NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAX Case No. 95 of 2017

- M/s B T A Cellcom India Ltd. (Now Known As Idea Cellular Ltd.) Raipur, Chhattisgarh

---- Appellant

Versus

- The Commissioner Of Commercial Tax Raipur, Chhattisgarh

---- Respondent

For Appellant : Mr. Anand Dadaria, Advocate
For State : Mr. U.N.S. Deo, Government Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, Chief Justice

05.09.2017

1. This appeal is admitted. Shri U.N.S. Deo, Government Advocate takes notice on behalf of the respondent. Service is complete. The matter taken up, on consent, for final hearing and heard accordingly.

2. We have heard learned counsel for the appellant and the learned Government Advocate for the respondent-State.

3. This application is instituted essentially challenging Annexure A/7 order by which an application for reference under Section 70(2)(B) of the Chhattisgarh Commercial Tax Act, 1994 read with Section 13 of the Entry Tax Act, 1976 was refused by the Commercial Tax

Tribunal, Raipur.

4. The appellant pleaded that it is involved in the activity for providing telecommunication services to its customers under license granted by the Department of Telecommunication and that there is no component involved in its activities, which could be brought to levy in terms of the Entry Tax Act. Therefore, in the light of the adverse decisions rendered in the statutory hierarchy, the application for reference was made. That stands rejected.

5. Having considered the materials available before us and in the light of the relevant facts and factors, we uphold the plea of the appellant that the following questions deserve to be referred for consideration of the High Court :-

> “1. 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 the meaning of the provisions of CG 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 charing section viz Section 3(1) of the CG Entry Tax Act, 1976?
>
> 2. Whether levy of Entry Tax on plant and machinery purchased 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 case of goods purchased in course of business?"

6. For the aforesaid reasons this application is allowed directing the Commercial Tax Tribunal, Raipur, to make a reference of the aforementioned two questions of law to the High Court for decision in terms of Section 70(2)(B) of Chhattisgarh Commercial Tax Act, 1994 read with Section 13 of the Entry Tax Act, 1976. Let this be done within three months from the date of receipt of copy of this order.

Sd/- Sd/-

(Thottathil B. Radhakrishnan) (Sharad Kumar Gupta)
Chief Justice **Judge**

Kishore