

Rajasthan Tax Board, Ajmer

Appeal No. 1073/2011/Jaipur

Appeal No. 1074/2011/Jaipur

M/s R.P. Digitech
S-34, Subhash Nagar Shopping
Complex, Jaipur

...Appellant

VERSUS

Assistant Commissioner,
Commercial Taxes,
Special Circle-V, Jaipur

.....Respondents

S.B.

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :
Ajay Rastogi, Advocate

for Appellant

Shri N.K. Baid,
Dy. Govt. Advocate

for Respondents

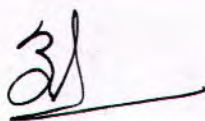
Dated : 08.03.2018

JUDGMENT

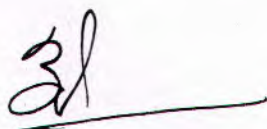
1. These appeals have been filed by the appellant dealer (hereinafter called the "appellant"), against orders of the Deputy Commissioner (Appeals) -III, Commercial Tax Department, Jaipur (hereinafter called the "appellate authority") dated 10.01.2011, who rejected the appeals against the assessment orders passed by Assistant Commissioner, Commercial Taxes, Special Circle-V, Jaipur (hereinafter called the "assessing officer" or "AO") dated 25.03.2010, under section 26, 55 and 58 of the Rajasthan Valued Added Tax Act, 2003 (hereinafter called the "Act").

The details of the Appellate orders as well as the AO's orders, are as under:

Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Officer's order Details		
		Appeal No.	order dated	order dated	disputed tax	disputed interest
1073/2011/JPR	2006-07	157/Appeals-IV/10-11/E	10.01.2011	25.03.2010	621289	223657
1074/2011/JPR	2007-08	156/Appeals-IV/10-11/E	10.01.2011	29.03.2010	574937	170255



2. Brief facts leading to the present appeals are that the appellant is in the business of Dish TV Antenna systems and accessories etc. and as per appellant's grounds of Appeal, he is an intermediate dealer between the Company providing DTH Service equipments and last stage dealers who actually install the Dish Antenna system, which includes digital decoders commonly known as 'set top box' and a smart card called as 'VC Card' which enables the digital decoders to get access to digital signals from the satellite through MSO.
3. The appellant, in the course of his business brings in the goods from outside the State, on consignment basis against Form 'F' and sells/supplies the same to the next stage dealers who in effect sell and install the TV Antenna System & accessories at the place of end-customers. The AO while finalizing the assessments for the years 2006-07 and 2007-08, after perusal of the record, found that the appellant sold the goods to next stage dealers and out of the total amount charged in the invoices the 'VC security amount' and the 'installation charges' were not shown as taxable receipts and no tax was paid on these amounts, which were in fact part of the consideration for the whole 'antenna system' as sold by the appellant. The AO held these receipts to be part of the 'sale value' and levied tax and interest thereon.
4. Aggrieved of the assessment orders, the appellant preferred appeals before the appellate authority who upheld the levy of tax & interest and rejected appeals.
5. The appellate authority has held that the appellant brought the TV antenna system and its accessories on consignment sale basis from out of the State and subsequently sold to various dealers who ultimately sold, supplied and installed the TV Antenna system & accessories at the end-customers' premises, so the receipts in the composite invoice shown as 'VC security' and 'installation charges' were in fact part of the 'sale price', hence confirmed the levy and rejected the appeals.



6. The learned advocate appearing for the appellant submits that the appellant is a distributor of Dish TV antenna systems and accessories and in the course of his business supplies this goods to various dealers and prepare invoices wherein, apart from the taxable sale component, a refundable "security amount for VC cards" and "installation charges" are also collected. As the security amount so collected, was refundable to the depositors, hence it is not taxable as per the law. For installation charges he submits that this amount has been charged as labour component of installing the device at the place of user customers, so this too is not part of the sale price. However, the assessing officer did not accept it as mere 'security deposit' and 'installation charges', and included the same in taxable turnover of the appellant and accordingly levied tax and interest thereupon. He also submitted that VC card cannot be held to be a 'goods' in light of the various judgment of the various Hon'ble Courts. He referred the following judgments:

1. Bharat Sanchar Nigam Ltd. Vs. Union of India & Ors. (2006) 145 STC 81
2. State of Punjab Vs. Hindustan Petroleum Ltd. (2007) 7 VST 702 (P & H)
3. Commissioner of Central Excise & Customers Vs. Idea Mobile Communication (2009) 22 VST 454 (Ker)
4. Aircel Digilink India Ltd. Vs. DC (Appeals) 33 TUD 3 (RTB-DB)

In light of the factual position so described and the cited judgments, he has requested to set aside the appellate orders and accept the appeals.

7. Learned Deputy Government Advocate appearing for the respondent Revenue supported orders of the appellate authority as well as the assessing authority and requests to reject the appeals. He submits that the antenna system in whole, comprising hardware as well as the VC card, was sold and supplied to the dealers, therefore, it was a bundled supply and the whole consideration would form part of the sale value. He also submits that as the goods were sold to next stage dealers therefore, there was no occasion for installation of the same and collection of any charge in the name of 'installation charges' was to evade the tax.
8. I have carefully gone through the submission from both the parties and perused the relevant record. The appellant has brought this goods from



out of the State on consignment basis against form 'F' and sells these goods to the next stage dealers to further sell the same to the end-customers and install these equipment at their premises. As per the purchase statement submitted by the appellant in Form VAT-07, the consignor of goods is M/s ACS Enterprises Ltd., Delhi who has consigned the goods on consignment sale basis against form 'F', and as per the sales statement as submitted in form VAT-9 there are number of purchasing dealers to whom the goods is ultimately sold by the appellant. For the sake of convenience as well as to understand the nature and amount of the transactions a few sample entries as taken from these statements for the period April-June, 2006 are reproduced hereunder :-

"VAT FORM NO. 7

*Details of inter state purchase against 'F' Form for the period
01.04.2006 to 30.06.2006*

S.No.	Date	Name of Party	Tin No.	Invoice No.	Amount
1	19.4.06	ASC Enterprises	7100296558	106	1081500
2	17.05.06	ASC Enterprises	7100296558	215	432600
3	25.05.06	ASC Enterprises	7100296558	306	648900
4	17.06.06	ASC Enterprises	7100296558	484	1081500
		Total			3244500

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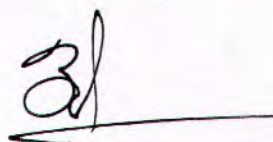
9. Likewise, the details of sale as submitted by the appellant in Form VAT-9 and a few sample entries from that statement, are reproduced hereunder:

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S. No.	Name of Party	TIN No.	Type of ac	Invoice No.	Total Amount	Taxable Amount	Vc security refundable Amount	Tax Amount	Installation Amount
1	Videon Electronics	8152100520	Sales	DTH/0001	57000	43260	8000	1740	4000
2	Gupta Agencies	8882251196	Sales	DTH/0002	57000	43260	8000	1740	4000
3	Surbhi	8471610106	Sales	DTH/0003	142500	108150	20000	4350	10000
4	Parnami Mobile & A	8602108372	Sales	DTH/0004	57000	43260	8000	1740	4000
5	Anupam Electronics	816170199	Sales	DTH/0005	82500	64890	12000	2610	3000

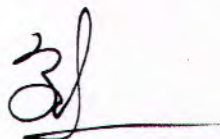
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10. As per the above sales statement, all the 148 purchasing dealers are registered under the VAT Act and TIN of each such dealer has been mentioned in this statement. Though some unregistered dealers (URD)



sale has also been shown but that is miniscule in comparison to registered dealers (RD) Sale. The appellant has mentioned such URD sale as "without TIN No." sale. So, from the AO's record it is evident that the sale in question is made out-rightly to the dealers only and not to end-customers. Therefore, out of the disputed transactions having part component of 'VC Security refundable amount' and 'Installation Amount', we arrive at a considered view that as the sale of the said goods are essentially made to the registered dealers who would further sell these equipments to the end-customers and get those installed at their premises, therefore, any amount shown as the 'installation charges' as purportedly collected from these next stage dealers, is factually incorrect and stands unsubstantiated. Since, the equipments as sold or supplied to the next stage dealers, were not installed at their places, therefore, the installation charges as shown in the invoices was in-fact part of the sales consideration exigible to tax. So, on this issue the argument of the appellant is completely untenable, hence rejected and it is held that the so-called installation charges would form part of the 'sale value' liable to tax. Accordingly, the orders of the lower authorities on this count are upheld.

11. So far as the issue of the so called 'VC security amount' is concerned, the dealer has nowhere shown or proved if any such security amount was refunded at all to some or any of the buyers, and on the other hand, it is not clear if any enquiry was made by the AO regarding the same, hence this Bench is not in a position to arrive at a definite 'finding of fact' on this issue. This is a matter of further enquiry at the level of AO to ascertain the claim of the assessee and counter claim of the respondent revenue.
12. So far as the four judgments as referred by the appellant are concerned, three of them viz. BSNL, Idea Mobile and Aircel Digilink cases relate to, apart from the other issues, the taxability or non-taxability of the SIM cards whereas the fourth case i.e. Hindustan Petroleum case (2007) 7 VST 702 (P&H) relates to the security amount taken by HPCL against the cylinders given to the consumers.



13. I have given a considered thought to these judgments with utmost respect to the Hon'ble Courts. In the referred cases, the SIM Cards were provided by the Telecom Companies (the service providers) to its subscribers and the Hon'ble Courts have held that if the sale of SIM Card is merely incidental to the service being provided which only facilitates the identification of the subscribers, their credit and other debits, it would not be assessable to sales tax.
14. It would be worthwhile to peruse the judgment in the lead case i.e. Bharat Sanchar Nigam Ltd. Vs. Union of India & Ors : (2006) 145 STC 91(SC). The Larger Bench of the Hon'ble Supreme Court in this matter has arrived at the following conclusion :
- "87. It is not possible for this Court to opine finally on the issue. What a SIM card represents is ultimately a question of fact as has been correctly submitted by the States. In determining the issue, however the assessing authorities will have to keep in mind the following principles : If the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the sales tax authorities to levy sales tax thereon. There is insufficient material on the basis of which we can reach a decision. However we emphasise that if the sale of a SIM card is merely incidental to the service being provided and only facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax. In our opinion the High Court ought not to have finally determined the issue. In any event, the High Court erred in including the cost of the service in the value of the SIM card by relying on the aspects doctrine."*
15. In the Telecom cases as referred by the appellant, the SIM Cards were supplied to the subscribers and sale of SIM Card was held to be incidental to the service provided by the telecom service providers, but

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in the instant case the VC Cards are not supplied to the end-customers but sold to the next stage dealers in a composite supply of goods consisting of TV antenna system, its accessories and VC Cards, so, in fact this was not a part of the service provided by the DTH operator to its end-customers. Therefore, the facts & circumstances of the instant case are different from those of the Telecom service providers and accordingly the *ratio decidendi* of the cases so discussed does not apply in this case.

16. However, the similar matters of TV antenna sale and supplies have been dealt by the Hon'ble Rajasthan High Court as well as the Rajasthan Tax Board and the Hon'ble High Court as well as the Tax Board has remanded the matters back to the Assessing Officers to enquire the issue of alleged security deposit for VC Cards as to whether the same would constitute a transaction of 'sale' or 'lease'. These cases are :-

1. M/s. Ronak Distributors (P) Ltd. V/s CTO, S.B. Civil (VAT) Revision Petition No. 179/14, D/o 14.01.2015 (RHC).
2. M/s. Narendra Motors V/s CTO, Appeal No. 2644/2011/Hanumangarh (RTB), order dated 20.03.2017.
3. M/s. Neha Creations V/s CTO, Appeal No. 1034/2010/Jaipur (RTB), order dated 18.01.2018.

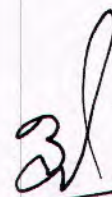
18. As discussed in foregoing paras, the impugned appellate order is confirmed on the issue of taxability of the "installation charges", but on the issue of 'VC security amount', the orders of the lower authorities are set aside and the matter is remanded back to AO to ascertain if the so called "VC security amount" was collected as a 'security deposit' only and the same has been refunded wherever it was necessitated to do so, or it was simply an accounting maneuver to dodge the tax liability. The AO shall also enquire if this transaction falls in the ambit of "Lease" or an outright "Sale" and levy the tax accordingly.

19. The appellant shall appear before the AO on 05.04.2018 and furnish the necessary evidence to prove as to why the disputed transactions would not fall into the purview of 'sale', and as to whether this so-called security amount was collected as per the prior condition between the



two parties and the same was refunded to the so-called depositors as and when required by the terms of the agreement, if any.

20. Thus, both the appeals are partly accepted and the cases are remanded back to AO to dispose off the matter as directed.
22. Order pronounced.


08.03.2018

(Omkar Singh Ashiya)
Member