Court No. - 38

Case :- SALES/TRADE TAX REVISION DEFECTIVE No. - 4 of 2021

Revisionist :- Vodafone Idea Ltd..
Opposite Party :- The Commercial Tax Tribunal And 2 Others
Counsel for Revisionist :- Ashish Mishra
Counsel for Opposite Party :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

1. Heard Sri Navin Sinha, learned Senior Advocate, assisted by Sri Ashish Mishra, learned counsel for the applicant and Sri B.K. Pandey, learned Standing Counsel.

2. Present revision has been filed against the order of the Commercial Tax Tribunal, Meerut, dated 18.2.2021, passed in Second Appeal No. 64 of 2019 for A.Y. 2008-09 (Entry Tax). By that order, the Tribunal has, by it's *exparte* order, dismissed the appeal filed by the assessee.

3. Though various questions of law have been pressed, at present, it is seen that for the A.Y.s 2001-02, 2002-03, 2003-04, 2005-06 and 2006-07, Sales/Trade Tax Revision Nos. 257 of 2012, 1492 of 2005 and 791 of 2008 (inter parties) came to be decided by an order dated 16.10.2019. While deciding those revisions, following question of law had been raised:

"Whether the equipment in question which has been held to be an electronic equipment would be covered by item no. 5 machinery and spare parts of machinery of Schedule referred in Section 4(1) of the U.P. Tax on Entry of Goods Act?"

4. Those revisions came to be disposed of with the following observations:

"10. Having heard learned counsel for the parties and having perused the record, as a general principle/rule, it cannot be denied that certain electronic goods may qualify as electronic machinery as understood by the men who deal in the same. However, that rule or principle may not be sufficient or decisive. What is required to be examined is whether in the facts of the present case, all the commodities that the assessee disclosed to have dealt in being electronic goods, computer goods, generators, telecommunication parts, SMPS Power Plant, electrical goods, telecom equipment and SIM cards etc., were such

as may be described as electronic machinery and therefore, machinery.

11. It has completely remained from the Tribunal to consider and decide this issue. The issue was essential to be dealt with and decided by the Tribunal separately in view of the fact that it is not a composite form or bill value of the goods that may determine the occurrence of the taxable event but the value of the individual machinery or part was required to be established to be Rs.10 lac or more. Therefore, unless the categorical finding was first recorded by the Tribunal that the assessee imported identified machinery of value more than 10 lac, the issue of taxable event could never get decided.

12. Then, even if the Tribunal were to find that one or more machinery of value Rs.10 lac or more was imported by the assessee, yet, it would have to further examine the objection raised by the assessee that the same would stand excluded by virtue of separate entries under the VAT Act providing for separate treatment of such machinery under that Act. In other words, even if one of the electronic machinery say ('x') imported is found to have been imported by the assessee which is of value Rs.10 lac or more, the Tribunal would have to further examine whether such electronic machinery ('x') was taxable as machinery under the VAT Act or as any other commodity falling under a separate schedule entry under the VAT Act. If the conclusion to be drawn by the Tribunal be that such machinery ('x') was taxable under a separate schedule entry under the VAT Act, it would be further required to examine whether on such distinction under the VAT Act, the commodity would continue to remain taxable as machinery under the Entry Tax Act or it would cease to be taxable on that reasoning.

13. At present, though the Tribunal has touched this issue but its findings are not reasoned. The issue that has been canvased by the assessee in the present revision, has not been squarely dealt with. In any case, since the matter is proposed to be remitted to the Tribunal, the same may be re-adjudicated.

14. As to the alternative submission advanced by the counsel for the revisionist-assessee, again there is no discussion by the Tribunal in the impugned order.

15. Inasmuch as, at present, order passed by the Tribunal does not appear to have dealt with the aforesaid issue, the question of law framed by this court, cannot be answered at this stage. The order of the Tribunal is, thus, set aside. The revision is disposed of. The matter is remitted to the Tribunal to pass a fresh order, preferably, within a period of four months in accordance with law after hearing the parties on the strength of evidence existing on record."

5. It is also on record that pursuant to that order passed by this Court, the Tribunal reconsidered appeal nos. 312 of 2004 and 244 of 2004 for A.Y.s 1999-2000 and 2000-01. In those cases, Tribunal reached a conclusion that telecom equipment imported by the petitioner fell under the category "All other electronic

goods" and, therefore, it did not qualify under the Scheduled commodity under the entry tax Act.

6. According to learned Senior Advocate for the petitioner, the same conclusion would attract in the present case as well, however, the Tribunal has erred in reaching a contrary conclusion, that too, without considering it's earlier view. In that regard, it has been further submitted that the petitioner could not bring to the knowledge of the Tribunal an earlier adjudication made by it, in the case of the assessee itself, since the matter proceeded *ex-parte*, on practically the first date fixed in the proceedings, after the Tribunal reopened post lockdown enforced due to spread of the pandemic Covid-19.

7. The *ex-parte* nature of the order apart, at present, it does stand out that the Tribunal has taken two divergent views in the case of the assessee itself, inasmuch as, in the earlier order, the Tribunal had clearly opined that the goods that have been dealt with by the assessee are not taxable under the provisions of the Entry Tax Act, whereas in the appeal giving rise to the present revision, a contrary view has been taken. While taking a such contrary view, the Tribunal has not considered the earlier adjudication made by it, which adjudication had become necessary in light of the earlier decision of this Court.

8. In view of the above, no useful purpose would be served in keeping the present revision pending or seeking to adjudicate the same on merits, inasmuch as, it cannot be denied that the order impugned in the present revision is an *ex-parte* order, passed without consideration of the earlier adjudication made by the coordinate bench of the Tribunal.

9. Accordingly, the order dated 18.2.2021 is set aside and the matter remitted to the Tribunal to pass a fresh order in

accordance with law. It will remain open to the department to raise such objection, as may be advised, in the facts of the present case.

10. It is further made clear that the Court has not expressed any opinion as to the taxability of the goods but the order of remand has become necessary because the Tribunal was obliged to consider it's earlier view before reaching any other conclusion, on same facts. The recoveries would abide by the adjudication made on merits in terms of this order.

11. With the aforesaid observations, the present revision stands **disposed of**.

Order Date :- 16.3.2021
Prakhar