(2009) 04 AHC CK 0199

In the Allahabad High Court

Tata Teleservices Limited Lucknow Through Its Authorized	APPELLANT
Vs	
State of U.P.Through Secy.(Tax & Registration/ Institutiona	RESPONDENT

Date of Decision : 07-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0199

Hon'ble Judges : Bala Krishna Narayana, J

Final Decision : Dismissed

Judgement

Heard Sri Bharatji Agarwal, learned Senior Advocate assisted by Sri Rahul Agarwal, Advocate for the petitioner and Sri H.P. Srivastava, learned Additional Chief Standing Counsel appearing for the opposite parties.

The petitioner is a Public Limited Company incorporated under the Indian Companies Act and is registered under the provisions of the U.P. VAT Act as well as the Central Sales Tax Act. In the State of U.P., the petitioner''s principal place of business is at 2, RF Bahadurji Marg, Lucknow.

By means of the present writ petition the petitioner has challenged the levy of trade tax on the petitioner under Section 3F of the U.P. Trade Tax Act, 1948 on the Fixed Plan Charges/ Tariff charged by it for providing Voice Carriage Services on its customers and in respect of which the petitioner has already paid service tax to the Government of India.

A preliminary objection has been raised by Sri H.P. Srivastava, learned Additional Chief Standing Counsel appearing on behalf of the respondents regarding maintainability of the instant writ petition on the ground of availability of alternative remedy of statutory appeal to the petitioner against the impugned orders under the U.P. Trade Tax, 1948.

Refuting the preliminary objection raised on behalf of the respondents, learned counsel for the petitioner has submitted that the controversy regarding the imposition of trade tax for providing voice carriage services/access charges by service providers the petitioner to its subscribers came up before the Apex Court in the case of Bharat Sanchar Nigam Ltd. vs. Union of India and others (2006) 2 SCALE 752, wherein the Apex Court allowed the claim of the licensee Bharat Sanchar Nigam, namely, the service provider holding that no trade tax can be levied or realized from the mobile service providers towards the amount received for providing voice carriage service but for the SIM Card charges.

Learned counsel for the petitioner further submitted that the controversy involved in the present petition is squarely covered by the decision of the Apex Court rendered in the case of Bharat Sanchar Nigam Ltd. vs. Union of India and other (Supra). Learned counsel for the petitioner next submitted that since the levy of trade tax on the petitioner is without any authority of law and no factual controversy is involved, no purpose shall be served by relegating the petitioner to the alternative remedy of filing a second appeal against the order of the First Appellate Authority. In support of his submission, learned counsel for the petitioner has relied upon a decision of Apex Court reported in AIR 1999 SC (22), Whirlpool Corporation vs. Registrar Trade Marks Mumbai and others.

Learned counsel for the petitioner also submitted that the entire amount of tax as assessed by order dated 12.01.2009 passed by the respondent no.3 has already been deposited by the petitioner and the interest amount on the impugned tax alone remains to be deposited.

The submission made by the learned counsel for the petitioner appears to have substance and since there is no factual dispute and the controversy involved in the instant writ petition, primafacie, appears to be covered by the decision of the Apex Court in the case of Bharat Sanchar Nitam Ltd. vs. Union of India and others (Supra), this Court is of the view that the writ petition is not liable to be dismissed on the ground of alternative remedy and the matter requires consideration after receiving response from the respondents.

Sri H.P. Srivastava, learned Additional Chief Standing Counsel is directed to file counter affidavit within four weeks. Rejoinder affidavit may be filed within two weeks thereafter.

List immediately after expiry of six weeks.

Till the next date of listing, the recovery of the interest on the disputed amount of tax from the petitioner in pursuance of the order dated 12.01.2009 passed by the respondent no.3, as contained in Annexure5 to the writ petition, shall remain stayed.

