(2012) 08 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 12033, 12034, 12035, 12037 and 12038 of 2012

G.T. Computer Hardware Engineering College Pvt. Ltd. APPELLANT

Vs

State of Rajasthan and others RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:
Rajasthan Value Added Tax Act, 2003 — Section 2(35), 25, 38(4), 55, 61

Citation : (2012) 55 VST 344

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Alkesh Sharma and Ashish Sharma, for the Appellant; Achintya Kaushik on behalf of R.B. Mathur, for the Respondent

Judgement

Alok Sharma, J.—Since all these writ petitions involve common questions of facts and law, they are being decided by a common order. The facts and grounds are taken from Writ Petition No. 12033 of 2012, treating the same as the lead case. The case of the petitioner is that it is a vocational educational institute and is providing vocational education which is job-oriented. The institute is duly registered under the Service Tax Act, 1994. The petitioner-company states that it does not carry on business of purchase and sale of goods, and consequently has not opted for registration under the Rajasthan Value Added Tax Act, 2003 (hereinafter "the 2003 Act"). The business of the petitioner-company is instead stated to be of appointing franchises in Rajasthan and across India charging a specific amount as franchise fee and royalty for service rendered not only for the use of its name and services but also for providing faculty, retraining of faculty, online registration and examination, staff training, certification and placement of students, conduct of job fails, advertisements, promotions and media support, etc. For this purpose the petitioner has entered into written agreements with the franchise/affiliates according to which the franchise/affiliates are only granted licence to use the software, information and services provided by the petitioner and the effective control and possession of the trade mark, service mark, trading name, trading style, trade description, design, insignia and logo associated with the name of the petitioner rests solely and exclusively with the petitioner-company.

2. Counsel submits that a survey was conducted by the officers of the Commercial Tax Department, Anti Evasion, Zone I, Jaipur, wherein the Department concluded from the transaction in the petitioner''s line of business as detailed hereinabove were liable to be treated as subject to value added tax in view of section 2(35) of the 2003 Act. Notice was thereupon issued to the petitioner-company asking it to show cause why VAT not be levied on the transactions ? A detailed reply was filed on February 21, 2012 stating therein that the transactions of the petitioner with its franchise/s were in lieu of lump sum franchise fee for providing service, i.e., total consultancy like computer branding, job fair, placement supports, online nomination, certification, faculty support, faculty technical, training, etc. A further additional reply was filed on March 16, 2012, by the petitioner stating therein that the main object of the petitioner was to provide technical education for which it was entering into written agreements with its affiliates for a specified period and in turn charging franchise fee and royalty, and that there was no tangible purchase and sale of goods. Only services were being provided for which the petitioner was paying service tax to the Central Excise and Customs Department. It was submitted that the petitioner-company could not be made liable for both service tax and value added tax on the same transaction.

3. However not satisfied with the reply filed by the petitioner-company, the Commercial Taxes Officer, Anti Evasion Zone I, Jaipur, passed an assessment order dated April 18, 2012 under sections 25, 55, and 61 of the 2003 Act creating a demand of Rs. 26,47,100 comprising tax of Rs. 8,17,006, interest of Rs. 1,96,081 and penalty of Rs. 16,34,013.

4. Aggrieved of the assessment order dated April 18, 2012, the petitioner-company filed an appeal along with a stay application before the Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur, who vide order dated June 4, 2012, u/s 38(4) of the 2003 Act was pleased to stay the recovery of penalty component of the demand. However, he rejected the stay application relating to the assessment of tax and interest thereon.

5. Aggrieved of the partial rejection of the stay application by the Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur, the petitioner filed an appeal along with stay application before the Rajasthan Tax Board, Ajmer (hereinafter "the Tax Board"). However the Tax Board dismissed the appeal and stay application on August 7, 2012 holding that the issue with regard to transaction between the petitioner-institute and its affiliates was a disputed question of fact alone.

6. Heard learned counsel for the parties, and perused the material available on record of writ petition.

7. Counsel for the petitioner submits that the petitioner had specifically raised a contention before the Tax Board that the company was registered with the Central Excise and Customs Department for the purpose of providing services to its franchise/affiliates and on the entire receipts from franchise/affiliates service tax was being paid to the Central Excise and Customs Department. It was submitted that the Commercial Tax Officer, Anti Evasion Zone I, Jaipur, had no authority in law to split the receipts from a composite business transaction by the petitioner-company into two parts, i.e., sale and service in view of the judgment of the honourable Supreme Court in case of Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, and the judgment of the Delhi High Court in case of Commissioner, VAT, Trade and Taxes Department Vs. International Travel House Ltd., It is stated that since the effective control and possession of the alleged goods made liable to tax by the Commercial Tax Officer always remained with the petitioner-company, there was no transfer of the goods in favour of affiliates to constitute a sale simplicitor taxable under the 2003 Act. Counsel submits that in the aforesaid context, in view of the judgment in case of Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, the Tax Board has wrongly held that the petitioner-company had no prima facie case or balance of convenience in its favour or would not suffer irreparable loss unless protected during the pendency of the appeal before the Deputy Commissioner (Appeals).

8. Counsel submits that the issue whether there was a stand alone sale of goods and whether tax could be levied where the assessee is paying service tax on the receipts on a transaction, was considered by the Tax Board in Appeal No. 377 of 2012, Aditya Brake Down Service, Jaipur v. ACTO decided on March 13, 2012 and it held that as a legal issue with regard to levy of VAT on hire purchase charges was involved, the assessee was entitled to an interim order of stay against recovery on the entire disputed assessed amount, and the Deputy Commissioner (Appeals) was directed to dispose of the appeal within three months. Counsel submitted that the nature of transaction in the petitioner''s case was similar, if not better entailing at the lowest consideration of an identical issue and the Tax Board should have maintained uniformity in similar cases as consistency in orders of duly constituted courts and Tribunal is a fundamental virtue of the administration of justice.

9. Mr. Achintya Kaushik appearing on behalf of Mr. R. B. Mathur, counsel for the Department, would submit that the transaction between the petitioner-company and its affiliates is capable of being bifurcated into sale and service. He submits that in this view of the matter the petitioner-company is liable to pay tax in respect of its transactions in issue. It is submitted that consequently the appellate authority has rightly rejected the stay application relating to tax and interest.

10. The contention of Mr. Kaushik that the transaction of the petitioner-company with its affiliates could be bifurcated between sale and service is not the

reasoning adopted by the assessing officer and the appellate authority or the Tax Board. Consequently I find no force in the submission. However, since in a similar case of Aditya Brake Down Service Appeal No. 377 of 2012 decided on March 13, 2012, the Tax Board has stayed the assessment order and demand absolutely, there was no reason for the Tax Board to take a different view in the case of the petitioner-company. Counsel for the petitioner is right in emphasising the imperative need of similar orders, even if interim, in similar cases. The honourable Supreme Court in the case of Bharat Sanchar Nigam Ltd. and Another Vs. Union of India (UOI) and Others, has applied the dominant nature test in respect of composite transactions where both an element of sale and that of service may be discernible and has held that unless the transaction composite in nature represents two clearly different and separate contracts, the State would not have the power to disintegrate the contract between that "for service" and "for the sale" components and levy (VAT) tax on the sale component. In the facts of the case a very contentious question of law has indeed arisen to be adjudicated by the statutory authorities and the Tax Board on the basis of the material as to the nature of transaction before them. The Tax Board has on lesser facts in the case of Aditya Brake Down Service Appeal No. 377 of 2012 decided on March 13, 2012 granted absolute protection to the assessee therein during the pendency of the assessee''s appeal before the Deputy Commissioner (Appeals) and stayed the demand and recovery. Apart from the merits of the petitioner''s case, the unexceptional rule of uniformity of orders in similar cases springs to the aid of the petitioner herein.

11. In view of submission of learned counsel for the parties, I would dispose of the writ petitions setting aside the order dated August 7, 2012, passed by the Tax Board, and directing the Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur, to decide the appeals filed by the petitioner-company within a period of four weeks from the date of receipt of the certified copy of this order.

12. During consideration of appeals by the Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur, the demand against the petitioner-company under the assessment orders shall not be enforced, subject to the petitioner-company furnishing a solvent security to the extent of the amount/s under demand/s in form VAT 64 appended to the Rajasthan Value Added Tax Rules, 2006, within a period of one week from the date of receipt of a certified copy of this order. The writ petitions and stay applications stand disposed of accordingly.