

Hotel Darpan, Mussoorie

Vs

Sub-Divisional Magistrate, Mussoorie and Another

Civil Appeal No. 11260 of 1995

(B. P. Jeevan Reddy, S. B. Majmuder JJ)

27.11.1995

ORDER

1. Leave granted. Heard counsel for both the parties.
2. This appeal arises from the order of the Division Bench of the Allahabad High Court dismissing the writ petition, filed by the appellant herein, with certain directions. The matter arises under the Uttar Pradesh Taxation and Land Revenue Laws Act, 1975.
3. The appellant is the proprietor of a hotel, Hotel Darpan, at Mussoorie. Section 4 of the U. P. Act imposes a luxury tax at the prescribed rate on every person who occupies rented room or suite or rooms provided with luxuries in a hotel. The appellant Hotel is, without a doubt, subject to the levy of the said tax. Section 5 of the Act sets out the manner in which the tax has to be paid by the proprietor of the hotel. In case of failure to pay within the prescribed period, interest at the prescribed rate is charged. Section 6 provides for assessment of tax. The authority competent to make the assessment and the procedure to be followed in that behalf is to be prescribed by the rules. The next provision to be noticed is Section 10 which provides for levy of penalties. It would be appropriate to set out the section in full :

"10. Penalty. - (1) Without prejudice to the provisions of sub-section (2) of Section 5 if any person fails to pay any sum payable under Section 5 or Section 7 within the prescribed period he shall, on conviction be liable to pay a fine not exceeding rupees five thousand and when the offence is a continuing one, with a further fine not exceeding rupees one hundred per day during which the offence continues.

(2) Whoever fails to supply and information which he is required to supply under any rules made under this Chapter or knowingly supplies false information shall be punishable with fine which may extend to five thousand rupees."
4. Section 13 empowers the State Government to make rules to carry out the purpose of the Act.
5. The rules framed under Section 13 are called "The Uttar Pradesh Luxuries (In Hotels) Tax Rules, 1975". Rule 3 provides that the amount of tax payable by a proprietor under Section 5(1) of the Act shall be paid within five days after the end of the month to which the tax collected by the proprietor relates. Rule 4 provides for filing of returns in the prescribed form. Rule 6 prescribes the procedure for assessment of tax. According to this rule, the Collector is the assessing authority and the assessment is made half-yearly. Sub-rule (3) provides that for the purpose of assessing the tax, the Collector shall serve notice on the proprietor to attend in person or through an agent on the

prescribed date and to produce such documents and evidence as may be specified in the notice or as he may wish to rely upon, as the case may be. Sub-rule (4) provides for making an order of assessment after examining the evidence placed before the Assessing Authority. Sub-rule (5) of Rule 6 is relevant for our purposes. It provides for making a best judgment assessment in case a return is not filed within the prescribed period. The sub-rule reads :

"6. (5) If the proprietor fails to submit the returns within the period mentioned in sub-rule (1) of Rule 4, the Collector shall assess to the best of his judgment the amount of the tax payable under Section 5 of the Act in accordance with the provisions of Section 4 of the Act."

6. Rule 7 provides for appeal while Rule 8 prescribes the appellate authority. It is not necessary to refer to other rules.

7. The writ petition from which this appeal arises was filed by the appellant questioning the validity of notices/orders dated 28-6-1993 and 14-7-1993. In the notice dated 28-6-1993 the assessing authority stated that the appellant was "called upon to deposit the amount of luxury tax on the monthly lodging and boarding by the fifth date of the next month" as provided by the said Act but that the appellant has failed to deposit the same in spite of repeated reminders. The appellant was, therefore, called upon to produce all documents and to deposit the tax under intimation to the assessing authority. The notice further stated :

"(1) In default of filing of returns regarding luxury tax for the period 1-10-1991 to 30-9-1992 you are called upon to deposit a sum of Rs. 5000 (Five Thousand) under Section 10 of Luxury Tax Act within 3 days from the date of receipt of this letter in the government treasury after verifying the head of account.

(2) You are called upon to produce all documents to the above period which were demanded from you through previous letters of Luxury Tax Assessing Authority, within 10 days before the court of undersigned.

An ex parte proceeding for assessment of Hotel under Section 7 of Luxury Tax Act will be taken against you in the case of failure to produce the documents or if records are not found satisfactory."

8. On the ground that the said amount of Rs. 5000 was not deposited in time, the order dated 14-7-1993 was passed calling upon the appellant to deposit the said amount of Rs. 5000 within one week. It was stated that in default of such deposit, the appellant would be liable to pay a further fine of Rs. 100 per day in addition to 10 per cent collection charges.

9. The appellant contended before the High Court that no fine or penalty could have been imposed under Section 10 for not filing the returns. This contention was rejected by the High Court in the following words :

"If the return has not been furnished by the petitioner, indeed, the authority concerned may proceed under Section 10 of the Act to impose penalty and after proceeding in accordance with the provisions of Section 10 of the Act only the Sub-Divisional Magistrate has imposed the fine....

As far as imposition of penalty is concerned this Court does not see any illegality in

it and upholds the imposition of penalty."

10. The High Court also took note of the statement of the appellant's counsel that the appellant had deposited a sum of Rs. 10,000 in advance and, therefore, there was no occasion for depositing a further sum of Rs. 5000, and observed :

"If that is so, indeed, the petitioner may, if so advised, approach to the authority concerned by filing an appropriate application to settle the account accordingly."

The Court finally observed :

"... if appropriate application is made by the petitioner before the Sub-Divisional Magistrate, Mussoorie within a month from today, the same shall be taken into consideration and be disposed of within three months thereafter."

11. In this appeal, the main contention put forward by the learned counsel for the appellant is that no penalty can be levied under Section 10 of the Act for not filing the return. If a return is not filed within the prescribed period, the learned counsel says, the only course available to the assessing authority is to make a best judgment assessment as provided by Rule 6(5) of the Rules. The learned counsel says that in the present case, penalty has been levied not for the failure to pay any amount due nor for the failure to supply any information which the appellant was called upon to supply but only for non-filing of the return within the prescribed period. As a proposition of law, the learned counsel is right. Section 10 is the only provision in the Act providing for levy of taxes. Sub-section (1) provides for levy of penalty on conviction for failure to pay any sum payable under Section 5 or Section 7 within the prescribed period. Sub-section (2) provides for levy of penalty on two grounds, viz., failure to supply any information which the person concerned is called upon to supply under the Rules or where the person knowingly supplies false information. For not filing the return, it is true, no penalty can be levied under Section 10. But the more important question in this case is, whether any penalty has been levied in this case, and if so, on what ground. The two notices/orders impugned in the writ petition are ambiguous and do not make it clear whether the amount of Rs. 5000 mentioned therein is a tax or a penalty. The impugned notices also speak of fine but do not say under which provision are they levied. In these circumstances, the proper course, in our opinion, is to quash the two orders/notices impugned in the writ petition with a direction to the assessing authority to pass appropriate orders afresh in accordance with law, after hearing the assessee, keeping in view the position of law explained in this judgment. The authority can also ascertain whether the appellant's case that he has deposited Rs. 10,000 in advance is correct and, if so, what is its effect in law - and its relevance in the matter of levy of penalty, fine or interest. It is made clear that in the proceedings which shall now be taken by the assessing authority pursuant to this order, the assessee shall not be entitled to raise any objection on the ground of limitation. He shall, of course, be free to raise all such other grounds as are open to him in law.

12. The appeal is allowed with the above directions. The order of the High Court shall stand modified accordingly. No costs.