(2016) 04 AHC CK 0267

In the Allahabad High Court

Case No : Writ Tax No. 326 of 2016

M/s Hathway Cable And Datacom Ltd. APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Citation : (2016) 93 UPTC 292

Hon'ble Judges : Dilip Gupta and Ravindra Nath Kakkar, JJ.

Bench : Division Bench

Advocate : Bharat Ji Agrawal, Senior Advocate and Piyush Agrawal, Advocate, for the Petitioner; C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition is directed against the assessment dated 29 February 2016 made for the assessment year 2012-13 by the Deputy Commissioner, Commercial Tax/ Commercial Tax, Noida by which tax under the U.P. Value Added Tax Act, 2008 (in short ''the Act'') has been imposed upon the petitioner on the Set Top Boxes.

2. A preliminary objection has been raised by the learned counsel for the respondents that the petitioner has a statutory remedy of filing an appeal under Section 55 of the Act.

3. It is, however, submitted by Sri Bharat Ji Agarwal, learned Senior Counsel assisted by Sri Piyush Agrawal for the petitioner that since the order is without jurisdiction, the Court should entertain this petition under Article 226 of the Constitution of India. In support of his submission learned Senior Counsel has relied upon the decision of Hon''ble the Supreme Court in the case of Idea Mobile Communication Ltd. v. Commissioner of Central Excise and Customs, Cochin, (2011) 12 SCC 608 and the division bench judgment in Sun Direct TV Pvt. Ltd. through Regional Manager v. State of U.P., reported in 2013 UPTC 1387.

4. The petitioner claims to be a public limited company engaged in the business of providing Cable T.V. Channel through Analogue and Digital Cable distribution

network. It is stated that the petitioner''s company procures/imports Set Top Box and Smart Cards for receiving the Cable T.V. Signals from various broadcasters and distributes the same through distributors or local cable operators to end subscribers.

5. The contention of the learned Senior Counsel for the petitioner is that the Set Top Box installed by the petitioner is used to provide Digital Cable Television Services and that the Set Top Box continues to remain the property of the petitioner and is not sold/transferred. Learned Senior Counsel for the petitioner, therefore, contends that the Assessing Officer has committed an illegality in imposing the tax.

6. Learned Standing Counsel, on the other hand, has submitted that as a fact from the evidence available on the record the Assessing Officer has found that rent was being charged from the subscriber, as a result of which there was a transfer by sale and purchase of goods as contemplated under Section 29A (a) (c) of the Act. In support of his submissions, learned counsel has placed reliance upon the decision of Tripura High Court in the case of Bharti Telemedia Ltd. v. The State of Tripura, Writ Petition No.563 of 2010, decided on 19 February 2015. The submission is that the factual aspect as to whether the Set Top Box was actually sold or transferred to the end subscriber can be examined by the Appellate Authority.

7. In our opinion, all the issues that have been raised in this petition can be examined by the Appellate Authority. Thus, when the petitioner has a statutory alternative remedy of filing an appeal under Section 55 of the Act, it would not be appropriate for the Court at this stage to examine all these issues in a writ petition.

8. This petition is, accordingly, dismissed. However, any observation made by this Court shall not be taken as an expression on the merits and it will be for the Appellate Authority to take an independent decision on the merits of the case.

