(2014) 04 MP CK 0077

In the Madhya Pradesh High Court

Case No : Tax Reference No. 03/2014

M/s. Idea Cellular Ltd. APPELLANT

Vs

Assistant Commissioner Commercial Tax RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (2014) 04 MP CK 0077

Hon'ble Judges : Shantanu Kemkar, J;J.K. Jain, J

Bench : Division Bench

Advocate : Sumit Nema, learned Counsel, Advocate for the Appellant; Sudarshan Joshi, learned Panel Lawyer, Advocate for the Respondent

Judgement

1. With consent heard finally. This is a tax reference u/s 70(2)(b) of the Madhya Pradesh Commercial Tax Act, 1994 (for short, the Act) read with Section 13 of the Entry Tax Act, 1976 against the order dated 20.09.2013 passed by the MP Commercial Tax Appellate Board (for short, the Board) in Reference Case No. 42/CTAB/2008 (Entry Tax), requiring the Board to make a reference to this Court.

2. The petitioner feeling dissatisfied by the order passed by the Board filed an application u/s 70(1) of the Act before the Board, requesting it to refer the questions to this Court. The Board rejected the application and declined to refer the questions, as would be clear from the order dated 20.09.2013 (Annexure A/4) filed along with this reference.

3. Feeling aggrieved, the petitioner has filed this application u/s 70(2)(b) of the Act seeking direction to the Board to refer the following the questions for opinion:-

(1) Whether the appellant who is engaged in the activity of providing telecommunication services to its customers not involving any activity of buying, selling, supplying or distributing of goods can be said to be a ''dealer carrying on business'' within the meaning of the provisions of the MPCT Act, 1994, and

whether the applicant can be said to be covered by the provisions of charging section of the MP Entry Tax Act, 1976 viz. section 3(1) and be subjected to Entry Tax?

(2) Whether the levy of Entry Tax against the applicant treating the applicant as a dealer without satisfying the conditions of charging section is valid in law? Whether the activity of the applicant of providing telecommunication services to its customers can be said to constitute a ''business'' within he meaning of the provisions of MP Commercial Tax Act, 1994, and whether the applicant can be said to be a ''dealer'' qua such activity of providing telecommunication services, thereby, rendering the applicant liable to Entry Tax by virtue of the charging section viz. section 3(1) of the MP Entry Tax Act, 1976?

(3) Whether the applicant is liable to pay Entry Tax on goods imported from outside India on which Customs Duty has been paid as the said levy violates Article 286 of the Constitution of India and is also beyond the purview of Section 3 of the Entry Tax Act read with Section 2(aa) of the Act and whether the expression "entry of goods into that local area from any place outside thereof including a place outside the State" in section 2(aa) would include goods imported in India?

(4) Whether entry of SIM Cards and Recharge Coupons is liable for Entry Tax despite the fact that these SIM Cards and Recharge Coupons have been held not to constitute goods by the Supreme Court and are only covered by Finance Act, 1994 as being liable to Service Tax?

(5) Whether levy of Entry Tax on plant and machinery for setting up of the project and purchased prior to commencement of activity of providing telecommunication services is unwarranted since the charging section 3(1) is attracted only in cases of goods purchased in course of business?

4. The Board, however, declined to refer the aforesaid questions to this Court for being answered.

5. Having heard learned counsel for the parties and taking note of the fact that out of the aforesaid five questions, on three questions in VATA No. 03/2013 have already been admitted, we are of the view that the following three questions need to be answered by this Court:-

(1) Whether the appellant who is engaged in the activity of providing Telecommunication services to its customers not involving any activity of buying, selling, supplying or distributing of goods can be said to be a ''dealer carrying on business'' within the meaning of the provisions of the MPCT Act, 1994, and whether the applicant can be said to be covered by the provisions of charging section of the MP Entry Tax Act, 1976 viz. section 3(1) and be subjected to Entry Tax?

(2) Whether the appellant is liable to pay Entry Tax on goods imported from outside India on which Customs Duty has been paid as the said levy violates

Article 286 of the Constitution of India and is also beyond the purview of Section 3 of the Entry Tax Act read with Section 2(aa) of the Act?

(3) Whether entry of SIM Cards and Recharge Coupons is liable for Entry Tax despite the fact that these SIM Cards and Recharge Coupons have been held not to constitute goods by the Supreme Court and are only covered by Finance Act, 1994 as being liable to Service Tax?

6. Accordingly, we direct the Board to state the case and refer it to this Court for being answered.

7. Let the three questions, as aforesaid, be referred by the Board.

8. This tax reference stands allowed to the extent indicated above. C. c. within three days.