BEFORE THE HIMACHAL PRADESH TAX TRIBUNAL, DHARAMSHALA, CAMP AT SHIMLA

Appeal No.	:	84 & 85/ 2014 & 68 & 69/ 2015
Date of Institution	:	15-12-2014 & 23-09-2015
Date of order	:	16-03-2024

In the matter of:

M/s Bharti Airtel Ltd. SDA Complex Shimla.

.....Appellant

Vs

i) Excise and Taxation Commissioner- cum –AA Shimla, HP.
ii) The Dy. E&TC, FS, SZ, Parwanoo.

.....Respondents

Parties represented by:-

Shri Goverdhan Sharma, Advocate for the Appellant.

Shri Sandeep Mandyal, Sr. Law Officer, Law for the Respondents.

Appeal under Section 12 of the HP Tax on Entry of Goods into Local Area Act, 2010 read with Section 45(2) of the Himachal Pradesh, Value Added Tax Act, 2005

Order

1. The present appeals have been filed by M/s Bharti Airtel Ltd. SDA Complex Shimla against the order of the Excise & Taxation Commissioner-cum- Appellate Authority, Shimla, dated 18-10-2014 & 04-09-2015 vide which Additional Demand of Rs. 3,28,64,284/- created for the assessment years 2010-11 & 2011-12 by the Assessing Authority Dy. E&TC, FS, SZ, Parwanoo, Solan vide order dated 02-02-2012, against

the appellant, under the HP Tax on Entry of Goods into Local Area Act, 2010 and the HP VAT Act, 2005, were upheld, by the 1st Appellate Authority.

2. The brief facts of the case are that at the time of assessment of the appellant dealer under the HP Tax on Entry of Goods into Local Area Act, 2010 read with the HP VAT Act, 2005, Assessing Authority found that the appellant had not paid any Entry Tax. The appellant is a company engaged in the business of providing telecommunication services in the state of Himachal Pradesh. The appellant company is registered as "dealer" in the state of Himachal Pradesh under the HPVAT Act, 2005 & under the above act. The Ld. Assessing Authority found that the goods imported into the State have been used for the purpose specified in Entry No. 5 of Schedule II of the HP Tax on Entry of Goods into Local Area Act, 2010 and held that these goods were liable to Entry Tax as per Section 3 of the Act ibid. Accordingly, an amount of Entry Tax was assessed which resulted into a demand of Rs. 4,84,89,634/- which was later changed to Rs. 3,28,64,284/- by omitting the clerical errors by the 1st Appellate Authority. Against the order of the Ld. Assessing Authority, the Appellant preferred an appeal to the Ld. Appellate Authority Excise and Taxation Commissioner Shimla, HP. The Ld. Appellate Authority upheld the demand created by the Assessing Authority of Rs. 3,28,64,284/- vide its order dated 04-09-2015 and also upheld the jurisdiction of the Assessing Authority vide order dated 18-10-2014 and the present appeals have been filed against these orders.

3. Aggrieved by the order of Ld. Appellate authority the appellant has filled the appeals before this Tribunal on the following grounds:-

   I. *That the respondent No-2 has erred in law and fact of the case by deciding the matter ex-parte that too without any jurisdiction to frame the assessment. It is pertinent to mention here that as per provision of the HPVAT Act and the provision of the Entry Tax Act (Section 12 and 13 of the Entry Tax Act) the Assessing Authority has been authorized to frame assessment under the Entry Tax Act. Thus it is clear from the said provisions of both the Acts that the orders*

as passed by the respondent are illegal, without jurisdiction hence liable to be quashed.

II. *That the respondent No.2 has erred in law and fact of the case by deciding the matter ex-parte without affording the reasonable opportunity of hearing. The said ex-parte order is in violation of the natural Justice hence the impugned order is liable to be quashed and set aside.*

III. *That the goods imported by the appellant do not fall within section 3 (which is the charging section) read with Schedule II of the Act and therefore are at any rate not chargeable to entry tax.*

IV. *That the respondent No-2 has erred in law and fact of the case by passing the orders which are non speaking and has not been passed on financial year basis. Hence on this ground the appeal of the appellant deserves to be allowed.*

V. *That the respondent No-1 has erred in law and fact of the case by relying upon the notification dated 05-06-2000 which has been issued under the HPGST Act and has no relevancy in the instant case as this notification is not applicable under the HP Entry Tax Act and if the same is to be implemented than this notification has been issued only for the purpose of section 31(1) of the HPGST Act, 1968 which refers to the Revision of the orders.*

4. The Ld. Counsel for the appellant has submitted that the matter is covered by the judgment of Hon'ble High Court of HP in CWP No. 178 of 2001 in Manali Resorts V. State of Himachal Pradesh dated 24th April, 2007. In the instant case, the goods have been brought into the site by the Appellant either by way of purchase by the Appellant from out of the State, for its own use. The Assessing Authority has erred in law and fact of the case by creating demand under the Act without verifying the fact that entire amount as has been reflected in the returns in non taxable as the goods which has been imported into the state does not fall in schedule-II of the Act, hence, the question of payment of entry tax does not arises at all. Hence on these grounds the appeal of the appellant deserves to be allowed.

5. Sh. Sandeep Mandyal, Sr. Law Officer, of the department said that the petitioner has no grounds to agitate before this tribunal as the issues raised herein have been correctly addressed by the authorities below and pleaded that their actions may be upheld.

6. I have heard the Ld. Counsel for the Appellant and the Ld. Counsel for the respondents in detail and perused the record and the relevant provisions of law contained in the HP Tax on Entry of Tax into Local Area Act, 2010 (hereafter referred to as "Entry Tax Act") as well. The contentions raised by the Appellant are answered as follows:-

i) The perusal of the Notification dated 05th June, 2000 produced by the Sr. Law officer before the court shows that the Taxation department has conferred the powers of assessment to DETC's of FS/SZ of all the zones within the respective jurisdiction. Hence, by virtue of the Notification No. EXN-F (10)5/81 dated 05the June 2000, issued under erstwhile HPGST Act, 1968 which was carried forward by the 'saving clause' under HPVAT Act, 2005 and under Section 12 of HP Entry Tax Act, 2010, DETC's of Flying Squad are authorized and are competent for framing assessment. The contention of the appellant is contrary to the provisions of section 12 of Entry Tax Act vide which the relevant provisions of the HP VAT Act, 2005 and the Rules made there under have been expressly made *mutatis mutandis* applicable for the purposes of Entry Tax and accordingly, the said contention deserves rejection in view of explicit statutory provisions.

ii) The contention of the Appellant that no opportunity of being heard was given and the impugned order was passed ex parte is not based on facts. From the perusal of the order, it is clear that proper notice for assessment was given to the appellant. Appellant was given opportunities on 19-01-2012, 24-01-2012, 27-01-2012 and 02-02-2012 to put forth its arguments. The appellant was afforded reasonable opportunity of being heard and put forth arguments on why Entry Tax under Section 3 of HP Entry Tax Act, 2010 should not been imposed. As such, I am of the view that the orders are legal and have been passed after

affording reasonable opportunity of being heard and principles of natural justice have been honored.

iii) Further, it is seen that the impugned orders dated 18-10-2014 & 4-09-2015 cannot be held to be a non speaking order. These are details orders. The order dated 18-10-2014 of the 1st Appellate Authority has categorically upheld the jurisdiction of DETC's Flying Squad as Assessing Authority whereas the order dated 04-09-2015 has upheld the demand created by the Assessing Authority along with omitting the clerical mistake committed by the Assessing Authority while making calculations and hence ordered that the Entry Tax to be recovered from the appellant as Rs. 3,28,64,284/- as per the provisions of HP Tax on Entry of Goods into Local Area Act, 2010.

iv) As regards levy of Entry Tax, it is not in doubt nor in dispute that the appellant has, in fact, admittedly affected entry of the concerned goods for consumption and in the above-said infra-structure of power or telecommunication projects. The provisions of the charging Section 3 (1) of the Entry Tax Act mandates *that "there shall be levied and paid to the State Government a tax on the entry, in the course of business of a dealer, of the goods specified in Schedule-II into each local area for consumption, use or sale therein .shall be levied and paid to the State Government a tax on the entry, in the course of business of a dealer, of the goods specified in Schedule-II into each local area for consumption, use or sale therein".* Section 2(1) (f) of the Entry Tax Act defines *"entry of goods into a local area" with all its grammatical variations and cognate expressions means entry of goods into a local area from any place outside thereof including a place outside the State for consumption, use or sale therein."* It is an admitted fact that the appellant is engaged in providing Telecom Network, Telecom Services and Live Cellular System etc. firm is purchasing Transmission/PC Cables, Transmission optical patch cords, HDPE self Lubricated ducts, Transmission/IF Cables, Connectors, Antennas, End Plugs, Simple Plugs, Broadcast Agent Servers, fire alarm systems etc. from M/s Ericsson India (P)

Ltd. Etc. Firm is causing entry of goods of above nature into local area for incorporation into works contracts/ consumption/ use for setting up towers, laying of cables and running Mobile Telephone Services within the state of Himachal Pradesh. Consequently, the appellant by his act of having caused and effected entry of the relevant goods into local areas of the State for consumption or use not only make the appellant a dealer but also clearly and indisputably attract liability to pay tax on entry of the goods. Section 3, ibid, does not require that in order to attract the levy of Entry Tax "sale" of goods is essential. The argument by the appellant does not whittle down the statutory tax liability which arises with the entry of goods into a local area for consumption or use. It is an admitted fact that these goods have been used and irrespective of their nature of use in the infrastructure, the tax liability remains intact and is exigible under the provisions of the Entry Tax Act. The provisions of section 3(1) of the Entry Tax Act apply to every use of goods as suggested for the appellant. The Supreme Court in Union of India Vs. Dharmendra Textile Processors (2008) 18 VST 180 has clearly held that "***It is well-settled principle of law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intention....Legislative casus omissus cannot be supplied by judicial interpretative process.***"

v) Entry 5 of the Schedule II to the Entry Tax Act only determines a rate of tax created by Section 3(1) of the Entry Tax Act. Further, the contention of the appellant that the goods imported by him does not fall under Schedule II is not acceptable. The above mentioned goods/ materials fall under Entry No. 5 of Schedule –II of the Entry Tax Act in which it has been clearly mentioned that:-

'Goods used in works contracts, including hydropower and thermal power projects, generations, transmissions and distribution projects,

Telecommunications and all other turnkey projects being executed by private as well a Government Department/ Corporations/ Boards etc, in the State'.

Therefore, Entry Tax is leviable on the entry of the goods being brought in to the State by the appellant for telecommunication use, from outside the state into local area, under Section 3 of the HP Tax on Entry of Goods into Local Area Act, 2010.

7. The plea of the appellant being thus directly contrary to the facts deserves to be rejected. I agree with the reasons adduced by the Ld. 1st Appellate Authority in his impugned orders dated 18-10-2014 & 04-09-2015 which are detailed and speaking one and the same are concurred to by this Tribunal also. Consequently, the impugned orders of the Ld. Assessing Authority dated 02-02-2012 and of the Ld. Appellate Authority dated 18-10-2014 & 04-09-2015 call for no interference and these are upheld.

8. Copy of this order be sent to the parties concerned. File after due completion be consigned to the record room.

Priyatu Mandal
Chairman,
HP Tax Tribunal,
Camp at Shimla

H P Tax Tribunal Camp at Shimla
Block No 30, SDA Complex Shimla-9

Endst. No. HPTT/CS/2024 -1370 17 **Dated:** 16/03/2024

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Jt. CST&E, FS, SZ, Parwanoo, Solan.
3. M/s Bharti Airtel Ltd. SDA Complex Shimla.
4. Sh. Goverdhan Sharma, Advocate for the Appellant.
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.

Reader
HP Tax Tribunal
Dharamshala

H P Tax Tribunal Camp at Shimla,
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