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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 04.03.2025***

+ **W.P.(C) 6029/2015 & CM Appl.10957/2015**

SWAGATH RESTAURANTSPetitioner

Through: Mr. Ravi Gupta, Sr. Adv. with Mr.
Aman Vashisht, Ms. Muskaan Mehra
and Mr. Shrey Sharma, Advs.

versus

GOVT. OF NCT OF DELHI & ORSRespondents

Through: Mr. Anubhav Gupta, Panel Counsel.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. This Court had examined the matter on 17.02.2025 and passed a detailed order. It is apposite to extract the order dated 17.02.2025 below:

“1. A request for an adjournment is made on behalf of learned counsel for the Respondents. It is stated that he has just received the case file.

2. Learned Senior Counsel appearing on behalf of the Petitioner, on instructions, objects the request and submits that the matter is being pending since the year 2015 and the issue involved in the present case is limited.

3. The grievance of the Petitioner as has been articulated before this Court is that he has been asked to pay additional license fee which is applicable only in cases where there has been a transition in the number of seat covers during a licence fee year. It is the case of the Petitioner that the additional licence fee was paid in the transition year and for one year thereafter. However, a demand notice dated 26.05.2014 has been issued to the Petitioner to make the payment of Rs.6,05,949 for an extended period of time for the year 2008-09.

4. Learned Senior Counsel seeks to rely upon the Delhi Excise Rules, 2010 (hereinafter, referred to as ‘the Rules’), more specifically Rule 154 (1) (Sl.



No. 21 and 42). He submits that usually the license fee for L-17 licensee is based on seat covers, in the year in issue, which is 01.07.2007 to 31.03.2008. The Respondent granted permission to the Petitioner for the increase of 1/3 seat covers in the restaurant being run by the Petitioner.

5. Learned Senior Counsel further submits that in that year (2007-08), the Petitioner made payment as per the licence fee along with the additional payment as per Rule 154 (1) Sl. No. 42, which requires that for an additional 75% of the regular licence fee to be paid. He further submits that additional 75% license fee was paid by the Petitioner in that year and thereafter from the next year, i.e. 01.04.2008 onwards the Petitioner has been making payment of license fee as per the increased seat covers. However, by the impugned notification dated 09.06.2015 what the Respondents are seeking is for the Petitioner to pay additional license fee for further subsequent years as well.

6. Learned Senior Counsel for the Petitioner, on instructions, further submits that the payment for licence fee for the period in issue has been made for the first year as well as an additional year, however thereafter, the demand as raised in the Impugned Notice is for two additional years which is not sustainable in law.

7. Learned Senior Counsel thus contends that the impugned order is completely arbitrary and without any reason since in the corresponding year the increased license fee has already been paid, the question of paying an additional amount @ 75% of the license fee does not arise.

8. It is apposite to extract Rule 154 of the Rules, more specifically Sl. No. 21 and 42 which are set out below:

“154. Rates of fee - The following shall be the rates of licence fee, label registration fee and other fees leviable in respect of excisable articles for various categories of Licences:-

(1) Licence Fee for wholesale vend of Indian Liquor, wholesale vend of Foreign Liquor and wholesale vend of Country Liquor.

(a) The licence fee for the licences in Form L-1, L-1F, L-3, L-31, l-32 and L-33 shall be prescribed in the terms and conditions approved by the Government for each year as provided under rule 34(1) of the Delhi Excise Rules, 2010.

(b) The licence fee for each additional sourcing for the approved brands of Indian Liquor shall be Rs.5 Lacs per brand in addition to the prescribed licence fee.



(2) Licence Fees for Other Category of Licenses-

<i>Sl. Nos.</i>	<i>Reference of Rules</i>	<i>Forms of Licence</i>	<i>Description of licenses</i>	<i>Annual licence fee (in. Rs.)</i>	
<i>1.</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>21.</i>	<i>32(1)</i>	<i>L-17</i>	<i>Service of Indian Liquor in independent restaurant</i>	<i>Having seat covers</i>	<i>Licence fee</i>
				<i>up to 50</i>	<i>4,75,000</i>
				<i>51 to 100</i>	<i>6,75,000</i>
				<i>101 to 200</i>	<i>9,00,000</i>
				<i>201 and above</i>	<i>11,50,000</i>
<i>xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>42</i>	<i>66(10), (11), (16), and (17)</i>		<i>Additional area for the holders of licence in Form L-16, L16F, 417, L-17F, L-18, L-18F, L-19, L-19F, L-21, L-21F, L-28, L-28F, L-29, 429F</i>		<i>Additional seventy five percent of the regular licence fee for the corresponding licences.</i>

9. It is clear from a plain reading of these Rules that the Rules provide for is an increased amount to be paid as license fee in the period where the number of seat covers are increased, so as to bridge the difference in the license fee payable for the previous years' seat covers on an increase in the seat covers during a particular year. Clearly, the intent of these Rules would be that the exchequer does not suffer on account of an increase during a period when a license fee has already been paid and not otherwise to enrich the Exchequer.

10. Given this contention, this Court *prima facie*, finds that the impugned order cannot be sustained.

11. In the interest of justice, one more opportunity is granted to the Respondents to take instructions and make submissions....”

2. The record reflects that despite the pendency of the present Petition for the last 10 years before this Court, no Counter-Affidavit has been filed by the Respondents.



3. Learned Counsel for the Respondents has made one submission. Relying on Rule 66(11)(a)(i) to (iv) of the Delhi Excise Rules, 2010 [hereinafter referred to as “Rules”], he submits that what was applied for by the Petitioner was only a license for additional area and not for additional seat covers. Hence, it is contended that payment is to be made for both, as demanded.

4. It is the contention of the Respondents that the Impugned Order dated 09.06.2015 has been passed in compliance with Rules 66(11) and 154(2)(42) of the Rules. It is contended that the statutory framework under these Rules provides for an additional licence fee to be paid for an extended area regardless of the total covers. Since the Petitioner did not pay the additional licence fee, the Impugned Order was passed.

4.1 Reliance is also placed upon Rule 66(11)(a)(iii) of the Rules to submit that the license granted is granted under Rule 66(11) of the Rules provides that the seat covers in the additional area shall not be more than the seat covers of the main license and the permission for additional area shall only be granted on payment of additional license fee as prescribed. Relying on Rule 154, 21 and 42, it is contended that the license fee is taken in accordance with additional area including seat covers.

5. Learned Senior Counsel for the Petitioner refutes the contention of the learned Counsel for the Respondents. In Rejoinder, reliance is placed on a public notice no. F1/(443)/Ex/R/2008-09/803 dated 15.06.2011 which is annexed to the present Petition and is applicable for all L-17/L-17F licensees which sets out the details of the license fee and the renewal fee payable, to



submit that the license renewal fee is dependent on seat covers alone. The notice relied upon is set out below:

*“DEPARTMENT OF EXCISE, ENTERTAINMENT AND LUXURY TAX
GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI*

L&N BLOCK, VIKAS BHAWAN, I.P. ESTATE, NEW DELHI – 110002.

No. F.1(443)/EX/R/2008-09/803

Dated: 15/06/2011

NOTICE

Attention:- All L-17/L-17F licensees

The holders of L-17/L-17F license have deposited fee for renewal of their license for 2011-12 as follows:

Details of renewal fee for L-17/L-17F license:

<u>Seat Covers</u>	<u>L-17 Fee</u>	<u>L-17F Fee</u>	<u>Total Fee</u>
<u>Upto 50 covers</u>	<u>4,12,500/-</u>	41,250/-	<u>4,53,750/-</u>
<u>Upto 100 covers</u>	<u>6,18,750/-</u>	61,875/-	<u>6,80,625/-</u>
<u>Upto 200 covers</u>	<u>8,25,000/-</u>	82,500/-	<u>9,07,500/-</u>
<u>More than 200 covers</u>	<u>10,31,250/-</u>	1,03,125/-	<u>11,34,375/-</u>

However, the license fee for L-17/L-17F licensees has been revised vide notification No.F.10(8)/Fin(Rev-I)/2010-11/DSII/247 dated 07.06.2011 w.e.f. 01.07.2011 as per detail given below.

Detail of revised renewal fee for L-17/L-17F license:

<u>Seat Covers</u>	<u>L-17 Fee</u>	<u>L-17F Fee (10% of L-17 Fee)</u>	<u>Total Fee</u>
<u>Upto 50 covers</u>	4,75,000/-	47,500/-	<u>5,22,500</u>
<u>Upto 100 covers</u>	6,75,000/-	67500/-	<u>7,42,500</u>
<u>Upto 200 covers</u>	9,00,000/-	90,000/-	<u>9,90,000</u>
<u>More than 200 covers</u>	11,50,000/-	1,15,000/-	<u>12,65,000</u>

The above mentioned revised rates are applicable w.e.f. 01.07.2011, accordingly, the licence holders are directed to deposit the differential amount of the L-17/L-17F licence fee as under:

Difference amount payable for L-17 License holders:



Seat Covers	L-17 Fee Pre-revised	L-17 Fee revised w.e.f. 01.07.2011	Difference	Difference amount for 3/4th year i.e., w.e.f. 01.07.2011 to 31.03.2012
Upto 50 covers	4,12,500/-	4,75,000/-	62,500/-	46,875/-
Upto 100 covers	6,18,750/-	6,75,000/-	56,250/-	42,190/-
Upto 200 covers	8,25,000/-	9,00,000/-	75,000/-	56,250/-
More than 200 covers	10,31,250/-	11,50,000/-	1,18,750/-	89,065/-

Difference amount payable for L-17 & L-17F License holders:

Seat Covers	L-17 Fee Pre-revised	L-17F Fee revised w.e.f. 01.07.2011	Difference	Difference amount for 3/4th year i.e., w.e.f. 01.07.2011 to 31.03.2012
Upto 50 covers	4,53,750/-	5,22,500/-	98,750/-	51,565/-
Upto 100 covers	6,80,625/-	7,42,500/-	61,875/-	46,410/-
Upto 200 covers	9,07,500/-	9,90,000/-	82,500/-	61,875/-
More than 200 covers	11,34,375/-	12,65,000/-	1,30,625/-	97,970/-

.....

[Emphasis supplied]”

6. The L-4/L-4F Licence Certificate issued, in this behalf by the Respondent contains special conditions that shows that the annual licence fee which is to be paid if the covers are less than 200 is Rs. 9.9 lakhs while when the covers are increased to more than 200, the licence fee is capped at Rs. 12.65 lakhs. Admittedly, prior to 2007, the covers were less than 200, which were increased during that year. Once additional licence covers/additional area was taken by the Petitioner in the year 2007, the



Petitioner had been making payment of a sum of the increased number of covers as the – “*More than 200 covers*” as can be evidenced from the challans placed on record by the Petitioner. The special conditions set out that additional covers The relevant extract of L-4/L-4F license of the Petitioner which evidences this is extracted below:

“LICENCE L-4/L-4F

1. Category of License	: L-4-L-F4
2. Registration No.	: F1/83/Ex/R/00-01/
3. Name of the Restaurant	: M/s Swagath Restaurant
4. Constitution of the Licencee/Firm/Co.	: (A unit of Kumar Sons)
5. Name of the Proprietor/Partners/ Director(s)	: 1) Deepak Kumar 2) Bharat Bhushan Kumar
6. Address	: 14, Defence Colony Market, N.D. 24
7. Address of Godown, if any	: -
8. Hours of sale	: 11:00 AM to 1:00 AM
9. Details of Licence Fee (TR No., Date and Amount)	: 2871 Dt. 22/07/02 Rs. 6,00,000/-
10. Date of issue	: 22-07-02
11. Seat covers approved	: G.F. 32, 48 F.F., 42 S.F.
12. Period for which licence is valid	: upto 30/06/03
13. <u>Special Conditions</u>	: <u>ADDL. Area 13, Defence Cly PG covers issued vide order dtd. 6.1.07 T.R. No. 186,7.XI.07, 3,40,313/-</u>

PERIOD	Details of fee (TR) No. date & Amount)	Seat Covers	Sign, and Seal of the Competent Authority	PERIOD	Details of fee (TR) No. date & Amount)	Seat Covers	Sign, and Seal of the Competent Authority
01-07-06 to 30-06-07	277-30/5/06 7,26,000/-	125	Sd/- + Seal	1.4.2011 To 31.3.2012	333 dt. 22/2/11 11,34,375/- 350 dt. 22/2/11 130625/-	125+40 +44= 209	Sd/- + Seal



1-7-07 to 31-3- 2008	258 29/5/7 5,44,500/-	125+40+44 =84	Sd/- + Seal	-			
<u>1-4-2008</u> <u>to 31-3-</u> <u>2009</u>	<u>T.R.-144,145</u> <u>Dt 6-2-08</u> <u>Rs.15,88,125/-</u>	<u>209</u>	<u>Sd/- + Seal</u>	-			
<u>1-4-2009</u> <u>to 31-3 -</u> <u>2010</u>	<u>T.R.- 27</u> <u>Dt 19.3.09</u> <u>Rs.11,34,375/-</u>	<u>209</u>	<u>Sd/- + Seal</u>	-			
1.4.2010 to 31.3.2011	242 dt. 3/3/10 11,34,375/-	209	Sd/- + Seal	-			

[Emphasis supplied]

6.1 The Licence contains a column for the period for the license. The first column shows an increase in covers in the period of 01.07.2006 to 31.03.2008. In the third column, the increase of seat covers is shown as $125 + "40 + 44 = 84"$. While the second column shows the amount of fees paid. As against Rs.5,44,500/- in 2007-08, the Petitioner paid Rs.15,88,125/- for the period from 01.04.2008 to 31.03.2009. Thus, additional fees was paid for the additional covers. Subsequently, the license fees was increased in the year 2011-12 as can be seen from the notice reproduced in paragraph 5 hereinabove, and paid accordingly.

7. In addition, a perusal of the Impugned Notice sent to the Petitioner on 13.01.2012 and 09.01.2013 seeking deposit of licence fee for the year 2013 mentions "*that the details of the licence fee are according to seating capacity*". Thus, the details of licence fee as per the documents filed by the Respondent is based on seating capacity that is "*the number of covers*". It is apposite to extract one such license which is set out below:

"DEPARTMENT OF EXCISE, ENTERTAINMENT AND LUXURY TAX



GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI

L&N BLOCK, VIKAS BHAWAN, I.P. ESTATE, NEW DELHI – 110002.

No. F.1/Ex/R/L-17/2010-11/17

Dated: 13/01/2012

NOTICE

Subject:- Depositing of licence fee and submission of required documents for renewal of L-17/L-17F, L-18/L-18F and L-19/19F licence for the year 2012-13

All the L-17/L-17F, L-18/L-18F and L-19/19F licencees are hereby directed to furnish the following information documents (duly self attested by the authorised person) along with requisite licence fee for renewal of their respective licensees for the year 2012-13 latest by 29th February, 2013, :-

1. Valid Health & Trade Licence
2. Valid Eating House Licence
3. Approval of DOT
4. Valid NOC from DFS/ Affidavit reg. fire-fighting arrangements (in case of seating capacity of below 50 covers)
5. Affidavit regarding seating capacity.
6. Affidavit regarding no change in L-17 licensed premises
7. Copy of Valid insurance having cover of fire and other natural hazards.
8. Excise Nominee for the year 2013-14.
9. IT Return for the year 2012-13.
10. DVAT Return for the year 2012-13.
11. TR of licence fee for the year 2013-14.
12. Original Licence

Details of Licence Fee according to seating capacity for L-17/L-17F licensees (previously L-4/L-4F) granted for serving IMFL/IFL are given as under:-

<u>Seating Capacity</u>	<u>Annual L-17 Fee</u>	<u>Annual L-17F Fee (10% of L-17 Fee)</u>	<u>Annual L-17/L-17F Licence Fee</u>
Upto 50 Covers	4,75,000/-	47,500/-	5,22,500/-
Upto 100 Covers	6,75,000/-	67,500/-	7,42,500/-
Upto 200 Covers	9,00,000/-	90,000/-	9,90,000/-
More than 200 Covers	11,50,000/-	1,15,000/-	12,65,000/-

[Emphasis supplied]

8. An examination of Rule 66 of the Rules also shows that additional



licence fee would have to be paid only for additional covers. Rule 66 (11)(a)(i) sets out that the permission for the additional area shall be granted on payment of additional fee and Rule 66(11)(a)(iii) states that the seat covers in the additional area shall be not more than seat covers in the main license. It does not state that the license fee shall be paid for both the previous seating capacity as well as the additional seating capacity. It is apposite to extract Rule 66(11)(a)(i) to (iv) of the Rules, which is set out below:

“(11) Licences in Forms L-17, 17F, L-18, L-18F, L-19, L-19F and L-21, L-21F for service of Indian Liquor and Foreign Liquor for consumption "on" the premises in independent restaurant :

(a) the licensee shall not serve Indian Liquor and Foreign Liquor at a premises other than the one specified and endorsed on the licence:

Provided that special permission may be granted to the holder of the above licences for service of liquor in additional area on the following terms and conditions, namely—

(i) the permission for the additional area shall be granted on payment of additional licence fee as prescribed;

(ii) the service of liquor in the additional area shall be allowed only from the main bar counter and the additional area means the area located adjacent to the existing bar;

(iii) seat covers in additional area shall not be more than the seat covers of main licence;

(iv) additional area shall be screened off from the public view;”

[Emphasis Supplied]

8.1. The Supreme Court in the case of CIT v. Calcutta Knitweaves¹, has held that the language of a taxing statute should ordinarily be read and

¹ (2014) 6 SCC 444



understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. A taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play in tax statutes, even if the literal interpretation results in hardship or inconvenience it has to be followed. The relevant extract is reproduced below:

“24. In taxing statutes, even if the literal interpretation results in hardship or inconvenience, it has to be followed (G.P. Singh's Principles of Statutory Interpretation, 12th Edn., 2010, Lexis Nexis Butterworths Wadhwa Nagpur; Bennion on Statutory Interpretation, 5th Edn., Lexis Nexis, p. 863; Vepa P. Sarathi, Interpretation of Statutes, 5th Edn., Eastern Book Company, Chapter VIII, Taxing Statutes). This Court in CIT (Ag) v. Keshab Chandra Mandal [1950 SCC 205 : AIR 1950 SC 265] , has held that hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear and apparent. Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint to do so. (Pandian Chemicals Ltd. v. CIT [(2003) 5 SCC 590] , Nasiruddin v. Sita Ram Agarwal [(2003) 2 SCC 577 : AIR 2003 SC 1543] , Bhaiji v. SDO [(2003) 1 SCC 692] , J.P. Bansal v. State of Rajasthan [(2003) 5 SCC 134 : 2003 SCC (L&S) 605] , State of Jharkhand v. Govind Singh [(2005) 10 SCC 437 : 2005 SCC (Cri) 1570] , Jinia Keotin v. Kumar Sitaram Manjhi [(2003) 1 SCC 730] , Shiv Shakti Coop. Housing Society v. Swaraj Developers [(2003) 6 SCC 659] , Grasim Industries Ltd. v. Collector of Customs [(2002) 4 SCC 297] and Union of India v. Hansoli Devi [(2002) 7 SCC 273] .)

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31. Thus, the language of a taxing statute should ordinarily be read and understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. A taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less. (J. Srinivasa Rao v. State of A.P. [(2006) 12 SCC 607 : (2006) 13 Scale 27] and Jagdambika Pratap Narain Singh v. CBDT [(1975) 4 SCC 578 1975 SCC (Tax) 356 : (1975) 100 ITR 698] .)

[Emphasis Supplied]



9. Thus, it is clear that even in the understanding of the Respondents, the license fee is to be ascertained on the basis of seat covers as well on the basis of the additional area. As stated above, by the Impugned Order, the Petitioner was directed to pay additional license fee for increase in the seating capacity. The covers [seating capacity] of the Petitioner was increased on 06.11.2007. During the said period, the number of seat covers in the Petitioner's restaurant were increased by 84 and the annual license fee was paid for the increased seat covers. Thus, in the year in issue, the Petitioner had paid the license fee for 125 seat covers and an additional amount was paid in view of the expanded seat capacity of 84 covers as well. Once, the differential had been paid in a particular year when the covers increased, there was no need to continue to pay the differential amount each year, when the amount for increased covers was already being paid.

9.1 The Petitioner, 2008 onwards, had 209 seat covers. In view of the fact that the total seat covers of the Petitioner were 209 as per Regulation 154, annual license fee required to be paid was at the rate of Rs.12.65 lakhs. These rates were also revised in the year 2011-12 as can be seen from the notice dated 15.06.2011. Since, the license fee for more than 200 covers is kept at Rs.12.65 lakhs, the Impugned order and notices which seek additional payment are without any basis.

10. In view of the foregoing, the Impugned Order dated 09.06.2015 and all notices that emanate therefrom are set aside.

11. The Petition is accordingly allowed. All pending Applications are disposed of.



2025:DHC:1913



12. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MARCH 4, 2025/r/ha

Click here to check corrigendum, if any