

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Commercial Tax Revision No.02 of 2014

Valley Hotel & Resorts,
(Through its partner Shri Arun Goyal),
Khasra No.1011/2,
Central Hope Town,
Selaqui, Chakrata Road,
Dehradun.....

.....Revisionist/Applicant.

Versus

The Commissioner,
Commercial Tax, Dehradun.

.....Respondent

Mr. P.R. Mullick, Advocate for the revisionist.

Ms. Puja Banga, Brief Holder for the State of Uttarakhand/respondent.

Dated: April 10, 2014

**Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble V.K. Bist, J.**

(Per: V.K. Bist, J.)

The revisionist is a partnership firm, engaged in the business of hotel. It provides boarding and lodging facilities to its customers. It also provides restaurant services. Upto 01.07.2012, the activities of the revisionist were covered under the Uttarakhand Vat Act, 2005 in respect to supply of cooked food in the restaurant. On 06.06.2012, the Government of India, Ministry of Finance (Department of Revenue) issued a notification amending the Service Tax (Determination of Value) Rules, 2006 by introducing Service Tax (Determination of Value) Rules, 2012, by which 40% of billed value to the customer, for supply of food or any other article of human consumption or any drink in restaurant, was made liable to Service Tax. Thereafter,

the revisionist moved an application under Section 57 of the VAT Act, 2005, requesting not to charge VAT on 40% billed amount to the customer, as same has already suffered Service Tax. The said application was rejected by the Commissioner, Commercial Tax, against which appeal was filed before Commercial Tax Tribunal. Same was also dismissed. Aggrieved thereby, the present revision has been filed.

2. We have considered the submission of learned counsel for the parties. Value Added Tax can be imposed on sale of goods and not on service. Service can be taxed by Service Tax Laws. The authority competent to impose service tax has also assumed competence to declare what is service. The State has not challenged the same. Therefore, where element of service has been so declared and brought under the Service Tax vide Government of India notification dated 06.06.2012, (i.e. 40% of bill amount to the customers having food or beverage in the restaurant was made liable to service tax) no Value Added Tax can be imposed thereon.

3. In our view, the Commissioner, Commercial Tax erred in rejecting the application of the revisionist. Thus, the revision is allowed. Judgments of Tribunal as well as of the Commissioner, Commercial Tax are set aside. The Commissioner, Commercial Tax is directed to pass order afresh in the light of above observations.

(V.K. Bist, J.) (Barin Ghosh, C.J.)

10.04.2014