submission, restaurants provided services in addition to food, and these had to be accounted for. Thus, restaurants provided an elegant decor, uniformed waiters, good linen, crockery and cutlery. It could even be that they provided music, recorded or live, a dance floor and a cabaret. The bill that the customer paid in the restaurant had, therefore, to be spilt up between

what was charged for such service and what was charged for the food.

9. The provisions of Sub-clause (f) of Clause (29A) of Article 366 need to be analysed. Sub-clause (f) permits the States to impose a tax on the supply of food and drink. The supply can be by way of a service or as part of a service or it can be in any other manner whatsoever. The supply or service can be for cash or deferred payment or other valuable consideration. The words of Sub-clause (i) have found place in the Sales Tax Acts of most States and, as we have seen, they have been used in the said Tamil Nadu Act. **The tax, therefore, is on the supply of food or drink and it is not of relevance that the supply is by way of a service or as part of a service. In our view, therefore, the price that the customer pays for the supply of food in a restaurant cannot be split up as suggested by learned Counsel. The supply of food by the restaurant owner to the customer, though it may be a part of the service that he renders by providing good furniture, furnishing and fixtures, linen, crockery and cutlery, music, a dance floor and a floor show, is what is the subject of the levy. The patron of a fancy restaurant who orders a plate of cheese sandwiches whose price is shown to be Rs. 50 on the bill of fare knows very well that the innate cost of the bread, butter, mustard and cheese in the plate is very much less, but he orders it all the same. He pays Rs. 50 for its supply and it is on Rs. 50 that the restaurant owner must be taxed."**

16. In the opinion of this Court, the dictum of the above quoted Apex Court judgment is squarely applicable in the instant case.

17. Furthermore, the contention of the assessee that as per aspect theory, the dominant supply was of supply of entertainment/service is also untenable for the following reasons:

17.1) Because it is an admitted position that no one is allowed entry if they only want to have the cultural experience, entry coupon which is adjustable only against food is a must.

17.2) Because the assessee is charging separately for the services provided inside the premises. Had this been a case where the assessee was charging a flat rate for a combined experience, this contention of the assessee might have been worth consideration. But since the assessee is admittedly charging separately for the services, it cannot be said that the dominant purpose of the entry coupon was for providing entertainment/services where the supply of food is only incidental.

17.3) Because as the bifurcation of the amount charged for entry coupon, done by the assessee itself, majority of the charge was for supply of food.

17.4) Because the reliance placed by the assessee on judgment of **Kota Eye Hospital and Research Foundation (supra)** is also misconceived as in that case, the primary supply was undisputedly of medical service and the consideration of sale of goods was included in the cost of bundle of services. In the instant case, as the assessee is not providing a bundled supply of service which also happen to include supply of goods incidentally, the judgment of **Bharat Sanchar Nigam Ltd. (supra)** and **Kota Eye Hospital and Research Foundation (supra)** has no application.

18. In view of the forgoing analysis, the questions of law framed hereinabove have to be answered in favour of the revenue and against the assessee. Accordingly, the impugned order of the Tax Board is quashed and set aside and the levy of penalty is maintained.



19. Consequently, all these STRs are allowed. Pending application(s), if any, shall stand disposed of.

(SAMEER JAIN),J