

(2015) 05 RAJ CK 0054

In the Rajasthan High Court

Case No : sales Tax (VAT) Revision Petition Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28/2011 and 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150 and 151 of 2012

Radiant Satellite Private Ltd.

APPELLANT

Vs

The Commercial Taxes Officer

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Rajasthan Entertainments and Advertisements Tax Act, 1957 — Section 3(4A), 3(5), 3(8), 4, 9

Citation : (2016) 1 RLW 291 : (2015) 84 VST 143

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Advocate : Vivek Singhal and Alkesh Sharma, for the Appellant; Tanvi Sahai on behalf of R.B. Mathur, Advocates for the Respondent

Judgement

J.K. Ranka, J.—All these instant sales tax revision petitions are directed against order of the Rajasthan Tax Board (for short, "Tax Board") and since common controversy has been raised and the Tax Board has also consolidated the order, therefore, with the consent of counsel for the parties, the matter is heard finally and decided by this common judgment.

2. At the outset, Id. counsel for the Revenue contended that the issue in the present bunch of petitions is identical and similar to the one decided by the coordinate Bench of this Court at principal seat, Jodhpur in the case of M/s. Sky Media (P.) Ltd. Vs. Asstt. Commissioner, Commercial Taxes: SB Sales Tax Revision No. 263/2012, decided on 16/02/2015 and therefore, in the light of the said judgment, the present matter is required to be considered.

3. Brief facts are that the assessee namely; M/s. Radiant Satellite Private Ltd. and M/s. Bhaskar Multinet (Private) Ltd. are providing entertainment facility as Multi System Operator (for short, "MSO") through cable operators. The Assessing

Officer (for short, "AO"), under the powers conferred under Section 4AA of the Rajasthan Entertainment and Advertisement Act, 1957 (for short, the "Act, 1957") and in the light of the notification No. F.12(14)FD/Tax/2006/139 dt. 08/03/2006, assessed Rs. 20/- per subscriber connection and levied entertainment tax. The AO held that in view of the amended definitions and charging provisions contained under Section 4AA of the Act, 1957, the proprietor of cable TV network, providing cable services, shall also be liable to pay the entertainment at the rate not exceeding Rs. 600/- per subscriber every year and at such rates the State Government may notify from time to time in the Official Gazette. The AO, in the light of the judgment of the Apex Court in the case of *The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others*, AIR 2005 SC 1849 : (2005) 2 CTC 300 : (2005) 3 JT 339 : (2005) 3 SCC 711 : (2005) 3 SCR 954 : (2005) 140 STC 154 : (2005) AIRSCW 1447 : (2005) 2 Supreme 750 held that the MSO fell within the said definition of "Proprietor" providing the satellite signals to the cable operators, who in turn transmit such signals to the ultimate viewers/consumers through their set top boxes. It is further observed by the AO that as per Section 4AA of the Act, 1957 as notified by the notification dt. 08/03/2006 by the State Government, he directed the assessee (MSO) to submit list of subscribers of its cable connection with their names and addresses but despite being granted reasonable time and sufficient opportunities, the assessee (MSO) neither filed the monthly details in the prescribed Form-5 nor did it provide the requisite information. On the contrary, it was claimed by the assessee before the AO that it is not providing any entertainment to the subscribers through the cable network at the place of their choice and thus, the notification dt. 08/03/2006 has no applicability on the assessee. During the course of the assessment proceedings, the assessee did provide copy of the contract executed between the MSO and Pay-Channels alongwith copy of the contract executed between the MSO and its franchisees (the cable operators), copy of the certificate of incorporation issued by the competent authority under the Companies Act and copy of the receipt issued by them to their franchisees (cable operators).

4. After going through the material placed by the assessee, the AO came to the conclusion that the assessee is the proprietor of the cable television network and as per Section 4AA of the Act and in the light of the notification and amendment dt. 08/03/2006, the entertainment tax is levied @ Rs. 20/- per subscriber for the entertainment services being provided through cable operators by the assessee (MSO). Since the requisite information namely; names and addresses of the cable subscribers were not provided but only names of 189 cable operators were provided, therefore, adverse inference was drawn by the AO and accordingly, the AO levied tax, interest and penalty by holding that the assessee is proprietor.

5. In the case of *M/s. Radiant Satellite Private Ltd.*, the matter was carried in appeal before the Deputy Commissioner (Appeals) [for short, "DC(A)"] who allowed the appeals of the assessee (MSO) and held that the judgment of the Hon'ble Apex Court in the case of *M/s. Purvi Communication* (supra) was

distinguishable, as the judgment in the case of M/s. Purvi Communication (supra) was based on West Bengal Entertainment-cum-Amusement Tax Act, 1982 whereas the Act of Rajasthan was separate.

5.1 The Revenue carried the matter in appeal before the Tax Board, who, after analyzing the material available on record and considering the amendments made in the Entertainment Tax Act particularly Section 3(5) by the Rajasthan Finance Act, 2011 with retrospective effect from 25/2/2008 and in the light of the judgment rendered by the Hon"ble Apex Court in the case of Purvi Communication (supra) as also in the light of the judgment rendered by the Hon"ble Apex Court in the case of Indusind Media and Commun. Ltd. and Another Vs. Mamlatdar and Others, (2011) 8 JT 62 : (2011) 9 SCALE 150 : (2011) 44 VST 35 , held that the order of the DC(A) was not proper and the judgments of the Hon"ble Apex Court rendered in the case of Purvi Communication (supra) and Indusind Media and Commun. Ltd. (supra) are squarely applicable on the facts of the instant case and accordingly, reversed the order of the DC(A) and sustained the order of the AO. Hence petitions by the

6. In the case of M/s. Bhaskar Multinet (Private) Ltd., the matter was carried in appeal before the DC(A), who upheld the view of the AO by holding that the judgment rendered in the case of Purvi Communication (supra) is wholly applicable and that the assessee is one who is receiving signals from satellite and the same are being transmitted to sub-cable operator and through the sub-cable operator, it is transmitted to the subscribers (consumers) and therefore, the main role is being played by the assessee (MSO) who receives signal by a satellite and in turn is provided to sub-cable operator and also held that liability of the entertainment tax of such act is of the assessee (MSO) and accordingly rejected appeals filed by the assessee.

6.1 The matter was carried in appeal by the assessee before the Tax Board and the Tax Board, after analyzing the material on record, in the light of the definition as contained in the Act, 1957, allowed the appeals filed by the assessee and quashed and set aside the order passed by the DC(A) vide order dt. 29/10/2010. Hence petitions by the Revenue-department.

7. Thus, on the one hand, in the case of M/s. Radiant Satellite Private Ltd., the Tax Board upheld the order passed by the AO and therefore, the assessee (MSO) has filed these petitions, while in the case of M/s. Bhaskar Multinet (Private) Ltd., on the other hand, the Tax Board has allowed the appeal of the assessee and therefore, the Revenue has assailed the order passed by the Tax Board before this Court. It is important to note that the judgment in the case of Radiant was delivered by the Rajasthan Tax Board on 05.01.2012 after the amendment in the Entertainment Tax Act by Rajasthan Finance Act, 2011 with retrospective effect whereas the judgment in the case of Bhaskar was delivered on 29/10/2010 i.e. prior to amendment.

8. Ld. Counsel for the assessee"s jointly contended that the assessee does not

fall within the notification dt. 08/03/2006 and cannot be said to be the proprietor and once the assessee is not a proprietor, the question of invoking provisions of Section 4AA of the Act, 1957 does not arise. It was further contended that the judgment of the Hon''ble Apex Court in the case of M/s. Purvi Communication (supra) was based on the definition as contained under the West Bengal Entertainment-cum-Amusement Tax Act, 1982 and the said definition is totally inapplicable on the phraseology of the definition under the present Act. It was further contended that the judgment in the case of Indusind Media and Commun. Ltd. (supra) also rested on its own facts and are inapplicable. It was further contended that the AO, without any just basis, by assuming and presuming that there were thousands of subscribers, has levied the aforesaid tax which is improper. It was further contended that the Hon''ble Chief Minister, while giving Budget speech for the Budget Session 2006-2007 on 08/03/2006, had granted such concessions/relaxations but the same has not been considered. It was further contended that under the West Bengal Entertainment-cum-Amusement Tax Act, 1982, sub-cable operator means "a person, other than any owner or person who is a cable operator referred to in the sub-section, who, on the basis of an agreement, contract or any other arrangement made between him and such cable operator, receives signals from such cable operator and provides cable service for exhibition of performance, film or any programme to the customers" whereas under the Act, 1957, sub-cable operator has not been defined. They further contended that Section 4A of the West Bengal Entertainment-cum-Amusement Tax Act, 1982 prescribes for Levy and collection of tax for exhibition which provides that subject to the provisions of sub-section (2) and other provisions contained in the Act, tax shall be levied on and collected from a holder of a video cassette recorder set or sets or a holder of a video cassette player set or set top box, in addition to the tax referred to in section 4 whereas under the Act, 1957, Section 4AA provides that the proprietor of a cable television network providing cable service shall be liable to pay entertainment tax at such rates not exceeding rupees six hundred per subscriber for every year, as the State Government may, from time to time, notify in the Official Gazette, in this behalf and accordingly, in the light of the aforesaid, contended that the judgment is distinguishable and contended that the judgment rendered in the case of M/s. Bhaskar Multinet (Private) Ltd. of the Tax Board should be held proper rather than the judgment rendered in the case of M/s. Radiant Satellite Private Ltd. They further contended that the entertainment tax ought to be paid by a person who is actually getting entertained namely, the subscriber. Counsel for the assessee's after going through the judgment contended that the judgment rendered by this Court in the case of M/s. Sky Media (P.) Ltd. (supra) has not considered several issues and has been decided on its peculiar facts.

9. Per-contra, Id. counsel for the Revenue contended that the AO has come to a correct conclusion and certainly the assessee is a proprietor and squarely falls within the notification dt. 08/03/2006 and Section 4AA of the Act, 1957. She further contended that in so far as the charging section is concerned, it is not

under challenge as the vires has not been challenged and once vires has not been challenged, then the assessee cannot argue that Section 4AA is inapplicable in the facts of the instant case. She strongly supported that not only the judgments of the Hon''ble Apex Court rendered in the case of Purvi Communication (supra) and in the case of Indusind Media and Commun. Ltd. (supra) are squarely applicable but even judgment rendered by a coordinate court at the principal seat of this Court in the case of M/s. Sky Media (P.) Ltd. Vs. Asstt. Commissioner, Commercial Taxes (supra) has also considered all the submissions raised by counsel for the assessee and has analyzed every judgment and the same very definitions and the question as to who can be said to be a proprietor has been adequately considered and answered and contended that when this Court has already come to a conclusion on the same material, same facts, same Act, same Notifications and same definitions then in the light of the said judgment, nothing survives.

10. I have heard Id. counsel for the parties and perused the material available on record including the judgments cited on behalf of both the sides.

11. Though Mr. Vivek Singhal, appearing for the assessee (M/s. Radiant Satellite Private Ltd.) and Mr. Alkesh Sharma, appearing for the assessee (M/s. Bhaskar Multinet (Private) Ltd.) tried to distinguish the judgment rendered by the Hon''ble Apex Court in the case of Purvi Communication P. Ltd. (supra), which has been relied upon by the Tax Board in one of the case so also the coordinate Bench of this Court at Principal Seat, Jodhpur in the case of M/s. Sky Media (P.) Ltd. (supra) and the judgment rendered by the Hon''ble Apex Court in the case of Indusind Media and Commun. Ltd. (supra) and in my view, the controversy in the instant petitions is identical and same, which has been considered by this Court in the case of M/s. Sky Media (P.) Ltd. (supra) and I am not persuaded with the arguments advanced by counsel for the assessees, as no distinguishing features have been noticed by me.

12. It may also be relevant to observe that M/s. Tata Sky Ltd. so also other assessees had challenged the amendment notification which was brought in the statute on 25/02/2008 which provides as under:-

"FINANCE DEPARTMENT (TAX DIVISION)

NOTIFICATION Jaipur, February 25.02.2008

S.O. 443.- In exercise of the powers conferred to section 4AAA of the Rajasthan Entertainments and Advertisements Tax Act, 1957, (Act No. 24 of 1957), the State Government hereby notifies that the proprietor of direct to home broadcasting service shall be liable to pay entertainment tax at the rate of 10% of the subscription charges as per subscriber.

[No. F. 12(15)FD/Tax/2008-91]

By order of the Governor, (Rajat Kumar Mishra) Secretary to Government"

13. It would also be appropriate to quote sub-sections 3(4A), Section 4AAA, Rules 18BBBB and Rules 18BBBBB:-

"Section (4A) "direct to home broadcasting service" means distribution of multi channel television programmes by using satellite system by providing television signals direct to the premises of subscribers without passing through an intermediary such as cable services."

4AA. Levy of Tax on Cable Service and Direct to Home Broadcasting service-

(1) Subject to the provisions of this Act, there shall be charged, levied and paid an entertainment tax on all payments for admission to an entertainment through a direct to home broadcasting service or through a cable service with addressable system or otherwise, other than entertainment to which section 4 applies, at such rates not exceeding twenty percent of the payment for admission for every subscriber, as the State Government may, notify in this behalf

(2) Notwithstanding anything contained in sub-section (1), the State Government may fix the rates of tax for the tax payable under this section a fixed amount, as may be notified but not exceeding rupees fifty per subscriber per month or part thereof

(3) Nothing in sub-section (1) shall preclude the State Government from notifying different rates of entertainment tax for house hold or for different categories of hotels.

(4) Where the subscriber is a hotel or a restaurant, the proprietor; may, in lieu of payment under sub-section (1), pay a compounded amount to the State Government on such conditions and in such manner as may be prescribed and at such rate as the State Government may, notify and different rates of compounded amount may be notified for the different category hotels and restaurant."

Section 4AAA. "Levy of tax on direct to home broadcasting service-- The proprietor of a direct to home broadcasting service shall be liable to pay entertainment tax at such rates, not exceeding twenty percent of the monthly subscription charges per subscriber, as the State Government may, from time to time, notify in the Official Gazette, in this behalf and different rates may be notified for different categories of subscribers."

Rules 18BBBB-"Permission to be obtained to operate direct to home broadcasting service.

(1) The proprietor of a direct to home broadcasting service shall submit to the Commissioner an application within 15 days from the date on which these rules come into force or at least within 15 days of his commencing entertainment through direct to home broadcasting service, whichever is later.

(2) The proprietor shall submit to the Commissioner a security of an amount fixed by the Commissioner along with any other information which may be so

required by the Commissioner."

Rules 18BBBBB- "Payment of tax for direct to home broadcasting service.

(1) The proprietor of a direct to home broadcasting service liable to pay tax in accordance with section 4AAA of the Act, shall maintain a true and correct record of the number of subscriber, the amount received from each subscriber and the amount of tax.

(2) The proprietor of a Direct to Home broadcasting service shall be required to deposit tax payable within seven days of the close of each calendar month.

(3) The proprietor of a Direct to home broadcasting service shall file quarterly return in Form S-7 in duplicate, within fifteen days of the end of each quarter along with proof of deposit of tax payable under the Act."

14. The said notification came to be challenged by M/s. Tata Sky Ltd. before Division Bench of this Court, inter-alia, claiming that the said assesseees were not liable for payment of entertainment tax under Section 3(4A), 4AAA of the Act of 1957 read with Rules 18BBBB and 18BBBBB of the Rajasthan Entertainments and Advertisements Rules, 1957 (for short, "Rules of 1957") and this Court in DB Civil Writ Petition No. 6012/2011, Tata Sky Ltd. Vs. The State of Raj. and Anr. vide order dt. 19/08/2014 held that the State Legislature had legislative competence to levy entertainment tax on all payments for admission to an entertainment through direct-to-home (DTH) and had rejected the claim of the aforesaid assesseees. It is just to observe that the constitutional validity of the amendment brought in by the State of Rajasthan by the Rajasthan Finance Act, 2011 with retrospective effect from 25/02/2008 was held proper. Though the controversy in the present petitions relates to cable services and/or MSO cable operator etc. but ultimately the issue revolves on the retrospective amendment brought in by the statute by the Finance Act, 2011 with retrospective effect from 25/02/2008 which has been upheld.

15. After analyzing the above controversy, this Court, in the case of M/s. Sky Media (P.) Ltd. (supra) framed the following question:-

"Whether the assessee M/s. Sky Media (P.) Ltd. Jodhpur, a Multi System Operator (MSO), falls within the definition of "Proprietor" and the charging provision of the Rajasthan Entertainments and Advertisements Act, 1957 and is liable to pay entertainment tax on the satellite signals or electronic TV signals provided to the cable operators, who further transmit the same to the viewers/consumers for entertainment by exhibition of films and videos etc."

16. This Court, in the case of M/s. Sky Media (P.) Ltd. (supra) considered this issue and after analyzing the definition of "proprietor" and "subscriber" at length went into the various amendments brought in by the State which is reproduced ad-infra:-

"The aforesaid judgments in the considered opinion of this Court leaves no

manner of doubt that the present assessee, a Multi System Operator, will clearly fall within the ambit and scope of the definition "Proprietor" read with the charging provision of Section 4AA of the amended law, irrespective of the fact that there is no separate definition of such MSO, cable operator or sub-cable operator in the Rajasthan Act. A closer scrutiny of the definition of "Proprietor", who falls within the tax net under the said law would reveal that even MSO like the present assessee is undoubtedly a person connected with the organization of entertainment. He may or may not be a last person providing such entertainment in the chain to the ultimate subscriber/viewer and there may be one or more agency in between like cable operator or sub-cable operator in the present case. But, it is undoubted that without the transmission of satellite signals or electronic signals by the MSO to the cable operators or sub-cable operators, the ultimate consumer or viewer cannot view the entertainment. Thus, the MSO is undoubtedly an integral part of the chain of persons or agencies or organization providing such entertainment and since the definition of the "Proprietor" clearly covers such an assessee, therefore, it cannot be contended, as has been contended by the assessee, that in the absence of a specific definition in the definition clause of cable operator or Multi System Operator, they would not fall within the tax net.

There is another angle to counter the argument of learned counsel for the assessee. While reading the definition of "Subscriber" in clause (11A), as quoted above, one may note that the proviso to the said definition clearly provides that in case of further transmission of signals of cable TV network, each room or premises where signals of cable television network are transmitted shall be treated as a subscriber. Therefore, even if the present assessee MSO may not have a privities of contract with the ultimate end user but qua his cable operator or sub-cable operator, who is a "subscriber" qua MSO, a service provider or entertainment provider or a proprietor providing such entertainment. Thus, by a harmonious reading of the definitions, the chain of agencies or persons providing entertainment is clearly established in the amended definitions inserted in the Act of 1957. The details of such amendments brought from time to time in the Rajasthan Entertainment and Advertisement Tax Act, 1957 having relevance for Cable Network Service are enumerated below for ready reference.

17. Thus the above question was answered in favour of the Revenue and against the assessee and it was held that the assessee would fall within the scope of charging provision of the Act of 1957, under the retrospectively amended provisions of the Act and the present assessee would also fall within the definition of "Proprietor" as defined under Section 3(8) of the Act and is liable to pay entertainment tax under the charging provisions of Section 4AA of the said Act of 1957.

18. The above clearly brings out the actual facts of the instant two assessee and on analyzing the facts viz-a-viz the judgment of M/s. Sky Media (P.) Ltd. (supra), in my view, there are no distinguishing facts in so far as the matter pertaining to

the cases in the instant petitions viz-a-viz Sky Media (P.) Ltd. (supra)

19. Admittedly, M/s. Bhaskar Multinet (Private) Ltd. is also an MSO as its claim before the AO, DC(A) and so also the Tax Board has been that it is an MSO. The DC(A) so also the Tax Board in para 7 and 8 of the impugned order has reproduced the contention of M/s. Bhaskar Multinet (Private) Ltd. where it has been categorically admitted that it is MSO. Therefore, once it is an admitted fact, then in the case of M/s. Bhaskar Multinet (Private) Ltd. as well, the aforesaid judgments hold good.

20. In my view, the judgment of the Hon'ble Apex Court in the case of Purvi Communication P. Ltd. (supra) has rightly been applied by the Tax Board in the case of M/s. Radiant Satellite Private Ltd. and by this Court in the case of M/s. Sky Media (P.) Ltd. (supra) and thus the judgment in the case of Purvi Communication P. Ltd. (supra), holds the field and I do not find any distinguishing features in between the facts in the instant cases viz-a-viz the facts in the case of Purvi Communication P. Ltd. (supra).

21. The Hon'ble Apex Court in the case of Indusind Media and Commun. Ltd. (supra) had also an occasion to consider the case of Multi System Operator (MSO) like the present assessee before this Court and observed as under:-

"On hearing the learned counsel and looking to the facts of the case, in our opinion, the High Court was justified in confirming the order passed by the Mamlatdar dated 18th October, 1999.

Two issues arise for our consideration in the present appeals viz.:

(i) Whether the appellants, who are Multi System Operators, are liable to pay Entertainment Tax, and

(ii) Whether the facts and circumstances of the case warrant imposition of penalty on the appellants.

The first issue is no longer res integra as this Court, in the case of The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others, AIR 2005 SC 1849 : (2005) 2 CTC 300 : (2005) 3 JT 339 : (2005) 3 SCC 711 : (2005) 3 SCR 954 : (2005) 140 STC 154 : (2005) AIRSCW 1447 : (2005) 2 Supreme 750 has held that even Multi-System Operators (MSO) would be liable to pay Entertainment Tax. It is not in dispute that the appellants are Multi-System Operators, who transmit the signals to the cable operators and in turn, the cable operators transmit signals to the subscribers. In such a way, as the appellants are connected to an organization of the entertainment, they would be "proprietors" as per the provisions of the Act. Hence, this issue does not need any further consideration. With regard to the second issue, it was contended by the appellants that penalty under Section 9(3) of the Act can be imposed only if there is any willful mis-statement or suppression of facts. In the instant case, the appellants were under a genuine belief that they would not fall under the definition of "Proprietor" under the Act and hence, imposition of penalty is unfair.

It was further argued on behalf of the appellants that the impugned order imposing the penalty is violative of the principles of natural justice as no notice was issued under Section 9 of the Act and also no opportunity of being heard was afforded to the appellants."

22. In view of the above facts and circumstances, the revisions petitions, in so far as M/s. Radiant Satellite Private Ltd. are concerned, are dismissed and the order of the Tax Board is upheld and the revision petitions filed by the Revenue, in so far as M/s. Bhaskar Multinet (Private) Ltd. are concerned, are allowed and the order of the Tax Board is quashed and set aside and the order of the DC(A) and AO is upheld. No costs.