R

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28th DAY OF AUGUST 2013

PRESENT

THE HON'BLE MR. JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE MR. JUSTICE B MANOHAR

LTRP No.8/2010
c/w
LTRP Nos.9/2010, 10/2010 and 1/2011

Between:

The State of Karnataka,
By the Commissioner of
Commercial Taxes,
Vanijya Terige Karyalaya,
Gandhinagar,
Bangalore-560 009 ...COMMON PETITIONER

(By Smt.S.Sujatha, AGA)

And:

M/s.Piem Hotels Limited
(Taj Residency), No.41/3,
M.G.Road, Bangalore-1. ... RESPONDENT
In LTRP No.8/2010

M/s The Taj West End,
Race Course Road,
Bangalore-560 001 ... RESPONDENT
In LTRP No.9/2010

M/s. The Taj Residency,
Taj Business Hotel,
No.41/3, M.G.Road,
Bangalore-1. ... RESPONDENT
In LTRP No.10/2010

M/s. The Indian Hotels Company
Limited, Unit: Gateway Hotel on
Residency Road, No.66,
Residency Road,
Bangalore. ... RESPONDENT
In LTRP No.1/2011

(By Sri. Sarangan, Sr.Advocate a/w Sri.M. Thirumalesh, Advocate)

These LTRPs are filed under Section 11-A of the KTL Act, 1979, against the judgment dated 23.2.2010 passed in STA.Nos.1203/05, 101/06, 938/08 and 428/07 respectively, on the file of the Karnataka Appellate Tribunal, Bangalore, allowing the appeals filed under the provisions of the Karnataka Tax on Luxuries Act, 1979.

These LTRPs coming on for dictating orders this day, ***DILIP B.BHOSALE, J,*** made the following:-

ORAL JUDGMENT: (Dilip B.Bhosale J)

These revision petitions are preferred by the State of Karnataka through the Commissioner of Commercial Taxes under Section 11A of the Karnataka Tax on Luxury Act, 1979 (for short, "the Act") against the common order dated 23.2.2010 rendered by the Karnataka Appellate Tribunal at Bangalore (for short,

"the Tribunal") in STA.Nos.1203/05, 101/06, 428/07 and 938/08.

2. The STA's were filed before the Tribunal by respondent-hotels, hereinafter referred to as respondents, under Section 11 of the Act against the common order dated 18.10.2005 passed by the Joint Commissioner of Commercial Taxes(Appeals), DVO, I and III, Bangalore, (for short, "the Appellate Authority"). The appeals before the appellate authority were arising from the assessment orders dated 16.2.2005, 5.12.2005, 12.05.2006, 26.8.2006 passed under Section 6(2) of the Act by the Assistant Commissioner of Commercial Taxes(Luxury Tax)-I, Bangalore, (for short, "the Assessing Authority or AA").

3. The questions raised and considered by the Tribunal and the authorities below and fall for our consideration in these revisions are similar. The respondents in the revisions are different, run by two different companies/managements. In view thereof, all

the four appeals were heard together and are being disposed of by this common judgment.

4. We have formulated the following question of law with the assistance of learned counsel for the parties and have heard them at considerable length:

> *"Whether the respondents are liable to pay luxury tax on the services rendered on luxuries, as defined by Sub-Section 5 of Section 2 of the Act, in the banquet/conference hall and business centre for which charges are separately collected. In other words, whether the respondents are liable to pay luxury tax on the charges collected for the services rendered in the banquet/conference hall and business centre in hotels to the guests/residents or others?"*

5. The respondents are registered dealers under Section 4-A of the Act. They are all five star hotels. Since the facts are similar and the question of law is common in all appeals, we would refer to the facts in

S.T.A.No.1203 of 2005, to the extent they are necessary, to understand the nature of controversy better.

6. The respondent in STA No.1203/2005 filed annual returns in Form No.III on 27.5.2004 for the financial year 2003-04 declaring the taxable receipts under the Act at Rs.25,10,49,351/- on which they admitted liability of luxury taxes at appropriate rates, as classified by the AA. The classification made by the AA reads thus:-

a)Room rent charges at rack rat for the period 1-4-2003 to 16-06-2003	Rs.06,85,82,787-00	
b)Actual room rent charges during the period 17-06-03 to 31-3-2004	Rs.18,73,30,534-00	
Total room rent charges	Rs.25,59,13,300-00	10%
2.Telephone charges	Rs. 1,26,38,071-00	10%
3.Hall rent charges	Rs. 31,61,330-00	20%
4.Health Club Charges	Rs. 47,79,054-00	20%
5.**Banquet miscellaneous charges**	Rs. 12,10,457-00	**Tax not Admitted**
6.**Internet charges**	Rs. 15,30,993-00	**Tax not Admitted**
Total charges	Rs.30,67,01,051-00	

7. Taxable receipts of the respondents from all its activities as determined by the Assessing Authority are at Rs.30,67,01,051-00. Liability to pay luxury tax on the receipts, relating to banquet miscellaneous charges of Rs.12,10,457/- and internet charges of Rs.15,30,993/-, were not admitted by the respondents on the ground that such receipts do not constitute taxable receipts under the provisions of the Act. The receipts which relate to room rent charges, telephone charges, hall rent charges and health club charges are not in dispute. The respondents, in fact, accepted their liability to pay the luxury tax, as classified by the AA, for those luxuries. Thus, in these revision petitions we are concerned only with the receipts which relate to banquet miscellaneous charges and internet charges.

8. The tribunal in the appeal, had framed the following question for consideration:-

> *"Whether the impugned levies of luxury tax on charges received towards internet/Telefax services and for provision of public address systems etc., are sustainable*

in law on the facts and circumstances of this case?"

9. The answer in negative, recorded by the tribunal on the above question, in our opinion, is legally unsustainable. We would like to reproduce two paragraphs from the order of the tribunal to understand and appreciate why we are saying so. The relevant paragraphs read thus:-

> "The impugned levy of luxury tax in this case on the disputed receipts of providing public address systems etc., is at the rate of 20% which means that it is under Section 3-B only those receipts are subjected to luxury tax because all other levies are at the rates other than at 20%. Therefore, **that impugned levy can be sustained only when the conditionalities of Section 3-B are satisfied in respect of the relevant receipts.** Section 3-B of the KTL Act authorizes the levy of luxury tax at the rate of 20% on the charges collected for luxuries provided in a hotel for its residents or for others. **The luxuries which are liable to be subjected to tax are to be like health club /beauty parlour / swimming pool /conference hall. On the principle of ejus dem generis, only such items of luxury which are mentioned supra can fall within the ambit of the said charging section.** The common characteristic of each such item of luxury is that each one of them is a structure**. Therefore, to fall within the said charging section, the luxury concerned has to be a structure. If it is**

not a structure, it is not falling within that group. The charges for provision of services which have been subjected to tax at 20% in the impugned orders is on the leasing of **public address systems, VCDs and LCDs. These are not structures and these are not fitted to structures.**

The levy of luxury tax on any item of luxury can be justified only when such a luxury is shown to fall within the ambit of the concerned charging section. The particular charging section needs to be clearly satisfied to justify the levy because each charging section under the KTL Act provides for the levy of luxury tax at different rates which are not common to each other. Until and unless a given charge is shown to be in accordance with the concerned charging section there cannot be any justification for charging any luxury to such tax under that particular charging section. **The authorities below have mixed up the characteristics of different charging sections to justify the charge under Sections 3-B / 3 which is not permissible under law.** If the levy is under Section 3-B, then the levy has to be justified only within the parameters and confines of Section 3-B of the KTL Act. Likewise, the levy under Section 3 has to be justified on the basis of that section only. There are various luxuries which are not at all subject to tax under the KTL Act. The Legislature has picked and chosen only certain luxuries to be subjected to tax under the said Act and for each group of such luxuries a different charging section has been specifically provided for in the Act. **The question whether providing the services like public address systems, VCRs and LCDs or E-mail facilities or photocopying facilities constitute**

> **luxuries is entirely irrelevant. Even if such services are luxuries in common parlance there cannot be any liability to luxury tax until and unless such charges are shown to fall within the ambit of any one or more of the various charging sections mentioned supra.** It is true when a hotelier while charging a room rent for its residents/customers compulsorily includes charges for providing the facilities of telephones then, even if such charges are shown separately, such charges will nevertheless be included within the room rent for being subjected to tax. That is not the situation here. **Even if it is to be assumed that providing internet facility is something like a telephone, such charges are not shown to have been collected compulsorily from the customers along with any room rent.** Further the appellant claims that internet facility was not provided in the rooms. Therefore, such charges cannot be subjected to tax under Section 3 of the KTL Act".
>
> (emphasis supplied by us)

It is in this backdrop, we have heard learned counsel for the parties at considerable length.

10. Smt.S.Sujatha, learned AGA for the petitioner, at the outset, invited our attention to the provisions contained in Sections 2(4-B), 2(5) and Section 3-B of the Act, to submit that the services rendered in the conference halls for which, the respondents-hotels

charge separately to its customers are also liable for luxury tax to be levied under the provisions of the Act. We are not quoting the submission advanced by learned counsel appearing for the petitioner in further detail. Suffice it to state that, she took us through all the relevant provisions and also the orders passed by the Assessing Authority and the tribunal, in particular, the observations made in the above quoted paragraphs. In the course of arguments, she also clarified, insofar as Internet charges are concerned, that they are in respect of the use of Internet facility by the guests and others in the business centre. In other words, she submitted that in the present revisions, we are not concerned with the charges collected by the respondents for providing Internet facility outside the business centre. She, therefore, submitted that the question, 'whether the charges collected by hotels for the Internet facility provided outside the business centres, such as in the rooms, conference/banquet halls etc., are liable to be levied luxury tax under the Act?' may be kept open. She submitted that merely because some wrong provision is

quoted by the Assessing Authority in the order for levying luxury tax in respect of Internet facility, it cannot be stated that luxury tax was charged on the charges collected for Internet facility provided in rooms and not in the business centre. She, on instructions, submits that the charges for Internet facility with which we are concerned in the instant appeals, are for the Internet facility availed in the business centres only and is leviable under Section 3-B and not under Section 3 of the Act. In support of her contention, she relied upon the judgment of the Supreme Court in ***B.S.E.Brokers Forum, Bombay and others vs. Securities and Exchange Board of India and others*** *[(2001) 3 SCC 482]*.

11. So far as the last submission advanced on behalf of petitioner is concerned, Mr. Sarangan, learned counsel for the respondents also joined her and submitted that since it is not clear from the orders passed by the authorities below, whether the charges shown against Internet facility, in the classification made by AA, are for availing the Internet in the business

centre, if this Court decides the question of law against the Assessee, the matter may be remanded to the Assessing Officer to verify the same. We will deal with this submission little later.

12. Mr.Sarangan, learned senior advocate appearing for the respondents in all the appeals, at the outset, submitted that charges collected from the customers for supply of public address systems, VCDs, LCDs etc., for use in the banquet hall cannot be brought to tax under the provisions of the Act. He submitted that "conference hall" has not been defined in the Act and therefore, the charges for services rendered in such hall cannot be brought to tax under the Act. He submitted that the charging section 3-B of the Act should be construed according to its plain language and nothing should be added or taken out unless taxing provision is either not clear or is ambiguous. In other words, if the language of the provision is clear and unambiguous a resort to interpretative process, to bring a subject for levying of tax, cannot be undertaken. In

support of his contentions, he placed reliance upon the judgments of the Supreme Court in ***Federation of Andhra Pradesh Chambers of Commerce and Industry and others v. State of Andhra Pradesh and others [(2001)247 ITR 36], Ajmera Housing Corporation and another v. Commissioner of Income tax [(2010) 326 ITR 642 (SC)] and Commissioner of Wealth Tax v. Ellis Bridge Gymkhana and others [(1998) 229 ITR 1 (SC)].*** He then pressed Entry No.62 of List II of Seventh Schedule to the Constitution of India into service, to submit that, it authorizes levy of luxury tax only on services. In other words, he submitted that luxury tax is leviable on the 'luxuries', as defined by Section 2(4-B) of the Act, i.e., on services and not on goods and since LCD, VCD, public address system etc., are goods and not luxuries so as to levy luxury tax. In support of his contention, he relied upon the judgment of the Supreme Court in ***Godfrey Philips India Ltd. & another v. State of U.P. and others [(2005) 139 STC 537 (SC)].*** He further submitted that making public address systems, VCDs, VCRs etc.,

available to the customers for use in banquet halls as goods cannot be brought to luxury tax. Then, he pressed the principle of 'ejusdem generis' into service to contend that the genesis or the class of items envisaged by the preceding words not being exhaustive of the genesis or the class, the Legislature has conceived the words 'and the like', so as to bring in any other item of the same class or genesis. He submitted that items/goods such as LCD, VCD, visual equipments etc., would not fall in the class of beauty parlour, health club, swimming pool, conference hall etc. Lastly, it was submitted that the charges recovered from the customers towards Internet are also outside the purview of the definition of 'luxury' provided in the hotel and therefore, the corresponding charging provision is not attracted.

13. Before we deal with the question, it would be advantageous to reproduce relevant provisions of the Act for better appreciation of the submissions advanced by learned counsel for the parties. Section 2(1), which

defines, 'charges for lodging' to the extent it is relevant, reads thus:-

> ***"Charges for lodging"*** *include charges for air-conditioning, telephone, telephone calls, television, radio, music, extra beds and the like but do not include any charges for food, drink, laundry or other amenities.*

13.1. This Section was amended by Act No.7/2003 with effect from 1.4.2003. By the amendment, the words 'telephone calls' in the definition of 'charges for lodging', were inserted in this provision.

Section 2(4) which defines the word "Hotel", reads thus:-

> ***"Hotel",*** *which means, a building or part of a building where lodging, accommodation, with or without board is by way of business provided for a monetary consideration, and includes a lodging houses, [club] [and holiday resorts].*

13.2 Section 2(4-B) defines "Luxuries". The definition of 'Luxuries' reads thus:-

> 2(4-B)***"Luxuries"*** *mean [services] ministering to enjoyment, comfort or pleasure extraordinary to necessities of life;*

13.3. Section 2(5) defines 'Luxury provided in a hotel', reads thus:-

> 2(5)***"Luxury provided in a hotel"*** *means -*
>
> *(i) accommodation for lodging provided in a hotel, the rate of charges for which (including charges for air-conditioning, telephone, television, radio, music, extra beds and other amenities for which charges are compulsorily payable, but excluding charges for food and drinks) is not less than [one hundred and fifty] rupees per room per day;*
>
> *(ii) provision in hotels, whether to residents or others of such facility as health club, beauty parlour, swimming pools, conference and the like for which charges are separately made:*

13.4 Section 3-B of the Act, which is a 'charging section', reads thus:-

> ***3-B. Tax on luxuries like health club****, etc.- There shall be levied and collected a tax at the rate of [ten percent] on the charges collected for (luxuries provided in a hotel) for residents or others such as health club, beauty parlour, swimming pool, conference hall and the like when such charges are collected separately.*

14. In the present case, the arguments advanced by learned counsel for the parties were centered around sub-section (5) of Section 2. Sub-section(5) defines 'luxury provided in a hotel'. Luxuries provided in hotels

are of two kinds, one, luxuries in rooms, and two, luxuries like, health club, beauty parlour etc. Clause(i) of sub-section (5) of Section 2 provides for rate of charges for luxuries in room or for accommodation for lodging, which are compulsorily payable. For instance, luxuries like telephone, television etc., whether they are used or not, they are subjected to payment of luxury tax.

15. Before the amendment of sub-section(1) of Section 2, which defines "charges for lodging", came into force with effect from 01.04.2003, the word "telephone calls" were missing from the said Section. This Court in ***Piem Hotels Limited, Mumbai v. State of Karnataka and another [(2003) 129 STC 373]*** had an occasion to deal with this provision, in particular, the word "telephone" as it occurred before the amendment. This Court observed that, the words "such charges" cannot, but include the telephone instrument as well. It could not be the intention of the Legislature to have a separate charge for out going telephone calls for simple reason that the telephone is an amenity and it is a luxury

provided in a hotel and it is compulsorily payable whether you like or not. It was further observed, it could not be the intention of the Legislature to dissect each component and levy tax on each item separately, unless the legislature expressly provides for it and the charging section provides for a separate luxury tax on each item. It appears that in view of this judgment, which was pronounced on 13.09.2002, the definition of 'charges for lodging' was amended and the words 'telephone calls' were introduced in the said provision.

16. Based on the judgment of this Court in *Piem Hotels Limited (supra),* it was vehemently contended that for services provided in the conference hall such as public address systems, VCDs, LCDs, VCRs, even if they are charged, cannot be taken into consideration for levying luxury tax thereon. In the course of arguments, it was also submitted, that on most of the occasions, the respondents-hotels take such instruments/equipments /goods on hire from outside. Though such submission was made, nothing was placed on record to show that either such equipments were brought on hire from

outside or they were not charged by the respondents-hotel and the customers were asked to pay directly to the agencies, which supplied these equipments to the hotels. In short, there is nothing on record to show that the services rendered with the help of those equipments in the conference/banquet hall were not independently charged by the hotels. On the contrary, they charge for every such service, if availed by the customers, at the rates prescribed for the same.

17. Sub-section (4-B) of Section 2 defines **"Luxuries"**, which means, services ministering to enjoyment, comfort or pleasure extraordinary to necessities of life. Sub-section (5) of Section 2, defines 'luxury provided in a hotel', which means, provisions in hotels, whether to residents or others of such facility as health club, beauty parlour, swimming pool, conference hall and the like for which charges are separately made.

18. It is not in dispute and could not be disputed that the respondent-hotels charge for the services and not a rent for the goods/equipments used for rendering

different services or for activities in the conference/ banquet halls for enjoyment & pleasure. In other words, it is not their case that they do not charge for the services rendered/provided for enjoyment or pleasure, and that they charge only rent of the goods/equipments used for rendering such services. It is also not in dispute that the charges they levy for such activities/services rendered in conference/banquet halls in five star hotels are beyond the capacity of an average member of society.

19. At this stage, we would look into the judgments of the Supreme Court relied upon by learned counsel for the respondents to contend that having regard to the provisions of the Act, there is no scope to interpret the provisions, reading something in it and that the provisions need to be construed strictly. In **Ajmera Housing Corporation v. CIT (SC) 2010 Vol.326,** the Supreme Court in respect of interpretation of taxing law observed thus:

> "It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the

relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax. (See: Cape Brandy Syndicate v. IRC (1921) 1 KB 64 and Federation of A.P. Chambers of Commerce and Industry v. State of A.P. (2000) 6 SCC 550). **In interpreting a taxing stature, the court must look squarely at the words of the statute and interpret them. Considerations of hardship, injustice and equity and entirely out of place in interpreting a taxing statute.** (Also se : CST v. Modi Sugar Mills Ltd. (1961) (2) SCR 189."

(emphasis supplied)

20. In **C.W.T v. Ellis Bridge Gymkhana (S.C.) 1998 Vol.229,** the Supreme Court observed thus:

"The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. **If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all".**

(emphasis supplied)

21. In **Federation of A.P. Chambers V. State of A.P. (S.C) 2001 Vol 247,** the Supreme Court observed thus:

> "On behalf of the respondent-State, learned counsel drew our attention to the judgment of this Court in CED v. Kantilal Trikamlal (1976) 105 ITR 925. that judgment also is to the same effect and does not avail the respondents. It said (page 97):
>
> "The sweep of the sections which will be presently set out must, therefore, be informed by the language actually used by the Legislature. Of course, if the words cannot apply to any recondite species of property, courts cannot supply new logos or invent unnatural sense to words to fulfil the unexpressed and unsatisfied wishes of the Legilature."

22. In **Godfrey Philips India Ltd v. State of U.P. (S.C) 2005 Vol. 139,** while dealing with Entry 62 of List II in the Constitution of India, the Supreme Court held thus:

> "85. .....on an application of general principles of interpretation, we would hold that the word "luxuries" in entry 62 of List II means **the activity of enjoyment of or indulgence in that which is costly or which is generally recognized as being beyond the necessary requirements of an average member of society and not articles of luxury.**
>
> 96. Given the language of **entry 62 and the legislative history we hold that entry 62 of List II does not permit the levy of tax on goods or articles. In our judgment, the word "luxuries" in the entry refers to activities of indulgence,**

> **enjoyment or pleasure.** Inasmuch refers to activities of indulgence, enjoyment or pleasure. Inasmuch as none of the impugned statutes seek to tax any activity and admittedly seek to tax goods described as luxury goods, they must be and are declared to be legislatively incompetent. However following the principles in Somaiya Organics (India) Ltd. v. State of U.P.*(2001) 5 SCC 519 while striking down the impugned Acts we do not think it appropriate to allow any refund of taxes already paid under the impugned Acts. Bank guarantees if any furnished by the assesses will stand discharged."

23. The services rendered in health club, beauty parlour etc., are the activities of enjoyment/pleasure in hotels, and charges for the same are costly and beyond the necessary requirements of an average member of society. The guests/residents in hotels or others are charged only when they avail such services and that they are charged for the services rendered and not for the goods/equipments used for the same. Only for visiting these places, in hotels including banquet hall, they are not charged. It is not in dispute that for every service, that one avail of, is charged separately though the provisions contained in Section 2(5) read with 3B of

the Act do not make specific reference to all such services available in beauty parlour, health club etc.,

24. In a beauty parlour, different services or activities of enjoyment are available/rendered such as, head massage, hair cut, eyebrows, pedicure, waxing etc., Similarly, in health club also, they have 2-3 different sections such as, Gymnasium, Massage, bath section consisting of sona bath, steam bath etc., It is not in dispute that for each of such services, rendered either in the beauty parlour or in the health club, the respondent-hotels charge separately and they are liable to be levied luxury tax under the provisions of the Act. In the present case, respondent-hotels did not raise any dispute regarding their liability to pay luxury tax for such activities/services of enjoyment/pleasure rendered in beauty parlour, health club etc, for which, they charge separately. Similarly, for the use of banquet hall, if used without any other service/ activity or is used only for service of food/meals, hotels do not charge separately for such use. That may be because the hotels take bookings for parties where large number of

people attend who cannot be accommodated in their regular restaurants without disturbing other customers/guests.

25. The objection is to the services rendered or facilities made available or the activities of enjoyment in banquet/conference hall, which, according to the respondents are in the nature of goods and therefore, they cannot be charged under Section 3-B of the Act. In support of this contention, the principle of 'ejusdem generis' was also pressed into service to contend that the words 'and the like' as occurred in clause(ii) of sub-section (5) of Section 2 cannot be read to mean, "the services like public address systems, LCDs, VCRs etc." It is not in dispute that in the conference hall, hotels provide different services or there could be different activities of enjoyment such as, Internet facility for video conferencing, sound system, light effects, decoration, dancing floor, projector etc., When such facilities are made available, it cannot be stated that only goods/equipments are made available free of cost or on rent or on payment to the agencies directly from whom

they are taken on hire. Admittedly, the respondent hotels provide such services or make all arrangements for the activities of enjoyment and charge separately only if they are availed of. There is nothing compulsorily payable as in the case of luxuries provided in the rooms in hotels. It is not in dispute that the respondents charge for every single activity/service they provide or make available as per the requirement or demand made by the parties, who book conference/banquet hall and that they collect such charges only for the services availed. For instance, if there is a birthday party, the hotels may, as per the requirement, provide music system like DJ, light effects, decoration of floors, balloons, dancing floor and the like and for each of these services, they charge and collect separately. Such services, in our opinion, would fall within the definition of "luxuries" as defined under Section 2(4-B) of the Act. Hotels charge and collect separately for all such services, which, in our opinion, the respondents are liable to pay luxury tax thereon under Section 3-B of the Act.

26. Section 3-B, which is a 'charging section', clearly provides that there shall be levied and collected tax at the rate of 10% on the charges collected for luxury provided in the hotel to the residents or others such as, health club, beauty parlour. swimming pool, conference hall and the like, when such charges are collected separately. At the relevant time, the tax under this provision was 20%. The section was amended by Act No.7 of 2009 with effect from 01.04.2009 and the tax was reduced from 20% to 10%. It is not in dispute that the amendment is prospective in nature.

27. The term "ejusdem generis", as defined in Black's Law Dictionary, 9th Edition, means a canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed. The principle of 'ejusdem generis' also fell for consideration of the Supreme Court on several occasions. In ***Kavalappara Kottarathil Kochuni vs. State of Madras AIR 1960 SC 1080,*** the

Constitution Bench of the Supreme Court construed the principle of "ejusdem generis" wherein it was observed as follows:

> "..... The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary."

27.1. Again, in another Constitution Bench decision in ***Amar Chandra Chakraborty vs. Collector of Excise (AIR 1972 SC 1863),*** the Supreme Court observed as follows:

> "..... The ejusdem generis rule strives to reconcile the imcompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words' (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent."

28. Thus, in our opinion, the principle of 'ejusdem generis', pressed into service by learned counsel for the

respondents, is of no avail to the respondent-hotels to contend that the services rendered, if any, in conference/banquet hall, may be with the help of electronic goods procured from outside, are not covered by the definition of 'luxury provided in a hotel'. This submission based on the judgment of this Court referring to the principle of ejusdem generis, deserves to be rejected outright. If at all, the principle of 'ejusdem generis' is to be applied, in the light of language employed in clause(ii) of sub-section(5) of Section 2 of the Act, the expression "and the like" will have to be read to include along with beauty parlour, health club, swimming pool, the provision in hotels of a facility like "business centre", for which, the customers/residents are charged separately for availing each of the activities/facilities therein. The judgments relied upon by the learned counsel therefore, in our opinion are of no avail to the respondents.

29. In the circumstances, the question that has been framed by us, which relates to the conference

hall/banquet hall is answered in favour of the petitioner and against the respondents-hotels.

30. That takes us to consider the next contention/question as to, whether Internet charges collected by the respondents-hotels are also liable to be levied luxury tax under the provisions of the Act?. The Internet charges shown to have been collected by the respondent-hotel in LTRP No.8/10, are Rs.15,30,993/-. The respondents have not admitted their liability to pay tax on this amount under Section 3-B of the Act.

31. Before we proceed further, it would be relevant to reproduce three paragraphs from the statement of objections filed on behalf of the respondent-hotels, to which, our attention was specifically invited by learned counsel for the petitioner to contend that the charges as shown in the classification made by AO were collected for providing Internet facility in the business centre and not in rooms. Paragraphs 19, 20 and 21 reads thus:-

> 19. The respondent firstly submits that internet, e-mailing, photocopying facilities are not the amenities offered to customers within the accommodation for lodging

provided to them in the hotel **but are the facilities made available in the common and separate premises operated as business centre. Secondly, it is not the case that charges for the facilities of internet, e-mailing, photocopying offered at the business centre are compulsorily payable by all the customers who are provided accommodation for lodging in the hotel and such charges are payable only by the customers who actually make use of the facilities of internet, e-mailing, photocopying.**

20. The respondent thus submits that **the charges collected only from such of the customers who make use of the facilities of internet, e-mailing, photocopying at the separate business centre are not the 'Luxury provided in a hotel' within the definition in Section 2(5) of KTL Act, 1979 and therefore are not the charges attracting liability to luxury tax prescribed in section 3 of the Act.**

21. The respondent therefore submits that the contention of the State of Karnataka that luxury tax is leviable on the charges collected from customers for the facilities of internet, e-mailing, photocopying made available at the separate business centre is without authority of any provision under KTL Act, 1979 and without any merit or substance.

(emphasis supplied by us)

32. The facility of business centre in hotel is for the benefit of residents and others and for availing such

facility, it is not in dispute, that respondents charge separately who avail the services rendered therein. It is also not in dispute that in the business centre, hotels provide the facility of internet connection. Further, it is also not in dispute that they charge only for those services in the business centres, which are availed of. It is common knowledge that the business centre is like a set up of corporate office where residents in the 5 star hotel or others can use it for their business purpose. The business centres in the 5 star hotels provide entire paraphernalia which is available in the corporate office and for availing all those services/facilities, they are liable to be charged and if they are charged separately, such charges would fall under Section 3-B of the Act. All the activities/services/facilities provided in the business centre in respondent-hotels, in our opinion, would fall within the definition of 'luxuries' and 'luxuries provided in a hotel' which are made available for enjoyment/comfort of residents/guests and others who avail such facilities.

33. In the circumstances, the question as framed by us concerning the internet facility is also answered in favour of the petitioner and against the respondents-hotels. The findings of the tribunal in respect of banquet hall/conference hall and internet charges are set aside. It is needless to mention that at the relevant time, luxury tax on the internet facility was 20% and therefore, we make it clear that the respondents-hotels are liable to pay 20% of luxury tax on the charges collected by them for the use of internet facility at the business centres.

34. Insofar as the question, whether the amount shown against the internet charges include charges collected towards internet facility/service provided/rendered at the business centre is concerned, we direct the Assessing Officer to once again verify on the basis of the materials on record, whether the amount of Rs.15,30,993/- shown against the internet charges pertain to the charges collected for providing internet in the business centre. On verification, if he finds that any part of the charges out of Rs.15,30,993/-

was not for the internet facility provided in the business centre, he may correct his order to that extent. While making such observation, we further make it clear that we have not dealt with the question, whether charges collected by the respondents-hotels for providing internet facility outside the business centre such as in rooms, conference/banquet hall are liable to be levied luxury tax is kept open.

With these observations, the revision petitions are allowed in terms of this order.

Sd/-
JUDGE

Sd/-
JUDGE

Alb/Srl.