(2014) 08 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition Nos. 40594 and 40619/2014(T-RES)

Kaizen Digital Cable Services Private Limited — APPELLANT

Vs

The Deputy Commissioner of Commercial Taxes — RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 2(29)

Citation : (2014) 08 KAR CK 0038

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : R.V. Prasad, Advocate for the Appellant; H. Venkatesh Dodderi, AGA, Advocate for the Respondent

Judgement

H.G. Ramesh, J.—These writ petitions are directed against three assessment orders and consequential demand notices (Annexures C to C5), all dated 23.07.2014.

2. I have heard Mr. R.V. Prasad, learned Counsel appearing for the petitioner and perused the impugned assessment orders.

3. Learned Counsel appearing for the petitioner contends that, what is sought to be taxed under the provisions of the Karnataka Value Added Tax Act, 2003 (the ''Act'') is the activation fee collected by the Assessee from its customers for rendering cable services. He further submits that the activation fee is not exigible to tax under the Act.

4. It is relevant to refer to the following finding recorded by the Assessing Officer relating to the nature of the transaction in question:

"In the instant case, there is transfer of property in goods from one person to another for cash or deferred payment. In other words M/s. Kaizen digital services, transferred set top boxes to customer and collected Rs. 999/- from each customer, totaling Rs. 13,73,484-00 in the tax period from April 2011 to March 2012 and called them, activation charges.

Here all the conditions laid down in the definition of sale in Section 2(29) of the ACT are fulfilled, i.e. Kaizen transferred right of digital set top boxes for use, which are Consumer electronics goods and received cash payment. This amount to transfer of right to use property in goods for cash payment.

The purpose, here is to use these goods in getting selected T.V. Channel services.

After the transfer of right to use goods and the payment received the dealer called it as activation charges. Close verification of the transaction, it has been found that the amount collected though called activation charges, is actually consideration for the right of use of the device i.e. setup boxes. Here, I am unable to believe that the amount is collected for activation of set top boxes. It must be for usage of the device, only after the payment, the customer gets the right to use. Activation means the device enables receipt of TV Signals and the customer uses it and hence it is not activation charges."

(underlining supplied)

As could be seen from the above, the Assessing Officer has found that the transaction in question is only a transfer of the right to use goods, though as per the Assessee, the payments received are towards activation charges. The aforesaid finding being a finding of fact, it is appropriate for the petitioner to avail the statutory remedy of appeal as against the impugned orders.

5. It is not in dispute that the petitioner has a statutory remedy of appeal as against the orders of re-assessment impugned in these writ petitions. Hence, in the light of the law laid down by the Supreme Court in Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, and in Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, , I decline to entertain these writ petitions with liberty to the petitioner to avail of the statutory remedy of appeal in accordance with law. At this stage, Mr. R.V. Prasad, learned Counsel submits that the petitioner would file appeals against the impugned orders of re-assessment before the Appellate Authority within three weeks from today. If appeals are filed in accordance with law within three weeks from today, the Appellate Authority shall consider them in accordance with law without going into the question of limitation.

Petitions dismissed.