BEFORE SHRI YUNUS, COMMISSIONER OF STATE TAXES & EXCISE

HIMACHAL PRADESH

Revision Petition Nos.79-85/2016-17

Date of Institution: 04-03-2017

Date of Decision: 04-08-2021

In the matter of:-

M/s Sterling Holiday Resort (India)

Ltd., Prini, Manali, Kullu, H.P. **.....Petitioner**

Versus

ETO-cum-Assessing Authority, Kullu,

District Kullu Himachal Pradesh. **.....Respondent**

Present:-

1. Sh. Prince Chauhan, Advocate for the petitioner.
2. Sh. Rakesh Rana, Deputy Director Legal Cell for the Respondent.

Appeal under Section 9 of the H.P Tax on Luxuries (In Hotels and Lodging Houses) Act, 1979

Order

1. The Revision Petitions above have been filed against the orders dated 15-12-2016 passed by the Appellate Authority-cum-Deputy Excise & Taxation Commissioner (Central Zone) Mandi. The Appellate Authority vide order above has upheld orders dated 25-06-2015 and 14-10-2015 for the Assessment Years 1998-99 to 2003-04, and 2004-05 respectively under the H.P. Tax on Luxuries (In Hotels and Lodging Houses) Act, 1979 (hereinafter the Act). An additional demand of ₹82, 64, 000 for the years 1998-99 to 2003-04, and ₹10, 89, 000 for the Assessment Year 2004-05 has been created vide impugned order above. The petitioner being not satisfied with

the orders of the Authorities below has filed these Revision Petitions under Section 9. (1) of the Act.

2. Briefs in the matter are that the petitioner M/s Sterling Holiday Resorts (India) Limited, Prini Manali, District Kullu H.P. (hereinafter referred to as the petitioner) is a limited Company registered under the Companies Act (as amended from time to time). The petitioner company owns and operates several properties as Hotel Resorts and provides holidays packages, as well, on time share basis at various places. The original assessment orders under the Act, for the years 1998-99 to 2004-05, in respect of the petitioner company, were passed on 31-10-2005 by the Assessing Authority Kullu with total demand of ₹41, 80, 000. The petitioner company was not satisfied with these orders of the Assessing Authority, and under provisions of Section 9 of the Act submitted Revision Petition before the under-designate, under Section 9 (1) of the Act. The Revision Authority vide order dated 08-05-2006 upheld the orders dated 31-10-2005 passed by the Assessing Authority Kullu. The petitioner, thereupon, filed a writ petition before the Hon'ble High Court of H.P. The Hon'ble High Court allowing the writ petition directed the Assessing Authority Kullu to re-assess the tax of the petitioner on the basis of material placed before it as per law. Accordingly, on directions of the Hon'ble High Court of H.P., the Assessing Authority passed assessment orders in the matter on dated 25-06-2015 and 14-10-2015 for the Assessment Years 1998-99 to 2003-04 and Assessment Year 2004-05 respectively under the Act.

3. The petitioner was not satisfied with these orders, as well, passed by the Assessing Authority. Aggrieved against the above re-assessment orders by the Assessing Authority, the petitioner again filed appeals before the Appellate Authority-cum-Deputy Excise and Taxation Commissioner (CZ), at

Mandi. The Appellate Authority vide order dated 15-12-2016 in Appeal Nos. LX-M-30-35 & 64 (2015-16) upheld the orders of the Assessing Authority Kullu. The petitioner is not satisfied with the Appellate Authority order dated 15-12-2016 and has filed the instant petitions alleging that the two observations of the Hon'ble High Court have not been considered by the authorities below in the matter, firstly, the amendment dated 03-11-2004 made in the Act cannot have retrospective applicability, and, secondly, only the luxuries are to be taxed and not the entire turnover. The petitioner is aggrieved that financial/monetary liability, thus, has been created by not taking into consideration the above observations of the Hon'ble Court.

4. The matter above was last heard on 14-07-2021. Advocate Prince Chauhan submitted written submissions signed by Advocate Rahul Mahajan on behalf of the petitioner. It is submitted for the petitioner that the Hon'ble High Court in its judgment dated 20-03-2010 delivered in **CWP No. 442** titled as **M/S Hotel Sterling Vs. State of H.P. & others** had held "that the amendment carried out in the Luxuries Tax vide notification dated 03.11.2004 i.e. amended provisions of 2004 cannot be used for assessment year prior to the amendment". Prior to amendment dated 3-11-2004, the charging section of H.P. Tax on Luxuries (In Hotel and Lodging House) Act, 1979 i.e. Section 4 (1) and 4 (2) reads as under:-

> *"4. (1). Subject to the provision of this Act, there shall be levied and collected a tax in respect of any luxuries provided in a Hotel"* (hereinafter referred to as Luxuries Tax) on the amount of charges payable for luxuries.
>
> "4. (2)., Luxuries tax under sub Section (1) shall be payable by the proprietor at the rate not exceeding 10 paise as the Government may by notification direct.

Luxuries Tax could have been imposed on luxuries provided in a hotel which means that property qua which tax was to be imposed should have been covered by the definition of Hotel as contained in the H.P. Tax on Luxuries (In Hotel and Lodging House) Act, 1979 prior to the amendment on 3.11.2004. Definition of Hotel prior to amendment dated 3.11.2004 did not cover time share property. Time share property was covered in the definition of Hotel when the amendment was carried out on dated 3-11-2004; and explanation was added to the definition of hotel as contained in Section 2 (d) of the H.P. Tax on Luxuries (In Hotel and Lodging House) Act, 1979. Explanation, which was added, read as under:-

> *"For the purpose of Clause (d) whenever in accommodation in a Hotel was provided under time share agreement or under package deal agreement or under any other assessment wherein the facility of availing accommodation during a given period is allowed under a lump sum payment shall also be deemed to be a hotel."*

The explanation added to Section 2(d) of the H.P. Tax on Luxuries (In Hotel and Lodging House) Act, 1979 in effect created a legal fiction and brought the accommodations provided under time share agreement or package deal agreement under the definition of 'hotel' by virtue of the deemed provision contained in this explanation. The words ***"shall also be deemed to be a hotel"*** as contained in this explanation make it amply clear that these were not in effect covered by the definition of 'hotel' till the date of amendment i.e. 3.11.2004. Thus, the accommodation provided under the time share agreements which is the subject matter of tax for the purpose of present petitions were brought under the definition of 'hotel' only by virtue of the legal fiction created by the amendment carried on 03-11-2004 that widened the scope of the term 'hotel'. Thus, the time share accommodations could not have been subjected to the luxury tax prior to 03-11-2004, as these were

not 'hotel' for the purpose of luxury tax under the Act prior to 03-11-2004. Definition of 'hotel' under section 3 clause (g) of the H.P. Registration of Tourism Trade Act, 1988 as was applicable during the relevant years of assessments, was same as was under the Luxury Tax Act, 1979. The time share accommodations were not covered under the HP Registration of Tourism Trade Act, 1988 also till this Act was repealed by the Tourism Development and Registration Act, 2002 applicable w.e.f. 12-07-2002, in which the definition of tourism unit under section 3 clause (n), for the first time, brought the time share units under the ambit of the tourism unit. Amendments by way of notification, rules, regulations which create financial liability cannot have retrospective operation. Ld. Advocate relies on citation **Hon'ble Apex Court in *Maharaja Chintamani Saran Nath Shahdeo V. State of Bihar 1999 Vol. 8 SC Hitendra Vishnu Thakur V. State of Maharashtra [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087)], Garikapati Veeraya [AIR 1957 SC 540 : 1957 SCR 488].***

Principle regarding retrospective effect of amendment and the judgment of the Hon'ble Apex Court/High Court has not been taken into consideration resulting in error of law apparent on the face of the record and mis-interpretation and non-application of judgment.

5. Ld. Advocate further argued that section 2 (d) clearly mentions in definition of 'hotel' about the "services are by way of business provided for a monetary consideration and includes such premises so as to be included as a 'hotel' for the purpose of luxury tax under the Act. In the case of time share accommodations, **there was no monetary consideration received from the time share members for stay and no rent was charged.** Therefore, there was no liability to pay luxury tax. The Act again mentions about the monetary consideration received or receivable by a proprietor in section 2 (gg) and 2 (i) while defining 'receipt' and 'turnover'. **Since there was no**

monetary consideration in the case of time share accommodations, there were no 'receipts' as per definition under the Act and thus there was no 'turnover' available for assessing the luxury tax thereon.

6. Ld. Advocate also submitted that another essential element of the charging section was the measure or value to which the rate of tax was to be applied. On the time share component, this element was also missing till the amendment was carried out on 03-11-2004 in the definition of "luxury provided in a hotel" under clause (e) of section 2 of the Act. The "charges" for luxury provided for accommodations covered under time share agreements or package deal agreements **were fixed at Rs. 500/- or Rs. 300/- per day per person depending upon the facilities the time share accommodations possess**. Prior to amendment dated 03-11-2014, there was no measure or value on which tax could have been levied and, therefore, according to the pronouncement of the Hon'ble Court, no tax on the time share accommodations could be levied and recovered prior to 03-11-2004. In the instant case, there was uncertainty or vagueness in identifying the taxable event attracting the levy, as well as the measure on which the rate of tax would have been applied prior to the amendments made on 03-11-2004. Therefore, no tax could have been levied or assessed for the assessment years 1999-2000, 2000-01, 2001-02, 2002-03 and 2003-04. The time share agreement of the petitioner was neither covered under the definition of 'hotel' under the Act, nor the HP Registration of Tourism Trade Act, 1988; therefore, there was no question of obtaining the registration of the time share block with either the Tourism Department or the Excise and Taxation Department till the statutes provided to cover the unit as a tourism unit under the Tourism Development and Registration Act, 2002. For this reason there was no question of filing of any returns qua the time share components under the Act and hence, the Assessing

Authority has wrongly passed the impugned order on the basis of presumptions, conjectures and surmises, which are not admissible under the law. It was beyond the competency of the Assessing Authority to take ₹1000/- as the basis of fixing of luxury tax liability which is arbitrary and imaginary. Shri Rahul Mahajan Ld. Advocate has emphasized that the time share block never formed the part of hotel and, therefore, there was no question of any luxury being provided in the hotel and, thus, the provisions of section 4 (3) of the Act were not applicable. The **assessing authority based the determination of room rent on the basis of inspection of the premises after a gap of seventeen long years** which is beyond any reasonable comprehension as no one could correctly assess the situation after a gap of **seventeen** years by making an inspection which is patently arbitrary and unlawful. Ld. Advocate submitted that without conceding that the petitioner was liable to pay luxury tax under the Act during the years in consideration in these appeal, the assessing authority **should have considered the actual payments received by the petitioner as per the agreements of time share.** The petitioner had entered into lease of the premises for long terms and the actual average amount per day for a room comes to Rs. 43 to Rs. 70 only. the Ld. Advocate has alleged discrimination in assessing the rent on *per diem* basis; asserting that the Appellate Authority failed to consider that in similar facts and circumstances i.e. in the case of **Mahindra Holidays and Resorts Limited,** with almost the same standards and in the same vicinity, which is situated in close proximity to the petitioner's property at Prini in Manali, Distict Kullu, the assessing authority had assessed the former's rent per day at Rs. 200/-. The action of the Assessing Authority in fixing the rent of Rs.1000/- per day in petitioner's case is, therefore, highly arbitrary, unreasonable and unjust. Thus, taking into consideration Rs. 200/- as rent received in the instant case assessed by the Assessing Authority and up held by the Appellate Authority is higher.

Otherwise too, the petitioner is not liable to pay luxury tax. Taking the amount of rent received at Rs.1000/- per day by the Assessing Authority is highly arbitrary and unreasonable, pleaded the ld. Advocate.

7. Ld. Advocate explaining **'Time Share'** submitted that this is a **'holiday of quality, variety and value for lifetime'** i.e. it is a holiday at specified places for a specified number of years against an initial payment as maintenance fee for the resorts. A holiday resort is not a hotel but a home away from home which caters to more needs than accommodation and provides facilities centered on family-holiday needs, co-ordinates holiday activities and provides for enjoyment **much larger than any hotel**. The 'Time Share' is purchased by the members because it provides holiday accommodation and many other facilities such as economic method of holidaying, variety of destinations, standard and varied services and entertainment during holidaying. Besides, it also provides exchange opportunities, opportunity to invest on time share basis and also has an investment potential. The concept of "Time Share" is that one room is sold in 52 units of one week each. **A person buying one unit of 'Time Share' is entitled to enjoy the accommodation free of cost** full one week which means the person at the most can be described as co-owner of the property having rights in the property for one week only. Since no rent is paid, it cannot be implied that one is getting luxuries in a hotel. **The contribution made** by the Time Share owner is towards **purchase of rights** in the property which are capital in nature and cannot be equated to rent of the property. **As regards charges collected from them** on account of **utilities** provided to the Time Share owner, **the charges** are nominal and ranging between Rs. 100/- to Rs. 150/- per day which includes the cost of water, electricity and gas etc. consumed and for washing and pressing of linen etc. As such, no tax liability accrues on time share component.

8. Petitioner advocate pleaded that he had never given or maintained any false or incorrect accounts or ever produced any information or return which could be termed false or incorrect in any material particular. *Cit.* **Hon'ble Apex Court in 2009 Vo. 13 SCC 448 titled as Union of India Vs. Rajasthan Spinning and Weaving Mill limited *In Cosmic Dye Chemical vs. CCE [(1995) 6SCC 117: (1995) 75 ELT 721].*** The petitioner, without any intent to evade Luxury Tax or any mis-representation of facts provided all information correctly to the assessing authority as and when was asked for. The authorities themselves were not sure about the taxability of the time share element for the period prior to amendments made in the Act on 03-11-2004. Luxury tax on 'time share' element was never demanded from the petitioner **ever since 2004 even while the returns for the period in question had been filed punctually by the petitioner complete and correct.** The petitioner was not liable to pay any tax on the time share element before the amendment of the Act on 03-11-2004 and the Hon'ble High Court in the judgment titled as **M/s Sterling Hotel Vs State of H.P. & Others** has also observed so. There was no intention to withhold any payment of tax at any point of time and there was no liability to pay tax on time share element. It arose only after the implementation of Act No. 3 of 2005 (amendment dated 03-11-2004) and not before that, and since then the tax on time share element has been paid regularly and punctually as per the provisions of the law. Therefore, the imposition of penalty under section 6 (5) & 6 (6) is bad in law, supporting citation- ***Hindustan Steel Limited Vs. State of Orissa (1970) 25 STC 211 (SC) BSNL V. CTT UP, (2014) 47 PHT 188 (ALL).*** The assessing authority has failed to aver, plead and prove that there was a suppression and a deliberate attempt to evade the payment of luxuries tax and/or there existed a criminal intent and *mens rea* for which penalty was to be imposed under Section 6 (5) and 6 (6) of the Act.

9. Now, as far as fraud and collusion are concerned, Ld. Advocate argued that it is evident that the requisite intent i.e. intent to evade duty is built into these very words. So far as misstatement or suppression of facts is concerned, in the Act itself, they are clearly qualified by the word 'wilful' preceding the words 'misstatement or suppression of facts' which means with the intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again immediately followed by the words 'with intent to evade payment of duty'. It is, therefore, not correct to say that there can be a suppression or misstatement of facts, which is not willful and yet constitutes permissible ground for the purpose of the proviso to Section11-A. Misstatement or suppression of facts must be "wilful." The same position was reiterated by the **Hon'ble Apex Court** in **Continental Foundation Joint Venture Holding Vs. CCE [(2007) 10 SCC 337: (2007) 216 ELT 177] and in a case titled as *Commissioner and Central Excise Chandigarh Vs. Pepsi Food & Others* [2011 Vol. I SCC 601].** The Appellate Authority has failed to take into consideration the provisions of Section 6 (5), 6 (6) and 14 (1) of the Act and also the law laid down by the Court; perusal of the provisions of the Act and the law laid down by the Apex Court will lead to a clear conclusion that penalty has wrongly been imposed, pleaded the Ld. counsel for the petitioner.

10. In the last leg of his arguments, Ld. Advocate has also raised objections on holding the petitioner liable, up to the date of reassessments, to pay interest under section 7-B of the Act, as per impugned order. The matter regarding taxability of the time share element was under dispute in the Hon'ble High Court of H.P. ever since 2002 as prior to the amendments made vide Act No. 3 of 2005, no charge to pay tax had been created under the Act on the time share element and liability of the petitioner to pay luxury tax was not

even clear to the assessing authority. This is clear from the fact that the assessing authority took many years to decide the assessment for the year 1999-2000. The law does not envisage the dealer to predict the final assessment when he files the returns and expect him to pay the tax correctly to avoid the liability to pay interest/penalty. The cause of action for paying interest is the default in the payment of tax determined by the authorities or affirmatively known by the assessee. Levy of interest and imposition of penalty is not intended to be applicable uniformly in all the cases. In a similar case the High Court of Punjab and Haryana in **United Riceland Limited Vs. State of Haryana (1997) 104 STC 362 (P&H)** has held the imposition of interest to be wrong. The Supreme Court in **J.K. Synthetic case {(1994) 94 STC 422}, in Frick India case { (1994) 95 STC 188 }, in Maruti Wire Industries case { (2001) 122 STC 410 } and in EID Parry case {(2005) 141 STC 12 }** struck down the demands on account of interest with the verdict that the petitioner is not liable to pay interest up to the date of assessment. *Pari materia*, the interest levied up to the date of assessment is illegal in the instant case as well, pleaded the counsel for the petitioner.

11. Sh. Rakesh Rana, Deputy Director, Legal Cell for the respondent has replied in writing that the plea of the petitioner that there is no provision under the Act for charging/depositing Luxury Tax on the booking received under time share accommodation, hence these entries were not disclosed by the petitioner in the return version and as such Luxury Tax was not paid by the petitioner, is not legally sustainable/acceptable even prior to the amendment in the Act. The mere coining of the new term and re-iteration of 'time share accommodation' words would not absolve the petitioner from payment of tax on receipts against providing accommodation and 'facilities' (synonym for luxuries). The petitioner has not shown any proof of 'time

share accommodation' being separate from M/s Sterling Holiday Resort. All the elements of the above 'time share accommodation' were covered under the definition of 'Hotel' as defined under sub-sections (d)&(e) of section 2 of the Himachal Pradesh Tax on Luxuries (In Hotel and Lodging Houses) Act, 1979. The bare perusal of sub-sections (d), (e), (gg) and (i) of Section 2 gives the irresistible conclusion that even prior to 03.11.2004, the time share occupancy did attract Luxury Tax under the Act. It was only upon gaining popularity of the 'Time Share', that this had to be specifically mentioned in the Act vide amendment dated 03-11-2004. Therefore, the petitioner is liable to pay Luxury Tax along with interest and penalty for not disclosing the turnover and monetary consideration, in the garb of time share occupancy, charged otherwise for luxuries provided in the hotel.

12. I have heard both the parties in the matter and gone through the impugned orders of the Appellate Authority (CZ), Mandi, dated 15-12-2016, re-assessment orders dated 25-06-2015 and 14-10-2015 by the Assessing Authority Kullu passed for the Assessment Years 1998-99 to 2003-04 and Assessment Year 2004-05 respectively. I have also gone through the doubts and queries raised, regarding charging tax on gross turnover/total of receipts, by the Hon'ble HP High Court in the matter vide order dated March 20, 2010 in CWP 442 of 2007. The Hon'ble Court has also issued directions regarding to the Assessing Authority to re-assess the tax afresh in accordance with law on the basis of material placed before it. Re-assessment orders, dated 25-06-2015, of the Assessing Authority is being quoted here for reference, "*In compliance to the orders of the Hon'ble H.P. High court re-assessment notice was issued to the hotelier on 18/09/2010 for appearance on 4/10/2010 after that several opportunities were afforded to the hotelier for re-assessment and for the production of account books as well as other information in support of his contention. The hotelier failed to*

produce any documents and adopted non co-operative attitude.....consultant of the hotelier appeared without any accounts." In view of above, it is clear that the petitioner was afforded enough opportunity of being heard and to produce documents in support of his claim that gross turnover/receipts should not have been subjected to luxury tax. But the petitioner failed to furnish required and supporting documents and information. Hence, on failure to give any evidence, the petitioner was liable to pay luxury tax on entire turnover/receipts.

13. **Another contention and re-iteration of the petitioner that luxury tax is applicable for luxuries provided in hotel whereas the words 'Time Share' did not find mention in the Act**, is a self-defeating argument as the above 'time share' has been bought and there are explicit monetary considerations as has been admitted by the petitioner that the bookings on weekly basis are made in advance by the members. The right to occupy the rooms and avail other luxuries *viz* eatables, beverages, etc. have only been provided to those occupants who have paid towards these luxuries, so, the foremost contention of the petitioner that accommodation was provided free of cost is contradictory on the basis of facts on record. Prior to amendment dated 03-11-2004 "hotel" in Section 2. (d) of the Act was defined as

> *'any premises or part of premises including a house-boat, restaurant, bar or a tent where lodging with or without board or any kind of eatables or beverages or other services are by way of business provided for a monetary consideration, and included such premises as are given on rent during any period of a financial year'.*

By virtue of the definition above, in the instant matter, premises for lodging with eatables, beverages and other services by way of

business were provided in lieu of advance monetary consideration and thus, were, already, well within the purview of the Act and liable to be subjected to luxury tax as per existent provisions of the Act. As per admission of the petitioner, as the element of permanent ownership was missing, and the occupant paid for eatables and other luxuries (the petitioner has knowingly used the word 'facility' as substitute for luxury) as well, therefore, all the elements of the luxury were already enshrined there, accordingly, plea of the petitioner that the Assessing Authority wrongly assessed the Luxury Tax on time-share component even prior to 03.11.2004 is not tenable. The payment, in the instant matter, has been made in advance only for securing and ensuring the place of lodging. The receipts had to be assessed, and accordingly subjected to Luxury Tax under section 4 & 2(e) of the Act ibid, as was done by the Assessing Authority. The Assessing Authority in his detailed and self-speaking orders has rightly concluded that there was no transfer of ownership and 'time-share' was just the term given to the above arrangement. Re-assessments proceedings by the Assessing Authority are in accordance with the provisions of Himachal Pradesh Tax on Luxuries (In Hotels and Lodging Houses) Act, 1979 which provides for levy and collection of tax on luxury provided in hotels and lodging houses. The petitioner has misconceived the fact that he is not entitled to charge luxury tax on ownership rights purchased under the "Time Sharing Scheme". In essence & substance, time sharing agreement, is nothing but a patent device, mechanism or instrument of inviting or collecting customers with the solitary objective of providing and enjoying luxury available in the hotel. The averment of so called ownership descending on the time sharer is a mere mask to cover up

ostensibly the transactions, because **it is incontestable that time sharing arrangement does not have the effect of divesting the owner company (petitioner herein) from its legal ownership of the hotel. Petitioner has failed to submit any document to prove that the ownership, albeit temporarily, was transferred to the occupants.** Admittedly, the petitioner has charged the amount in advance under the scheme from the members for providing luxury in hotel and **the taxable event is the act of actually providing luxury no matter whether the amount for providing such luxury has been received in advance or simultaneously**. The luxury tax as assessed for the assessment years in question by the assessing authority is in accordance with the provisions of the Act ibid on actual occupancy of the rooms in the hotel by guests/ time-share members. The receipts/considerations received on account of "time share accommodation" are otherwise also, taxable under the provisions of the Act i.e. irrespective of amendment dated 03-11-2004, as has been elaborated above in this very para. In view of the above, the judgments of the Hon'ble Courts that tax cannot be levied with retrospective effect are not applicable in this matter.

14. The plea of the petitioner that he has floated a "Time Share occupancy" scheme inviting membership, where rooms to the members are sold in 52 units of one week each on yearly basis. The statement and contention of the petitioner, "A person **buying one unit of time share** is entitled to enjoy the accommodation **free of cost for one week** by paying a cost thereof for the enjoyment of any week every year within the allotted season" is, in itself, is a contradictory statement. However, luxury tax is levied on actual occupancy of the rooms and the luxuries availed in the hotel by such guests/members and not on the entire cost paid for time-sharing scheme.

'Time share' is purchased by the members for the purpose of accommodation and also to avail luxury/facilities. Therefore, for luxuries, provided by the management levy of luxury tax is legal and justified. It is further reiterated that petitioner has filed the returns and paid the Luxury Tax only in respect of the rooms rented out to the customers/guests other than the guests/members of time sharing scheme actually occupied/stayed in the hotel for the relevant assessment years. The hotel management has not shown the turnover gained out of actual occupancy from the members/guests of the "Time Sharing Scheme" and accordingly did not pay the luxury tax due, in respect of such occupancy, and thereby contravened the provisions contained in Section 4 of the Act ibid.

Regarding the issue of determination of room rent @ ₹ 1,000/-; in the impugned orders it has been stated that the same has been determined after inspection of the rooms and facilities provided therein and comparing these with the contemporary hotels and resorts. So, determination of rent is neither on conjectures nor surmises.

Therefore, the assessments framed by the Assessing Authority are in accordance with the provisions of the Act ibid on actual occupancy of the rooms in the hotel by guests/members. The cases were assessed prior to the amendment when sections 4(1) and 4(3) were in operation. Therefore, the Assessing Authority has rightly framed the re-assessments and the orders are sustainable in the eyes of law.

15. **On the issue of enforcing the Act retrospectively** as contended by the petitioner, the intention of the legislature is very much clear as is provided in Section 2(d) & (e) of the Act ibid. The definition of 'hotel' and 'luxury' as provided in the Definitions part of the Section and quoted on Para 12 above

clearly provides for levy of Luxury on "*any premises or part of premises including a house-boat, restaurant, bar or a tent where lodging with or without board or any kind of eatables or beverages or other services are by way of business provided for a monetary consideration, and included such premises as are given on rent during any period of a financial year*'. Furthermore, the amendment was made just to make the existing provisions more explicit and clear to introduce clarity and transparency with regard to modalities of providing luxury in hotels and lodging houses. So, there is no question of enforcing the Act retrospectively as the provisions of subjecting the activities of the petitioner to luxury tax were already in existence. Nevertheless, the petitioner was time and again made conversant to deposit luxury tax on time-share occupancy. The State Government is fully competent to levy and charge tax under the Act ibid and is covered by Entry 62 of List-II of VII Schedule to the Constitution of India. The petitioner has no case to agitate; it is only an apparent and willful attempt of escape from the liability to pay the assessed Luxury Tax which has been levied as per the provisions of the Act and Rules framed there-under and by adhering to Articles 246 & 19(1) (g) of Constitution of India. The orders passed by the respondent Authority to the above extent as well are, therefore in accordance with the provisions of the Act and the Rules framed there under.

16. The petitioner has objected to levy of interest and penalty. Here, it may be pertinent to refer to relevant provisions contained under section 6 of the Act, which are as under:

> *6. Payment of tax and submission of returns.- (1) Every proprietor, liable to pay luxury tax under this Act shall deposit the full amount of luxury tax due and payable by him, in respect of each month within [thirty] days after the close of the month to which the*

relates into a Government treasury or the State Bank of India, and shall furnish to the assessing authority of the district concerned a proof of having paid the tax due in the prescribed manner. (2) Every proprietor shall furnish a return in the prescribed form to the assessing authority of the district concerned quarterly within [7 days after the expiry of the period specified in sub-section (1) for making payment of luxury tax] along with the receipts of payment of luxury tax for each month of the quarter to which the return relates. (3) Every such return shall show the number of rooms or other accommodation in the hotel which is intended to be occupied, the number of persons who occupied such rooms or accommodation, the periods of their stay, the amount of charges recovered from them., together with such other information as may be prescribed. (5) If a proprietor fails without sufficient cause to comply with the requirements of provisions of sub-sections (1), (2) and (3) the assessing authority of the district concerned may, after giving such proprietor a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum not exceeding one and a half times of the amount of luxury tax due and payable by him under this Act. (6) If a proprietor has maintained false or incorrect accounts with a view to suppressing any transaction pertaining to his business or has concealed any particulars of his business or has furnished to, or produced before, any assessing authority under this Act or the rules made thereunder any account, return or information which is false or incorrect in any material particular, the Commissioner or any other person appointed to assist him under sub-section (1) of section 3 of this Act may, after affording such proprietor a reasonable opportunity of being heard, direct him to pay by way of penalty in addition to the luxury tax to which he is assessed or is liable to be assessed, an

amount which shall not be less than twenty-five percentum but which shall not exceed one and a half times of the amount of luxury tax to which he is assessed or is liable to be assessed:]

The petitioner has not filed returns in respect of time-share occupancy just to avoid the payable luxury tax liability, though he was, time to time, directed to pay luxury tax and submit actual occupancy returns on monthly/quarterly basis for time-share occupancy. So penalty under section 6(5) has rightly been imposed on the petitioner for not abiding by the provisions sections 6 (1), (2) & (3) of the Act.

17. Section 7-B of the Act authorizes the Assessing Authority to levy interest, in case the proprietor fails to pay the amount of luxury tax due.

7-B. Payment of interest.- (1) If any proprietor fails to pay the amount of luxury tax due from him under this Act, except to the extent mentioned in sub-section (2), he shall, in addition to the amount of luxury tax, be liable to pay simple interest on the amount of luxury tax due and payable by him, at the rate of one percentum per month from the date immediately following the last date on which the proprietor should have filed the return and paid the luxury tax under the Act for a period of one month, and thereafter at the rate of one and a half percentum per month till the default continues. (2) If the amount of luxury tax or penalty due from a proprietor is not paid by him within the period specified in the notice issued under subsection (8) of section 7 or, if no period is specified within thirty days from the service of such notice, the proprietor shall, in addition to the amount of luxury tax or penalty, be liable to pay simple interest on such amount, at the rate of one percentum per month from the date immediately following the date on which the period specified in the notice or the period of thirty days, as the case may be, expires, for a

period of one month, and thereafter at the rate of one and a half percentum per month till the default continues:

In the case above, the petitioner has, overblown the issue of 'Time Share' and did not pay the due luxury tax, therefore, for non-discharging of the liabilities of paying tax as provided for under section 6 (1) of the Act was rightly subjected to charging of interest by the Assessing Authority and the same is upheld legal and just.

18. In view of the discussions in paras 12 to 17 herein above, the petitioner is not entitled to any relief prayed for by him. The grounds of the petitions being devoid of any legal merit deserve outright dismissal and the petition, accordingly, is disposed of as rejected. As the grounds of disposal are similar in all of the above Revision Petitions (Revision Petition No. 79-85 of 2016-17), so these, as well, are being disposed of by this single order. The orders of the Assessing Authority are upheld accordingly. Inform all concerned accordingly.

Files after completion be consigned to records.

(Yunus) I.A.S.
Commissioner State Taxes & Excise
-cum-Revision Authority
Himachal Pradesh.

22929-39

Endorsement No. ST&E/CoST&E-Reader/2021-22 Dated: 12-08-2021

Copy is forwarded to:-

1. M/s Sterling Holiday Resort (India)Ltd., Prini, Manali.
2. Deputy Excise and Taxation Commissioner cum Appellate Authority CZ Mandi.
3. ~~Authority C/Z Mandi~~ Assessing Authoity Kullu. through Dy. Comm (ST & E) Kullu.
4. S/Sh. Rahul Mahajan, and Prince Chauhan, Advocates, H.P. High Court..
5. Shri Rakesh Rana, Deputy Director (Legal) Legal Cell, HQ.

Reader to the
Excise & Taxation Commissioner
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