



Kantilal P. Jain Advocate

## Valuation under Bombay Tax on Luxuries Act, 1987

A valuation is an important issue under any fiscal statute. Nowadays when self assessment is becoming prime aspect of taxation, it becomes necessary to know how to value luxuries for the purposes of the Luxuries Tax Act.

### Preliminary

The Maharashtra Tax on Luxuries Act, 1987 first came into effect from 1-1-1988. Initially, it was tax on luxury provided in a hotel, lodging house and club. To increase revenue the Maharashtra Government extended the scope of said Act by providing for tax by way of cess on other facilities, services, enjoyments, utilities, consumption, etc. and thereby provided for tax on supply of tobacco and tobacco products (w.e.f. 1-5-1993) and then superior and costly textiles (w.e.f. 1-11-2000).

These levies were challenged by way of writ petition in many high courts and finally the issue was settled by the Supreme Court in Godfrey Philips India Ltd., holding that word "luxuries" in Entry 62 of List II of the Constitution means the activity of enjoyment of or indulgence in that which is costly or which is generally recognised as being beyond the necessary requirement of an average member of society and not articles of luxuries.

Thus, concluding that this entry does not permit the levy of tax on goods or articles.

After the said judgment, the Commissioner of Sales Tax issued the Circular No. 16A of 2005 dated 9-8-2005 clarifying the effect of said judgment and providing course of action to be taken by the department as a fall out of judgment.

Currently luxury tax is applicable on luxury provided in hotel, lodging house or club. Luxury for the purpose of Act is providing accommodation and other services in a hotel. Hotel includes a residential accommodation, a club, lodging, a house, an inn, etc. In simple language a public place where a residential accommodation or stay provided by way of business for consideration. It also includes a club where supply of food or any other article for human consumption or any drinks, whether intoxicated or not, by way of service is made for consideration.

### Receipts – Valuation

Turnover of receipts means the aggregate of the amounts of valuable consideration received or receivable by a hotelier or his agent in respect of the luxuries provided in a hotel during a given period. What is taxable under Luxury Tax Act is aggregate of receipts

in given period. What is receipts for the purpose of Luxury Tax Act?

A receipt means the amount of valuable consideration received or receivable for any luxury provided in a hotel by hotelier or his agent. Thus, it will include all charges that are charged by a hotelier for any services provided in addition to accommodation. The charges can be for air-conditioning, telephone, television, radio, music, entertainment, etc. The extra charges levied for providing extra bed will also form part of receipt.

It may be noted that when charges for food and drinks are separately charged, then such charges shall not form part of 'Luxury' provided the hotelier has already paid the tax under the Maharashtra Value Added Tax Act, 2002.

Charges for incidental services such as health club services, swimming pool facilities, etc. shall form part of luxury and would attract tax, irrespective of whether they are separately charged for or not. It may be noted, however, that when any charges are charged over and above tariff for providing any optional services on the basis of actual services availed then it may not form part of luxury. It can be any service like telephone call when the same are charged based on the actual call made, laundry services, velvet services, limousine service, postal services, health club services, secretarial services, xerox services, etc. However, if the bill is inclusive of all services provided then the luxury tax will be payable on such composite receipts shown in the bill.

There may be a hotel where service charges levied and appropriated by the hotelier from the customer but not paid to the staff of the hotel will be treated as part of the luxury for the purpose of levy of tax.

The luxury tax is levied on the charges for luxury provided in a hotel per day per accommodation. In a case where the charges are levied otherwise than on daily basis then the charges shall be determined proportionately for a day per residential accommodation based on total period of such accommodation for which the charges are levied.

The luxury tax collected separately by the hotelier shall not be considered as part of the receipt or the turnover of receipts. For example, the rate for single bed room charged is ₹ 1,200/- per day, on which, hotelier collects ₹ 48/- separately by way of tax then the tax shall not be considered as part of receipt and hence the receipt at ₹ 1,200/- will be taken for the purpose of levy of tax.

In the same case, if the hotelier does not collect tax separately but makes a consolidated charge of ₹ 1320/-, then for the purpose of levy of tax, receipt will be taken at ₹ 1320/- based on which tax is payable in the higher slab of ₹ 1,200/- and above, on net receipts of ₹ 1,200/- after a reduction of luxury tax from receipts of ₹ 1,320/- under rule 18.

The 'Expenditure tax' levied by the Central Government on hotel. The Expenditure tax is levied on the expenditure which may not relate to the accommodation. For example, a customer visiting a restaurant in a Five Star hotel and paying expenditure tax on food consumed by him there, may not necessarily stay in that particular hotel. On the other hand, luxury tax is payable only on such receipts which are necessarily borne by the customers staying in a hotel. Therefore, the expenditure tax collected separately from the customer would not form part of the receipts for the purpose of levy of luxury tax.

