SUPREME COURT OF INDIA

Sales Tax Officer, New Delhi

Vs.

East India Hotels Ltd.

(S Bharucha and M J Rao JJ.)

09.09.1997

ORDER

1. These appeals raise the same point of law and can be decided together. The brief facts that we give, relate to Civil Appeal No. 3798 of 1989.

2. The relevant period with which we are concerned is Assessment Year 1972-73. In the course of its business, the first respondent served at its hotels food, beverages and the like to patrons. The appellant-authority charged sales tax on the sales thereof prior to the judgment of this Court in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, . A fresh assessment order was passed thereafter, on the basis of a revised return filed by the first respondent. Ultimately, it culminated in an order which held that the first respondent had paid excess tax aggregating to Rs 11,15,562.30. On 16-3-1982, within the permissible period, the first respondent made an application for refund of the said amount of Rs 11,15,562.30. No action having been taken thereon, the first respondent filed a writ petition in the High Court at Delhi on 30-8-1982, whereon the order under appeal was passed. The writ petition prayed for a writ of mandamus directing the appellant-authority to refund the said amount of Rs 11,15,562.30 with interest thereon. The writ petition was allowed by the order under appeal, the High Court having found that no further consideration was required and that the defence of unjust enrichment was not maintainable.

3. In these appeals it has been contended on behalf of the appellant-authority that, in the first place,

a writ petition seeking only refund is not maintainable. It is not in serious dispute that it is settled law that refund may be ordered on a writ petition as a consequential relief but not as the sole or principal relief. We, therefore, must allow the appeal.

4. At the same time, it is appropriate that we should direct the sales tax authorities to hear the first respondents on their refund applications and dispose of the same within 12 weeks from today.

5. Learned counsel for the first respondents submit that we should take into account the defence of unjust enrichment that had been raised by the appellant-authority in the counter-affidavit filed before the High Court and decide its validity. We would not be justified in assuming that the quasi-judicial authorities who will decide the refund applications will consider themselves bound by what has been stated on behalf of the appellant-authority in the counter-affidavit and we, therefore, do not think that it would be appropriate for us to pre-empt them on the issue of unjust enrichment.

6. The appeals are allowed accordingly. No order as to costs.