IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P. Nos. 834, 835, 836, 837 and 1356 of 2015

Tata Sky Limited,
represented by its Chief Financial Controller
Mr. Sambasivan Ganesan,
1st Floor, SYMTEC, F-5,
3rd Phase, Ekkaduthangal,
Chennai - 32. ... Petitioner in W.P. Nos. 834 to 837 of 2015

-vs-

1. The State of Tamil Nadu,
   Represented by the Secretary,
   Commercial Taxes and Registration Department,
   St. George Fort,
   Chennai.

2. The Assistant Commissioner (CT),
   Chepauk Assessment Circle,
   Station No.1, Greams Road,
   First Floor, Chennai 600 006.
   ... Respondents in W.P. Nos. 834 to 837 of 2015

Prayer in W.P. No. 834 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Re-assessment order dated 28.11.2014 passed by the 2nd respondent bearing reference No. TIN No.33100561230/2012-13 and to quash the same and direct the 2nd respondent to hold de-novo adjudication of the matter by reconsidering the submissions made by the petitioner's reply dated 24.11.2014.

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Prayer in W.P. No. 835 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Re-assessment order dated 28.11.2014 passed by the 2nd respondent bearing reference No. TIN No.33100561230/2010-11 and to quash the same and direct the 2nd respondent to hold de-novo adjudication of the matter by reconsidering the submissions made by the petitioner's reply dated 24.11.2014.

Prayer in W.P. No. 836 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Re-assessment order dated 28.11.2014 passed by the 2nd respondent bearing reference No. TIN No.33100561230/2009-10 and to quash the same and direct the 2nd respondent to hold de-nevo adjudication of the matter by reconsidering the submissions made by the petitioner's reply dated 24.11.2014.

Prayer in W.P. No. 837 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Re-assessment order dated 28.11.2014 passed by the 2nd respondent bearing reference No. TIN No.33100561230/2011-12 and to quash the same and direct the 2nd respondent to hold de-novo adjudication of the matter by reconsidering the submissions made by the petitioner's reply dated 24.11.2014.

W.P.No. 1356 of 2015:

Tata Sky Limited,
represented by its Chief Financial Controller
Mr. Sambasivan Ganesan,
1st Floor, SYMTEC, F-5,
3rd Phase, Ekkaduthangal,
Chennai - 32. ... Petitioner

-vs-

1. The State of Tamil Nadu,
Represented by the Secretary,
Commercial Taxes and Registration Department,
St. George Fort,
Chennai.

2. The Commercial Tax Officer,
Guindy Assessment Circle,
46, Greenways Road, Taluk,
Office Building, R.A. Puram,
Chennai - 28. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Re-assessment order dated 12.12.2014 passed by the 2nd respondent bearing reference No. TIN No.33100561230/2013-14 and to quash the same and direct the 2nd respondent to hold de-nevo adjudication of the matter by reconsidering the submissions made by the petitioner's reply dated 24.11.2014.

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For Petitioner in all writ petitions : Mr.Sujith Ghosh
Senior Counsel
for Mr. A. K. Rajaraman

For Respondent in all writ petitions : Mr. Mohammed Shabbiq
Special Government Pleader

COMMON ORDER

Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

2. By this common order all the 5 writ petitions are being disposed. The petitioner has challenged the impugned orders all dated 28.07.2014 passed for the assessment years 2009-10, 2010-11, 2011-12, 2012-13 and the impugned order dated 12.12.2014 for the assessment year 2013-14.

3. These proceedings were initiated pursuant 4 separate notices dated 25.09.2014 and notice dated 25.10.2014 issued to the petitioner under section 27/27 (4) of the TN VAT Act, 2006, wherein it was proposed to demand differential tax on activation and installation charges of DTH Set-Top Box (STB) called Digicomp collected by the petitioner at the time of installation of DTH set-top box and to deny input tax credit availed on the goods which were sold by the petitioner.

4. The petitioner is engaged in DTH services. For providing the aforesaid service, the petitioner used to sell Set-Top Box to its customers. Apart from collecting regular subscription charges for providing DTH service, the petitioner used to collect one time activation and installation charges. The petitioner used to supply cables, dish antenna and accessories for the purpose activation of the DTH service and claims to have paid service tax on the same. Since the petitioner was purchasing Set-Top Box and sold the same to the customers either directly or through dealers, petitioner availed input tax credit on Set-Top Box in terms of section 19 of the TN VAT Act, 2006.

5. Later the petitioner altered the business model and started supplying set-top box also as a part of the service provided and therefore no VAT was paid to the petitioner on the Set top Box.

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6. The respondent construed that the petitioner was liable to pay VAT on the activation and installation of the DTH Set-Top Box (STB) to the customers. The notices also proposed deny input tax credit on the inputs namely Set-Top Box on the ground that the petitioner had neither produced the original tax invoice before the enforcement wing official nor before the assessing authority as was required under Rule 10 (2) of the TN VAT Act, 2006 and therefore the petitioner was liable to pay tax and reverse the proportionate credit to the extent the petitioner had failed to produce necessary invoices before the assessing officer.

7. It is the contention of the respondent that even though petitioner used to retain the ownership over dish antenna, cables and accessories and later over the set-top box, the fact that the subscribers were required to pay in case of loss or damage indicated that there was a sale.

8. It is the contention of the petitioner that it was paying service tax on installation and activation charges and therefore the petitioner cannot be made liable to pay VAT on such activation and installation charges under the provisions of the TN VAT Act, 2006.

9. The learned counsel for the petitioner submits that while passing the order the respondent has relied on clauses not relevant for the relevant assessment year to continues the tax and therefore has committed an error.

10. Per contra, the learned counsel for the respondent the impugned order is well reasoned and requires no interference. It is further submitted that the petitioner has an alternate remedy under section 51 of the TN VAT Act, 2006, by way of a statutory appeal before the Additional Deputy Commissioner. Under the circumstances it is submitted that these writ petitions were liable to be dismissed.

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11. I have considered the arguments advanced on behalf of the petitioner and the respondents and perused the impugned order. It is noted that the petitioner was not only providing DTH service to its subscribers on which it was paying service tax, it was also collecting activation and installation charges at the time installation and activation of the DTH services. During the assessment year 2013-14, the petitioner claims to have stopped selling DTH Set-Top Box and started offering it as

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part of DTH service. However, in the impugned order for the said assessment are also the clauses in the agreements for the previous period have been relied upon.

12. It is further noticed that there may have been transfer of right to use of the dish net antenna, cable and accessories and later set top box as well. It is not clear from the impugned order and the notices issued by this order to the petitioner whether any proposal was made to collect VAT from the petitioner under section 4 of the TN VAT Act, 2006 as the petitioner had primafacie, transferred the right to use in favour of the subscribers. There is also no clarity on the issue relating to denial of credit. There is also no clear discussion in the impugned orders as to whether the petitioner has paid service tax on the activation installation charges on the whole or part of the amount. Thus, the impugned order is liable to be set aside and remitted back for passing a fresh order.

13. Under these circumstances, I am inclined to set aside the impugned orders and remit the case back to the respondent to pass fresh order on merits within a period of 3 months from date of receipt of a copy of this order. Respective impugned orders which stand quashed shall be treated as show cause notices. If desired, the respondent may issue a further corrigendum to the petitioner to answer within a period of 60 days from date of receipt of a copy of this order. It is expected that the respondent shall pass a speaking order in accordance with law within a period of 120 days from date of receipt of a copy of this order. Needless to state, before passing such orders for the respective assessment years, petitioner shall also be heard in person or through their legal/sales tax representatives.

14. These Writ petitions thus stand disposed with the above observations. No cost.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To
1. The Secretary,
Commercial Taxes and Registration Department,
St. George Fort,
Chennai.

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2. The Assistant Commissioner (CT),
   Chepauk Assessment Circle,
   Station No.1, Greams Road,
   First Floor, Chennai 600 006.

3. The Commercial Tax Officer,
   Guindy Assessment Circle,
   46, Greenways Road, Taluk,
   Office Building, R.A. Puram,
   Chennai - 28.

+2 Ccs to Mr.R. Sathish Kumar, Advocate sr 6266.
+1 CC to The Special Government Pleader sr 5950.

W.P. Nos. 834, 1356, 835, 836 and 837 of 2015

SSI(CO)
SP(10/03/2020)

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