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Court No. - 10

(1) Case :- SALES/TRADE TAX REVISION No. - 124 of 2024

Revisionist :- M/S Bharat Sanchar Nigam Ltd

Opposite Party :- Commissioner Trade Tax Commercial Govt. of U.P., Lucknow

Counsel for Revisionist :- B.K.Singh Raghuvanshi

Counsel for Opposite Party :- C.S.C., B.K. Pandey, A.C.S.C.

(2) Case :- SALES/TRADE TAX REVISION No. - 125 of 2024

Revisionist :- M/S Bharat Sanchar Nigam Ltd

Opposite Party :- Commissioner Trade Tax Commercial Govt. of U.P., Lucknow

Counsel for Revisionist :- B.K.Singh Raghuvanshi

Counsel for Opposite Party :- C.S.C., B.K. Pandey, A.C.S.C.

(3) Case :- SALES/TRADE TAX REVISION No. - 126 of 2024

Revisionist :- M/S Bharat Sanchar Nigam Ltd

Opposite Party :- Commissioner Trade Tax (Commercial) Govt. of U.P., Lucknow

Counsel for Revisionist :- B.K.Singh Raghuvanshi

Counsel for Opposite Party :- C.S.C., B.K. Pandey, A.C.S.C.

AND

(4) Case :- SALES/TRADE TAX REVISION No. - 127 of 2024

Revisionist :- M/S. Bharat Sanchar Nigam Ltd.

Opposite Party :- Commissioner Trade Tax (Commercial) Govt. of U.P., Lucknow

Counsel for Revisionist :- B.K.Singh Raghuvanshi

Counsel for Opposite Party :- C.S.C., B.K. Pandey, A.C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Sri B.K.Singh Raghuvanshi, learned counsel for the revisionist, and Sri B.K. Pandey, learned Additional Chief Standing Counsel for the State-opposite party.

2. Since the controversy involved in the aforesaid revisions are similar, the same are being decided together by this common judgment.

3. For convenience, the facts are being delineated from STRE No.124 of 2024.

4. By means of this revision, the revisionist has assailed the order dated 31.07.2024 passed by the Trade Tax Tribunal, Bareilly in Second Appeal No.474/2013 for A.Y. 2003-04.

5. Learned counsel for the revisionist submits that the revisionist herein is the Bharat Sanchar Nigam Limited (B.S.N.L.), an undertaking of Central Government.

6. He further submits that this is a second round of litigation. Earlier, the STRE No.395 of 2015 was filed which was tagged with some other revisions, which was allowed vide order dated 30.11.2021 and the matter was remanded to the tribunal with a specific direction to decide the appeal, however the impugned order has been passed without considering the said direction.

7. He further submits that the handsets which were given, cannot be treated as sale in terms of the provision of the Act as there is no transfer of right to use any goods, which can be said to be sale within the meaning of Section 3F read with Section 2H of the U.P. Trade Tax Act.

8. He further submits that the handsets provided to the subscribers have to be returned on disconnection. The revisionist is only charging monthly charges on the basis of various service providers to its subscribers.

9. He further submits that the revisionist is already paying tax as provided under the service tax act. He further submits that the tribunal has miserably failed to follow the directions given by this Court as well as the Hon'ble Apex Court in the catena of judgments.

10. In support of his submission, he has placed reliance upon the judgment of the Hon'ble Apex Court passed in the case of ***Bharat Sanchar Nigam Ltd. Vs. Union of India & Ors., AIR 2006 Supreme Court 1383*** as well as judgment of this Court passed in the case of ***Oriental Bank of Commerce Through Its … Vs. State of U.P. Through Its Commissioner, … on*** decided on 13 February, 2008.

11. *Per contra,* learned Additional Chief Standing Counsel supports the impugned order and submits that the tribunal has rightly imposed the tax as the revisionist did not provide any documentary evidence showing that no bifurcation has been submitted for rental receipt and therefore, the finding of fact recorded against the revisionist is justified.

12. He next submits that the revisionist did not file any material documents or data, by which it could be certified that how many consumers having been taken the handsets and how many has returned the same on disconnection. Further, no evidence has been produced, which could bifurcate the rental receipt as well as different services provided by the revisionist.

13. Upon hearing the parties, the Court has perused the records.

14. It is not in dispute that in the earlier round of litigation, the writ petition was allowed and the matter was remanded vide order dated 30.11.2021.

15. The record further shows that in pursuance of the order impugned, the revisionist did not produce copy of any agreement between the revisionist and its consumers. The revisionist has produced the copy of one bill for the period 01.5.2000 to 31.08.2000 in which rent is specifically mentioned. The bill also reveals that 241 calls have been made free of charge. It further reveals that charges towards coloured instruments and 150 for other charges were charged, which denotes that the rent charged by subscribers are towards telephone sets only. The relevant paragraphs of the order impugned reads as under:-

> *"हमारे द्वारा उभय पक्षों को सुना गया। कर निर्धारण आदेश, विद्वान अधिवक्ता द्वारा प्रस्तुत लिखित बहस का परिशीलन किया गया तथा इसके क्रम में माननीय उच्च न्यायालय द्वारा दिये गये निर्णय के बिन्दु–9 एवं 10 में उल्लिखित निर्देश के अनुपालन में जॉच किया गया । विवेचना निम्न प्रकार है:–*
>
> *हम लोगों द्वारा अपीलार्थी से यह अपेक्षा की गयी थी कि उनके द्वारा उपभोक्ताओ एवं बी०एस०एन०एल० के बीच टेलीफोन लगानें से सम्बन्धित जो अनुबन्ध हुआ है उसकी प्रति जाँच हेतु प्रस्तुत किया जाये परन्तु ऐसे किसी भी अनुबन्ध की प्रति जॉच हेतु हमलोगों के समक्ष प्रस्तुत नही किया गया है बल्कि इसके स्थान पर निम्न अभिलेखों की छाया–प्रतियाँ प्रस्तुत की गयी है:–*
>
> ***क–*** *अपीलार्थी द्वारा टेलीफोन नम्बर 63005 से सम्बन्धित बिल की छाया प्रति दाखिल किया है, जो कि दिनांक 01.05.2000 से 31.08.2000 तक की अवधि से सम्बन्धित है जिरमें रेन्ट रू० 600.00 अंकित है तथा 241 काल्स निशुल्क दिखायी गयी है अन्य चार्ज रू० 120.00 है। इस प्रकार इस बिल से भी यह स्पष्ट नही होता है कि बिल में उपभोक्ता से जो रेन्ट चार्ज किया गया है उसमें टेलीफोन सेट से सम्बन्धित किराये की कितनी धनराशि अंकित*

ख– अपीलकर्ता की ओर से एक मांग पत्र की छाया प्रति को दाखिल किया गया जो दिनांक 2.02.2001 से संबंधित है जिसमें रू० 2000.00 की धनराशि अंकित है तथा इसमें भिन्न 12 मदों को उल्लेख है जिसमें क्रम संख्या 8 पर Rent of plug and sockets तथा क्रम संख्या 11 पर Charge for coloured Instruments का किराया अंकित है।

इसके अतिरिक्त सर्वश्री जिला दूर संचार अभियंता पीलीभीत के द्वितीय अपील सख्या 377 378379,380/2015 के मामलें में अधिकरण के निर्णय दिनांक 18.10.2022 के निस्तारण के समय टेलीफोन रेवन्यू एकाउन्टस के मैनुवल की छाया– प्रति भी दाखिल किया गया है, जिसमें रेन्टल आफ फोन्स को निम्न प्रकार परिभाषित किया गया है, जो निम्न प्रकार है:–

(1) Rentals of Telephones, There comprise of rent of telephone connections to Departmental Exchanges, charges on account of local calls(including STD calls), installation and shifting charges for telephone installations, rentals for accessories private wires, recoveries from Defence telephone systems, etc.

उक्त का अवलोकन किया गया इसमें स्पष्ट रुप से रेन्टल फार एसेसरीज का उल्लेख है इससे यह स्पष्ट होता है कि बी०एस०एन०एल० द्वारा उपभोक्ताओं को जो भी एसेसरीज उपलब्ध करायी जायेगी, उसका रेन्ट लिया जायेगा। उल्लेखनीय है कि टेलीफोन बाक्स /टेलीफोन आपरेटस (सेट) भी एक आवश्यक एसेसरीज की श्रेणी में आता है। इसके बिना काल्स संभव ही नही हो सकती है। उपभोक्ताओं उपभोक्ताओं को यह विकल्प दिया गया है कि वे अपने प्रार्थना–पत्र में यह विकल्प ले कि उन्हें टेलीफोन आपरेटस की आवश्यकता है या नहीं। यदि उपभोक्ता द्वारा अपनें आवेदन प्रार्थनापत्र में टेलीफोन आपरेटस लगानें के लिए हॉ कहता है तो ऐसे उपभोक्तओं को बी०एस०एन०एल० द्वारा टेलीफोन बाक्स/सेट उपलब्ध कराया जायेगा और अपीलार्थी नें रेवन्यू एकाउन्ट का जो

मैनुअल दिया है उससे स्पष्ट है कि उसका रेन्ट इनके द्वारा वसूला जायेगा। अपीलार्थी ऐसा कोई ऑकड़ा या ऐसा कोई अभिलेख हमलोगो के समक्ष प्रस्तुत नही कर सके है, जिससे यह प्रमाणित हो सके कि इन्होनें अपनें अधिक्षेत्र में कितनें उपभोक्तओं को टेलीफोन के बाक्स उपभोग किए जानें हेतु दिये गये है और, कितनें उपभोक्ताओं को नही दिये गये है। जहाँ तक उपभोक्ताओं को जो बिल जारी किया गया है उसमें केवल रेन्ट की धनराशि अंकित है परन्तु इस धनराशि में किन–किन मदों में वसूली की गयी है, बिल से स्पष्ट नही है अर्थात रेवन्यू एकाउन्ट मैनुअल में जिस रेन्ट का उल्लेख है, जिसमें टेलीफोन बाक्स का भी रेन्ट समाहित है, का विवरण अलग–अलग बिल से निकाला जाना संभव नही है। लेकिन उपरोक्तानुसार उल्लिखित मांगपत्र के बिन्दु संख्या 11 में उल्लखित Charge for coloured Instruments से यह स्पष्ट होता है कि वसूले गये रेन्ट में जिन उपभोक्ताओं नें बी०एस०एन०एल० से टेलीफोन आपरेटस / बाक्स प्राप्त किया है, उनसे वसूले गये ऐसे रेन्ट की धनराशि में टेलीफोन के बाक्स की धनराशि भी समाहित है । अतः ऐसी स्थिति में टेलीफोन आपरेटस से सम्बन्धित जो भी धनराशि होगी वह धारा–3F के अन्तर्गत राइट टू यूज ऑफ गुड्स की श्रेणी में आयेगी और इससे सम्बन्धित जो रेन्ट की धनराशि अर्जित होगी उसके आवर्त / टर्नओवर पर बी०एस०एन०एल० की नियमानुसार कर देयता होगी ।

7– अब प्रश्न यह होता है कि बी०एस०सन०एल० द्वारा जो रेन्ट की सम्पूर्ण धनराशि अर्जित की गयी है उसमें टेलीफोन बाक्स की धनराशि का रेन्ट कितना समाहित है, इसका निर्धारण केवल न्याय एवं विवेक से ही किया जा सकता है क्योंकि अपीलार्थी द्वारा इसके सम्बन्ध में अधिकरण के समक्ष कोई भी ऑकड़े उपलब्ध नही कराये है। विभाग ने न्याय एवं विवेक से प्राप्त रेन्ट की धनराशि में 10 प्रतिशत भाग टेलीफोन बाक्स के रेन्ट से सम्बन्धित मानते हुए कर आरोपित किया गया है वह सामान्य रूप से उचित प्रतीत होता है। दूसरा महत्वपूर्ण बिन्दु यह भी है कि यदि उपभोक्ता द्वारा टेलीफोन बॉक्स बी०एस०एन०एल० से प्राप्त कर इसे

लगाता है तो यह उपभोक्ता की जिम्मेदारी होती है कि यदि टेलीफोन कनेक्शन समाप्त करते समय अथवा अपना कनेक्शन किसी अन्य स्थान पर स्थानान्तरित करते समय इन दोनों स्थितियों में ही उपभोक्ता को बी०एस०एन०एल० को इस आपरेटस को वापस करना पड़ता है। इससे यह स्पष्ट होता है कि कनेक्शन लिए जानें से लेकर कनेक्शन विच्छेदन या स्थानान्तरण की तिथि तक उसके उपभोग का अधिकार उपभोक्ता के पास संरक्षित रहता है और टेलीफोन आपरेटस का स्वामित्व विभाग अर्थात बी०एस०एन०एल० के पास एंरक्षित रहता है। इस प्रकार इस अवधि में उपभोक्ता से टेलीफोन बॉक्स का जो भी रेन्ट वसूला जायेगा सफर आफ राईट टू यूज ऑफ प्रापर्टी के अन्तर्गत आयेगा और प्राप्त होनें वाले आवर्त बी०ऐस०एन०एल० की करदेयता होगी।"

16. The finding of fact, which has been recorded in the impugned order, has not specifically been challenged in the present revision rather reliance has been placed upon the judgment of the Hon'ble Apex Court passed in the case of ***Bharat Sanchar Nigam Ltd. (supra)*** and heavy reliance has been placed upon para no.92 whereof, which reads as under:-

"For the reasons aforesaid, we answer the questions formulated by us earlier in the following manner:

A) Goods do not include electromagnetic waves or radio frequencies for the purpose of Article 366 (29A) (d).The goods in telecommunication are limited to the handsets supplied by the service provider. As far as the SIM cards are concerned, the issue is left for determination by the Assessing Authorities.

B) There may be a transfer of right to use goods as defined in answer to the previous question by giving a telephone connection.

C) The nature of the transaction involved in providing the telephone connection may be a *composite contract of service and sale. It is possible for the State to tax the sale element provided there is a discernible sale and only to the extent relatable to such sale.*

D) The issue is left unanswered.

E) The aspect theory would not apply to enable the value of the services to be included in the sale of goods or the price of goods in the value of the service."

17. He further placed reliance upon the judgment of this Court passed in the case of ***Oriental Bank of Commerce*** (supra) in para nos.7, 16, 21 & 24, which reads as under:-

"7. Now we proceed to consider the matter on merits.
The term "goods" and "tax on the sale or purchase of goods" are defined under Article 366 (12) & (29-A) of the Constitution. The relevant provisions thereof are reproduced as under

"366. Definitions.-..................…

(12) "goods" includes all materials, commodities, and articles;

......................................…

(29-A) "tax on the sale or purchase of goods" includes-

(a).……

(b).……

(c).……

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

e).……

(f).……

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the *person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made."*

Section 2 (aa) of the Act defines "business" and the relevant part, which been pressed in service in the present case, reads as under :

"2. Definitions.-………………

(aa) 'business', in relations to business of buying or selling goods, includes-
(i) ………………

(ii) the execution of any works contract or the transfer of the right to use any goods for any purpose (whether or not for a specified period); …"

Similarly, the term "dealer" is defined under Section 2(c) of the Act and according to the respondents, the present transaction is covered by provisions of Section 2 (C) (vii) (viii), which are reproduced as under :

"2. (c) "Dealer" means any person who carries on in Uttar Pradesh (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration and includes-

(vii) every person who carries on the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(viii) every person who carries on business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;"

The "goods" are defined under Section 2(d) of the Act which reads as under :

"2. (d) 'Goods' means every kind or class of movable property and includes all materials, commodities and articles involved in the execution of a works contract, and growing crops, grass, threes and things attached to, or fastened to anything permanently attached to the earth which, under the contract of sale, are agreed to be severed but does not include actionable claims, stocks, shares, securities or postal stationery sold by the Postal Department;"

Since, the respondents have also placed reliance on the definition of "works contract" as contained in Section 2(m), therefore, the same is also reproduced as under :

"2. (m) 'Works contract' includes any agreement for carrying out, for cash, deferred payment or other valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;"

The charging provision attracting tax liability in the present case is Section 3-F and relevant part thereof reads as under :

"3-F. Tax on the right to use any goods or goods involved in the execution of works contract.-(1) Notwithstanding anything contained in Section 3-A or Section 3-AAA or Section 3-D but subject to the provisions of Sections 14 and 15 of the Central Sales Tax Act, 1956, every dealer shall, for each assessment year, pay a tax on the net turnover of-

(a)transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; or

(b)transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

at such rate not exceeding twenty percent as the State Government may, by notification, declare and different rates may be declared for different goods or different classes of dealers."

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16. the issue can also be examined from another angle. The transfer of right to use any goods for any purpose must be for cash, deferred payment or other valuable consideration. Can it be said that the rent charged by the Bank for entering into an agreement with the customers assigning right to use Locker of the Bank amounts to such consideration. This would require us to examine as to what is the principle object of the customer in hiring the Locker of the Bank. In other words, we have to examine what actually is the contract between the Bank and its customers with respect to user of Bank Lockers and the kind of transaction involved therein. In para 22 of the writ petition, it is averred that the Bank is not selling Lockers to its customers for rent. Locker is a part of big vault attached and embedded to earth. The whole extent of the vault is embedded to the strong room which has been specifically designed to ensure proper security and safety to the valuables of its customers. In order to provide security, the Bank has to construct strong room with prescribed specifications necessary for attaining highest security and safety and it is attached to earth. The specifications necessary for security are as per the norms and standards of global standard security. The Bank further installs security alarm surveillance device and ensure constant electric supply for the working of security alarm surveillance device. A regular security guard is employed for round the clock for guarding of Lockers. The customers have limited right to access during specific hours and specific days. The Locker is operable with the use of a key which is in possession of the customer and a master key *possessed by the Bank without which, the Locker cannot be opened and operated by the customer. The Bank has every right to stop operation of the Lockers in certain cases. The agreement is said to be a lease-deed wherein the customer is in the capacity of lessee and the Bank in the capacity of lessor. A copy of the draft agreement is on record as Annexure 7 to the writ petition. It is admitted by all the parties concerned that the agreements executed by all the Banks for renting out Lockers are in similar terms. It provides that the Bank reserves right of having the working of the Safe Deposit Vault and of making changes therein without any previous notice or information and the Lockers can be operated by the customer or his authorized agent during such working times as are prescribed by the Regulations or the Bank. Clause 5 of the lease deed reserves rights to the Bank of closing Safe Deposit Vault under extra-ordinary circumstances such as civil commotion, riots and other similar circumstances for such time as may be necessary. Clause 20 provides as to what shall not be kept in the Locker and reads as under : "20. The lessee shall not assign or subject the locker or any part thereof, or use or permit it to be used for deposit of any liquid of any thing of explosive dangerous of offensive nature or which may become a nuisance to the Bank or any of its tenants or customers or for any other purpose than for deposit of valuables or other property and shall on demand permit the bank to inspect the contents of the safe for the purpose of ascertaining it the condition is being complied with.*

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21. That being so, the rent charged by the Bank for user of the Lockers also cannot be taxed under the Act and that is another reason vitiating the impugned orders of assessment and notices issued by the respondents to the Banks attracting liability of tax upon the petitioners under the Act.

Moreover, the entire transaction of hiring of a Locker by a customer or letting out a Locker by the Bank to its customers involves service with primary object of safety and security of the valuables of the customers kept in the Lockers. It is an indivisible contract and not a composite contract. Even in those cases, where sales tax would have been chargeable on that element of a contract which is part of a composite contract but is distinct, but in case of an indivisible contract, the amount cannot be separated to attract the liability of sales tax at all. In Imagic Creative Pvt. Ltd. (supra), the Court with reference to payment of service tax as well as sales tax observed "Payments of service tax as also the VAT are mutually exclusive. Therefore, they should be held to be applicable having regard to the respective parameters of service tax and the sales tax as envisaged in a composite contract as contradistinguished from an indivisible contract. It may consist of different elements providing for attracting different nature of levy. It is, therefore, difficult to hold that in a case of this nature, sales tax would be payable on the value of the entire contract; irrespective of the element of service provided.

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24. Now we proceed to consider whether right to use Locker of a Bank can be said to be "transfer of right to use goods". In support of the submission that it constitute "transfer of right to use goods", reliance is placed by the respondents on the Apex Court decision in State of U.P. Vs. Union of India (supra) and 20th Century Finance Corporation Ltd. (supra). However, we find that the Apex Court decision in State of U.P. Vs. Union of India (supra) rendered by the two Hon'ble Judges of the Apex Court was overruled by a three-Judge Bench of the Apex Court in Bharat Sanchar Nigam Ltd. (supra). Similarly, 20th Century Finance

> *Corporation Ltd. (supra) is cited for the proposition that delivery of possession of goods is not a necessary concomitant for completing a transaction of sale for the purpose of Article 366 (29-A) (d), but in BSNL's Case, the Apex Court in para-73 of the judgment has clearly held that the aforesaid decision is not an authority for the said proposition. Therefore, both the aforesaid judgments do not help the respondents at all. On the contrary, the Court said that in order to constitute "goods", it must be capable of being bought and sold and capable of being transmitted, transferred, delivered, stored and possessed. It has held that goods must be available at the time of transfer, must be deliverable and delivered at some stage. It further says that transaction must also show intention to transfer the right to use freely. In State of Andhra Pradesh Vs. M/s. Rashtriya Ispat Nigam Ltd. 2002 (3) SCC 314, the contractor was allowed to use machinery for execution of the project and the user of machinery was claimed to be transfer of right to use goods by the sale tax authorities. Negativing, the Court said that :*
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> *"The transaction did not involve transfer of right to use the machinery in favour of contractors. ....the effective control of the machinery even while the machinery was in use of the contractor was that of the respondent Company; the contractor was not free to make use of the machinery for the works other than the project work of the respondent or… ."*

18. In the case in hand, the aforesaid judgment is of no aid to the revisionist as the finding of fact recorded against the revisionist therein, here-in-above has not been challenged in any para of the present revision, which reads from para no.1 to 11. In the para no.9, an averment has been made that the tribunal without proper discussion of the matter, has rejected its appeal. The finding in the impugned order which has been recorded that no details of bifurcation has been provided by the revisionist, the same has not been challenged before this Court.

19. Further, after considering the material available on record, the tribunal, considering 10% of the total received rent, imposed the tax.

20. In view of the facts as stated above, no interference is called for by this Court in the impugned order.

21. Accordingly, the revisions are fails and are **dismissed**.

22. The questions of law framed in body of the aforesaid revisions, are answered against the revisionist.

Order Date :-11.04.2025
Pravesh Mishra/-

(PIYUSH AGRAWAL, J.)