

(2016) 04 SC CK 0136

In the Supreme Court Of India

Case No : Civil Appeal No. 4850 of 2016 (Arising out of SIJP (C) No. 37727 of 2013) With Civil Appeal No. 4851 of 2016 (Arising out of SUP (C) No. 37754 of 2013) Writ Petition (C) No. 1055 of 2013 Writ Petition (C) No. 1057 of 2013 Writ Petition (C) No. 11 of 2014

Dishnet Wireless Limited

APPELLANT

Vs

The Commercial Tax Officer (Addl.)

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Citation : (2016) 93 UPTC 331

Hon'ble Judges : Dipak Misra And Shiva Kerti Singh, JJ.

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. F.S. Nariman, learned Senior Counsel along with Mr. Subhash Sharma, learned Counsel appearing for the appellant and Mr. Subramonium Prasad, learned Senior Counsel for the respondents.

2. Leaving granted.

3. These appeals by way of special leave are directed against the judgment and order dated 9.12.2003 passed by the Division Bench of the High Court of Judicature at Madras in Writ Appeal No. 2408 whereby it has recorded its concurrence with the order passed by the learned Single Judge in writ petition wherein he has declined to interfere on the ground that alternative remedy under the Tamil Nadu Value Added Tax Act, 2006 (for short "the Act") is available. Ordinarily we would have accepted the view taken by the High Court, that an alternative remedy being available the writ petition could not be entertained. However, the issues that have been raised here being different we take note of the same.

4. It is submitted by learned Senior Counsel appearing for the appellant that the High Court has declined to interfere and decided the matter without going into

the merits of the case simply on the ground that alternative remedy is available and no questions of law are involved without appreciating the fact that in actuality there are more than three pure questions of law that arise for consideration in the present case. It is submitted by Mr. Nariman that the issues that arise for our consideration are:-

(i) Whether the transfer of one of the businesses claimed by the petitioner as the whole of that business qualifies for, exemption under Explanation III to Section 2(41) of the Tamil Nadu Value Added Tax Act, 2006?

(ii) Whether the State of Tamil Nadu has no jurisdiction to levy VAT Tax on telecommunication towers located outside the State of Tamil Nadu (as in the case of the SLP petitioner in the case of Dishnet Wireless Ltd.) even if they are regarded as "goods"?

(iii) Whether the Assessing Authority has jurisdiction to pass an assessment order with regard to a composite transaction as in the case of Aircel Ltd., where part of the telecommunication towers are within the State of Tamil Nadu and part are situated outside the State of Tamil Nadu and, whether there is any provision for bifurcation in the TNVAT Act, 2006, to enable such an assessment to be made as contended by the SLP petitioner.

5. Mr. Bagaria, learned Senior Counsel for the respondents would suggest that these questions can be gone into in appeal. However, it is not disputed that these questions are pure questions of law and could be gone into in a writ petition under the peculiar circumstances. In our considered opinion the questions that have been raised by the appellant being absolutely pure questions of law, the High Court should have decided these matters. We may hasten to clarify that as far as these issues are concerned and the facts brought on record which include documents are not disputed. When we say that facts are not disputed it is meant that some transactions have taken place inside the State while the towers are located outside and the documents which are brought on record their existence is not disputed.

6. In view of the aforesaid, the appeals are allowed and the order passed by the High Court is set aside and the matters are remitted back to the High Court. The High Court is requested to dispose of these appeals within six months from the date of passing of this order. Interim orders passed by this Court shall remain in force till the disposal of these appeals by the High Court.

7. No order as to costs.

Writ Petition (C) No. 1055 of 2013, Writ Petition (C) No. 1057 of 2013 & j Writ Petition (C) No. 11 of 2014

8. In view of the order passed in the "Civil appeals, these writ petitions also stand disposed off.