



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 10<sup>TH</sup> DAY OF FEBRUARY, 2025**

**R**

**PRESENT**

**THE HON'BLE MR JUSTICE KRISHNA S DIXIT**

**AND**

**THE HON'BLE MR JUSTICE G BASAVARAJA**

**WRIT APPEAL NO. 2536 OF 2015 (T-RES)**

**C/W**

**WRIT APPEAL NO. 1340 OF 2015 (T-RES)**

**IN WA No. 2536/2015:**

**BETWEEN:**

M/S BALLAL AUTO AGENCY ,  
A REGISTERED FIRM HAVING ITS  
REGISTERED OFFICE AT #15-11584,  
MAHAVEER BUILDING, BENDOOOR,  
MANGALORE TALUK-574 201.  
BY ITS PARTNER  
SRI. K JAYA VARMA RAJ BALLAL

...APPELLANT

(BY SRI. CHANDRANATH ARIGA K.,ADVOCATE)

**AND:**

1. UNION OF INDIA,  
BY ITS SECRETARY,  
NORTH BLOCK,  
NEW DELHI-110 006.
2. THE ASSISTANT COMMISSIONER (AUDIT)  
CENTRAL EXCISE, 4<sup>TH</sup> FLOOR,  
PUNJA BUILDING ANNEXE,  
BALLAL BAUGH,MANGALORE - 575 003.

...RESPONDENTS

(BY SRI.H SHANTHI BHUSHAN.,DSGI FOR R1;  
SMT. VANITHA K R.,ADVOCATE FOR R2)





THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 2033/2014 DATED 03/11/2014.

**IN WA NO. 1340/2015:**

**BETWEEN:**

BRUHATH BENGALURU HOTELS ASSOCIATIONS (R)  
NO.87, SHRESTA BHOOMI,  
NO.307, 3<sup>RD</sup> FLOOR, K.R. ROAD,  
BANGALORE 560 004.

NOW REPRESENTED BY ITS PRESIDENT:  
B. CHANDRASHEKAR HEBBAR

...APPELLANT

(BY SRI.SHAKEER ABBAS.,ADVOCATE)

**AND:**

UNION OF INDIA  
REPRESENTED BY THE SECRETARY,  
MINISTRY OF FINANCE,  
DEPARTMENT OF REVENUE AND BANKING,  
NORTH BLOCK, NEW DELHI 110 001.

...RESPONDENT

(BY SRI.H SHANTHI BHUSHAN.,DSGI)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 52327/2013 DATED 3/11/2014.

THESE APPEALS COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT  
AND  
HON'BLE MR JUSTICE G BASAVARAJA



**ORAL JUDGEMENT**

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

These two Intra Court Appeals seek to call in question a learned Single Judge's common order dated 03.11.2014 whereby their W.P.Nos.2033/2014 c/w 1966/2014 & 52324/2013 (T-Res) having been negatived, their challenge to constitutional validity of sub-clauses (zzzzv) & (zzzzw) of clause 105 of Sec.65 of the Finance Act 1994, whereby in respect of the subject matter, Service Tax was introduced vide Finance Act, 2011.

2. Learned advocates appearing for the appellants argue that the subject matter of impugned provisions of the Act in pith & substance would fall within the precincts of State Legislative power under Entries 54 & 62 of List II, Schedule VII of the Constitution of India and therefore, the Parliament lacked competence to enact the same providing for levy in the nature of service tax. In support of this submission, they pressed into service a Division Bench decision of Hon'ble Kerala High Court in **UNION OF**



**INDIA vs. KERALA BAR HOTELS ASSOCIATION<sup>1</sup>.** In appreciable fairness, Mr.Chandrakanth Ariga appearing for one of the appellants submits that this decision along with Bombay High Court decision in **INDIAN HOTELS AND RESTAURANTS VS. UNION OF INDIA**, (W.P.No.2159 OF 2011 disposed off on 08.04.2014) is put in challenge that is pending before the Apex Court. He also suggests that the hearing of these matters be deferred till after the said challenge is decided, one way or the other. He also draws our attention to a Co-ordinate Bench order dated 25.11.2019 in support of said request.

3. The Co-ordinate Bench order reads as under:

*"Heard learned counsels.*

*2. In terms of the impugned order dated 03.11.2014, passed in Writ Petition No.2033 of 2014 and connected matters, the learned Single Judge followed the judgment of this court in the case of CONFEDERATION OF REAL ESTATE DEVELOPERS' ASSOCIATION OF INDIA (KARNATAKA) AND ANOTHER VS. UNION OF INDIA, THROUGH JOINT SECRETARY, MINISTRY OF LAW AND JUSTICE BHAVAN AND OTHERS reported in ILR 2013 KARNATAKA 569, wherein inter-alia the High Court of Bombay in the case of INDIAN HOTELS AND RESTAURANTS VS.*

---

<sup>1</sup>2014 SCC OnLine Ker 20039



*UNION OF INDIA, (W.P.No.2159 OF 2011 disposed off on 08.04.2014) and SKY GOURMET CATERING PRIVATE LIMITED VS. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, BENGALURU AND OTHERS reported in [(2011) 46 VST 35 (Karn.)], upheld the legislative competence in enacting the impugned law.*

*3. It is presently submitted that the aforesaid judgment of the Bombay High Court is questioned before this Hon'ble Supreme Court in C.A.No.10871 OF 2014 and leave has been granted. In view of the submissions made, we are of the considered view that it is unnecessary to continue to hear this matter. Hence, list this matter after the disposal of C.A.No.10871 of 2014, before the Hon'ble Supreme Court or on a memo being moved by the learned counsels."*

We decline to defer the hearing of these decade old cases, there being admittedly no direction by the Apex Court to defer unlike in **INDORE DEVELOPMENT AUTHORITY vs. MANOHARLAL**<sup>2</sup>. Secondly, the SLP of INDIAN HOTELS *supra* is dismissed as withdrawn; of course, other matters do still *pend* is true. However, justice can be done to the appellants by permitting them to seek recall of this judgement if Apex Court decides the questions favourable to them.

---

<sup>2</sup>2020 (8) SCC 129



4. Having heard learned counsel and having perused the Appeal Papers, we decline indulgence in the matter agreeing with the views of learned Single Judge in the light of following discussion:

4.1 A BRIEF HISTORY OF SERVICE TAX:

(a) The Finance Act, 1994 for the first time introduced levy of Service Tax w.e.f. 1.7.1994. This statute was structured on the recommendation of Raja Challaiah Committee on Tax Reforms, 1991. *"....The source of concept of Service Tax lies in economics. It is an economic concept. It has evolved on account of Service Industry becoming a major contributor to the GDP of an economy, particularly knowledge-based economy... as an economic concept, there is no distinction between the consumption of goods and consumption of services as both satisfy human needs. ... it is important to note that service tax is a value added tax which in turn is a general tax which applies to all commercial activities involving production of goods and provision of services. ..."* observed the Apex Court in **ALL INDIA FEDERATION OF TAX PRACTITIONERS vs. UNION OF INDIA**<sup>3</sup>.

(b) Service tax is a levy on the transaction of certain services specified in the Act. It is an indirect tax

---

<sup>3</sup> AIR 2007 SC 2990



akin to Excise Duty or Sales Tax, in the sense that normally the service provider pays it and thereafter recovers the same from the recipient of taxable service. To begin with, the taxation was on the Positive List basis, that is to say, the levy was only on the activities enlisted as 'Service'. Thus, the journey of taxation of services began by selective levy on just three services, namely, General Insurance Service (Non-Life insurance), Telephone Service & Stock Broker Service. Subsequently, this list grew: for the Financial Year 2003-2004 as many as 62 services were enlisted; for the following year it was 75; for the Financial Year 2011-12 this list consisted of 119 services.

(c) The Service Tax law took giant leaps in the next seven years of its initiation both in terms of wider coverage and increase in tax rate. The newer additions to the Positive List of services often raised issues of overlap with the previously existing services confounding both sides as to whether some activities were taxed for the first time or were already covered under an earlier, even if under a little less specific head. With the accumulated experience, Budget 2012 ushered a new system of taxation of services, popularly known as Negative List. The next changes are a paradigm shift from the existing system where, only services of specified descriptions are subjected to tax. In the new system, all services, except



those specified in the Negative List, are subject to taxation.

#### 4.2 A THUMBNAIL DESCRIPTION OF RELEVANT PROVISIONS OF THE FINANCE ACT, 1994:

(a) As already mentioned, 1994 Act enacts the law relating to Service Tax. Sec.66 till 30.06.2012 and Sec.66B w.e.f. 01.07.2012 are the charging provisions. They provide for levy of tax at the rate of 12% on the value of all services other than those enlisted in the Negative List. Sec.68(1) imposes the obligation to pay the tax on the provider of service, whereas Sec.68(2) r/w. Rule 2(1)(d)(i) of the Rules speaks of special circumstances to decide as to on whom this obligation rests i.e., whether the service provider or the service recipient. 'Service' is defined in Clause 44 of Section 65B, to mean any activity for *consideration* carried out by a person for another. To remove some ambiguities, certain activities have been specifically defined by description as 'Services' and are referred to as 'Declared Services' as defined under Section 65B(22) which in turn refers to those enlisted in Section 66E. The definition of "service" is both inclusive in certain aspects and exclusive in other.

(b) The Central Government being the delegate, has promulgated rules for the determination of *place of provision of service*. These are called 'Place of Provision of



Services Rules, 2012'. 'Taxable Territory' is defined under Section 65B as the territory to which the Act applies.

Substantive part of Clause 44 reads as under:

*"Service" means any activity carried out by a person for another for consideration, and includes a declared service..."*

It is apparently a "means, includes & excludes" definition. It is not the case of either party that the exclusion part of the definition is invocable, and therefore a long list of exclusion is not reproduced.

(c) The substantive definition of 'service' has four building blocks namely: "activity"; "carried out"; "by one person for another" and, "for consideration". The word 'activity' has not been defined in the Act. In common parlance, it would mean an act, a deed, a work, an operation or the like. An 'activity carried on' means an act executed, a deed done, a work accomplished or an operation carried out. This expression has a wider connotation and includes both active and passive act. The second component of the definition is consideration, which again is not well defined. However, as per Explanation (a) to section 67 of the Act, 'consideration' includes any amount that is payable for the taxable services provided or to be provided. This Explanation does not make the idea clear.



4.3 Now let us see the text of impugned provisions: Sub-clauses (zzzzv) and (zzzzw) of Clause 105 of Section 65 of the Finance Act, 1994, as amended by Finance Act, 2011, would read as under:

*"(zzzzv) services provided or to be provided, to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has license to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises;*

*(zzzzw) Services provided or to be provided, to any person, by a hotel, inn, guest house, club or camp-site, by whatever name called, in relation to providing of accommodation for a continuous period of less than three months;"*

The aforesaid amendment was brought by the Parliament, in exercise of the residuary power under Entry 97 of List I of the Seventh Schedule to the Constitution, which has the following text:

*"Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."*

4.4 By virtue of the aforesaid amendment, the services enumerated in the impugned clauses were brought within the Service Tax net, so that on and from the



commencement of the Amendment Act, the services enumerated therein came to be subjected to levy of said tax. Entry 97 of List I is a residuary Entry under which Parliament is empowered to make laws in respect of any matter not enumerated in List II or List III, including any tax not mentioned in either of those laws. But Entry 54 of List II specifically deals with taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92A of List I, is a subject on which the State Legislature can enact laws. Entry 97 of List I derives its powers from Article 248 of the Constitution which gives power to the Parliament to make a law imposing a tax, not mentioned in either of two other lists namely List II and III and therefore Service Tax is leviable by the part.

4.5 The above apart, it has been well settled by now that there can be no question of conflict solely on account of two aspects of the same transaction being utilized by two legislatures for two levels, both of which may be taxes, fees or one which may be a tax and the other a fee falling within two fields of legislation, respectively



available to them, as observed by the learned Single Judge at para 25 of the impugned order. There may be more than one taxable events in a single transaction, involving different kinds of taxes and different aspects of taxation. The Apex Court in ***IMAGIC CREATIVE PRIVATE LIMITED vs. COMMISSIONER OF COMMERCIAL TAXES***<sup>4</sup> has said that the payment of service tax and remittance of VAT are mutually exclusive, the nature of levies being different. Different aspects of a single transaction can be taxed under different statutes. There can be levy of more than one tax on a subject matter, if incidence of each of the taxes is different from the other and such taxes may be imposed under different statutes.

4.6 The question raised before us is largely no longer *res integra*. In ***TAMIL NADU KALYANA MANDAPAM ASSN vs UNION OF INDIA***<sup>5</sup>, at paragraphs 43 & 44, it is observed as under:

---

<sup>4</sup> (2008) 2 SCC 614

<sup>5</sup> (2004) 135 STC 480



*"...on Article 366(29A) (f), we are of the view that it does not provide to the contrary. It only permits the State to impose a tax on the supply of food and drink by whatever mode it may be made. It does not conceptually or otherwise include the supply to services within the definition of sale and purchase of goods... In other words, the operative words of the said sub-article is supply of goods and it is only supply of food and drinks and other articles for human consumption that is deemed to be a sale or purchase of goods. The concept of catering admittedly includes the concept of rendering service. The fact that tax on the sale of the goods involved in the said service can be levied does not mean that a service tax cannot be levied on the service aspect of catering..."*

Similarly, in **K.DAMODARASWAMY NAIDU & BROS vs. STATE OF T.N.**<sup>6</sup>, the Apex Court recognized the service tax aspect of the transaction involving supply of food and drink in a restaurant with the following observations:

*"...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 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*

---

<sup>6</sup> (2000) 1 SCC 521



*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."*

To put it shortly, when a restaurant renders any person a service, tax on sale of goods involved in the said service can be levied separately. That does not mean that no service tax can be levied on the aspect of serving of food. That is precisely the levy imposed by the Parliament in the form of service tax by virtue of impugned amendment.

4.7 Learned Single Judge at para 31 of the impugned order has rightly observed as under:

*"31. Thus, a tax on the sale of purchase of goods and tax on service are two distinct aspects. Tax on sale or purchase of goods is envisaged under Entry 54 of List II (Sales Tax) and the taxable event therein is transfer of property in goods or any of the nature of transactions stipulated in Article 366 (29A) (a)*



*to (f). Sales Tax can be levied by the State Government and the State Legislature is competent to enact law with regard to levy of Sales Tax. When State Government imposes tax on sale of goods, it does not do so on the service aspect of the sale. Thus, service tax is not levied on the transaction when sale of goods occurs. Service tax can however be levied on the said transaction by the Parliament, which is competent to enact a law imposing service tax. Hence, in the instant case, by virtue of the insertions of clauses zzzzv and zzzzw to sub-section 105 of Section 65 of the Finance Act, 1994, the Parliament intends to levy service tax on those transactions relatable to service aspect and not on the aspect of sale of goods, which the Parliament is competent to do so..."*

4.8 The vehement submission of learned counsel for the appellants that KERALA BAR HOTELS ASSOCIATION *supra* supports their view, may be true. The Kerala High Court disagrees with the decision of Bombay High Court in *INDIAN HOTELS AND RESTAURANTS supra*. On a broad perspective, we are of the considered view that the reasoning in **KERALA BAR HOTELS ASSOCIATION** *supra*, does not appear to accord with the inner voice of Apex Court decisions, adverted to above. We do not find any error in learned Single Judge cottoning with the views



in **INDIAN HOTELS AND RESTAURANTS** *supra* in variance with that of Kerala decision.

In the above circumstances, these appeals being devoid of merits, are liable to be and accordingly dismissed, costs having been made easy.

We reserve liberty to the appellants to seek recall or modification of this judgment on the basis of outcome of Apex Court decision in pending matters referred to above; in that connection, all contentions of both the sides are kept open.

We place on record our deep appreciation for the able assistance rendered by our Research Assistant Mr.Raghunandan K.S.

**Sd/-**  
**(KRISHNA S DIXIT)**  
**JUDGE**

**Sd/-**  
**(G BASAVARAJA)**  
**JUDGE**