

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar: Member (Judicial) & Sh. Rakesh Bali, Member (Administration)

Appeal Nos. : 82-89/ATVAT/12

Date of Judgment: 13/05/2022

M/s. Idea Cellular Ltd.,
A-26/5, Mohan Corporate Industrial Estate,
New Delhi.

.....Appellant

v.

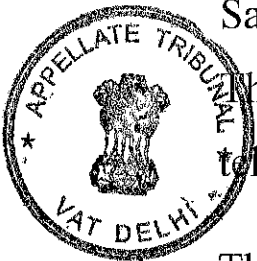
Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. Puneet Tyagi
Counsel representing the Revenue : Sh. P.Tara

JUDGMENT

1. The above captioned eight appeals have been filed by the dealer company registered under Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) as well as under Central Sales Tax Act, 1956 (hereinafter referred to as CST Act).



2. The dealer company is engaged in the business of providing telecommunication services to various parts of this country.

3. The matter pertains to all the four quarters of 2007-08.

3. Vide impugned order dated 03/02/2012, Learned Objection Hearing Authority/ Special Commissioner (hereinafter referred

Narinder Kumar
13/5/22
Rakesh Bali
13/5/22

to as OHA) rejected objections filed by the dealer u/s. 76(4) of DVAT Act and upheld the orders passed by Learned Assessing Authority – VATO.

4. Learned Assessing Authority had imposed tax and interest vide assessments dated 25.02.2010/ 26.03.2010 in respect of all the four quarters of tax period 2007-08.

The assessments of tax and interest were framed in respect of value added products and also as regards transfer of the right to use of telephone signals, converted into light energy, and then transferred from one tower/cable to other tower /cable and which are finally delivered to the users.

5. For the above reason, Learned Assessing Authority observed that it was a case of tax deficiency and accordingly, imposed penalty on the dealer u/s. 33 read with section 86 (10) of DVAT Act as regards tax periods, i.e. all the four quarters of 2007-08.

Feeling aggrieved by the above assessments, the dealer filed objections u/s. 74(6) of DVAT Act. Since the objections came to be rejected, as noticed above, the dealer came up in appeals.

6. Arguments heard. File perused.
7. Learned Counsel for the appellant has submitted that it cannot be said to be a case of transfer of the right to use goods, and accordingly, not a case of deemed sale as provided u/s 2(1)(zc) of DVAT Act.



Appeal Nos. : 82-89/ATVAT/12

12/5

13/5

As regards value added services, Learned Counsel for the dealer has submitted that the services provided by the appellant – dealer did not fall within the ambit of expression “transfer of the right to use”, so as to consider the same as deemed sale, particularly when these services are not capable of being stored by the dealer and are rather stored by the user on mobile phone.

In support of his submission, learned counsel has referred to decision^s in -

1. Bharat Sanchar Nigam Ltd. vs. Union of India, (2006) 3 SCC1.
2. State of Andhra Pradesh vs. B.S.N.L. Ltd., Hyderabad, (2012) 49 VST 98 (AP).
3. PA Abdul Mazeed^{v. St. of Kerala} (2012) 51 VST-54

The contention raised by the Learned Counsel for the dealer – appellant therefore, is that the assessments of tax and interest as well as impugned order passed by Learned OHA deserves to be set-aside.

Learned Counsel has urged^{ed} that once the Default Assessment of Tax and Interest is set-aside, it being not a case of any tax deficiency, the assessments of penalty also deserve to be set-aside.

8. On the other hand, Learned Counsel for the Revenue has submitted that in Volume –I, which forms part of the appeals, dealer – appellant has submitted copies of three agreements, but



13/11

13/11

none of these agreements were filed before Learned OHA. Learned Counsel has further submitted that even though decision in BSNL Ltd's case by Hon'ble Supreme Court was there during the period objections came to be disposed of, decisions in Idea Mobile Company (Supra) and State of Andra Pradesh v. BSNL Ltd., Hyderabad came later on and as such Learned OHA had no opportunity to consider the terms and conditions of the three agreements referred to above, and also to apply the legal proposition settled in subsequent decisions, referred to above. The submission is that in the given situation, the matter needs to be remanded to Learned OHA for decision afresh, keeping in view the terms and conditions of the three agreements and applying the settled law on the legal points involved in this matter.

9. In the course of arguments, Learned Counsel for the appellant admits that none of the three agreements was part of the record submitted before Learned OHA and that the same has been produced before this Appellate Tribunal for the first time. In this situation, learned OHA had no opportunity to take into consideration the terms and conditions of the three agreements before arriving at the conclusion which find^s mentioned in the impugned order. Therefore, the impugned order cannot be said to be an order by way of complete and effective adjudication of the matter in dispute. We have expressed to^{ie} learned counsel for the appellant that the matter needs to be remanded to learned



2
13/5

13/5

OHA, when admittedly the three agreements were not produced before learned OHA.

10. In State of Andra Pradesh's case (Supra), Hon'ble High Court observed in the manner as :

“Under Article 366(29-A)(d) levy of tax is not on the use of goods, but on the transfer of the right to use goods. The right to use goods accrues only on account of the transfer of the right and, unless there is a transfer of the right, the right to use does not arise. It is the transfer which is the sine qua non for the right to use any goods. The title to the goods, under sub-clause (d) of Article 366 (29-A), remains with the transferor who only transfers the right to use the goods to the purchaser. Yet, by fiction of law, it is treated as a sale.”

11. Here, when none of the agreements was made available to Learned OHA, Learned Special Commissioner had no occasion or opportunity to go through the terms and conditions of the agreements and interpret the same while applying the relevant law, we deem it a fit case to remand the matter to Learned OHA for decision afresh, taking into consideration all the relevant terms and conditions of the each agreement and applying the well-settled law, and that too after providing reasonable opportunity of being heard to the dealer.

12. As a result, all the eight appeals are disposed of and while setting aside the impugned order passed by Learned OHA, we hereby remand the matter to Learned OHA for decision on the



12/5

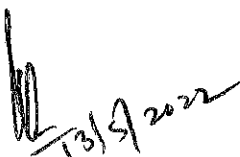
13/5

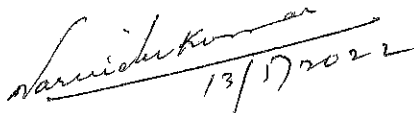
objections afresh, taking into consideration all the relevant terms and conditions of each agreement and applying the settled law, and that too after providing reasonable opportunity of being heard to the dealer.

13. The dealer to appear before Learned OHA on 26/05/2022.
14. File be consigned to the record room. Copy of the order be sent to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website

Announced in open Court.

Date : 13/05/2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



Appeal No. 82-89/ATVAT/12/4388-95

Dated: 19/05/2022

Copy to:-

- | | |
|--|----------------|
| (1) VATO (Ward-) | (6) Dealer |
| (2) Second case file | (7) Guard File |
| (3) Govt. Counsel | (8) AC(L&J) |
| (4) Secretary (Sales Tax Bar Association) | |
| (5). PS to Member (J) for uploading the judgment on the portal of
DVAT/GST, Delhi - through EDP branch. | |

REGISTRAR

