

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

Appeal No. : 65/ 2017  
Date of Institution : 17-10-2017  
Date of order : 19-07-2023

**In the matter of:**

M/s Bharat Sanchar Nigam Limited, formerly registered as AGM  
MM BSNL SDA Complex, Kasumpti, Shimla

**.....Appellant**

**Vs**

1. Addl. ETC-cum-Appellate Authority, (SZ), Shimla (HP).
- &
2. Assessing Authority, Sanjauli Circle, Distt. Shimla (HP).

**.....Respondents**

**Parties represented by:-**

Shri Rakesh Sharma, Advocate for the Appellant.  
Shri Sandeep Mandyal, Sr. Law officer for the Respondent.

**Appeal u/s 12 of Himachal Pradesh Tax on Entry of Goods into local  
Area Act, 2010 read with section 45(2) of the HP VAT Act, 2005**

**Order**

1. The present appeal has been filed by M/s Bharat Sanchar Nigam Limited, registered as AGM MM BSNL SDA Complex, Kasumpti, Shimla Himachal Pradesh against the order of Ld. Addl. Excise and Taxation Commissioner-Cum-Appellate (SZ), Himachal Pradesh, Shimla dated 30-11-2016 who dismissed the appeal filed by BSNL against the order dated 27-02-2016, of the Assessing Authority Sanjauli Circle, Shimla, HP whereby additional demand of Rs. 23,38,962/- was created for the period w.e.f 01-07-2015 to 31-12-2015, under the HP Tax on Entry Goods into Local Area Act, 2010.

2. Brief facts of the case are that Bharat Sanchar Nigam Limited, registered as AGM MM BSNL SDA Complex, Kasumpti Shimla (hereinafter referred to as 'appellant') was procuring material for use in constructing telecom

infrastructure including towers, mobile BTS and also for repair and maintenance and for sales of telecom products. The appellant imports majority of the materials from outside Himachal Pradesh, either from its own factories situated outside the State or from independent vendors. The Assessing Authority, Sanjauli Circle vide his orders dated 27-02-2016 evaluated the appellant under the HP Tax on Entry of Goods into local area Act, 2010 read with the rules made there under and found that the dealer had effected entry of goods into the local areas of Himachal Pradesh, by way of interstate purchases. The Assessing Authority found that these goods had 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 the goods were liable to Entry Tax as per section 3 of the Act *ibid*. Accordingly, Entry Tax was assessed which resulted into a demand of Rs. 23,38,962/-. Against this order of the Assessing Authority, the appellant preferred an appeal to the Ld. Appellate Authority-Cum Addl. Commissioner State Taxes and Excise (South Zone), H.P. Shimla. The Ld. Appellate Authority (South Zone) passed the order dated 30-11-2016 upholding orders dated 27-02-2016 of the Assessing Authority and the demands created therein. The appellant has thereafter filed the present appeals against the said appellate order dated 30<sup>th</sup> November, 2016.

3. Aggrieved by the orders of the Ld. Appellate Authority, the Appellant has filed these appeals before this Tribunal on the following grounds:

- I. *The assessing authority levied the Entry Tax on the entire purchases irrespective of its use in works contract. Majority of goods like setting up of OCB Exchanges etc. were used by the appellant through its own employees without outsourcing or through works contractor. As per the mandate of statute, only goods used in works contracts are subjected to the Entry Tax only. The action of assessing authority, taxing the entire purchase turnover is illegal arbitrary and unjustified. Besides this the goods sold by the appellant against the payment of Value*





*Added Tax Act, 2005, has been subjected to Entry Tax, which is illegal and not sustainable in the eyes of law.*

II. *The liability for payment of Entry Tax rest with the vendors supplying and bringing in the goods into the local area. The respondent authority has failed to discharge its obligation to recover the Entry Tax from the various vendors who were bringing in the good into the local area.*

III. *The provisions of the Entry Tax Act, 2010 are violative of constitution provisions. The appellant has given its position citing Article 304A and Article 301 of Constitution and stated that the Entry Tax is inherently unconstitutional.*

4. The counsel for the appellant prayed that the appeals be accepted and impugned orders be quashed, along with the additional demand created against the appellant. It is stated by the counsel that the observations of the Appellate Authority are illegal and factually incorrect whereby it has been observed that M/s BSNL Shimla imports majority of the material from outside the State of Himachal Pradesh either from its own factories situated outside the State against Form "F" or from independent vendors on 'FOR' destination basis as per tender conditions. The independent vendors transported materials from outside the state of HP at different locations 'FOR' destination basis. The said material was property of independent vendors in transit/transport while entering in the State of Himachal Pradesh. Entry Tax, if leviable, was the liability of such vendors, but department failed to collect Entry Tax at HP Barriers from vendors who were wrongly using BSNL TIN number at the time of entry of material to HP state and the Assessing Authority had shifted the liability of Entry Tax on appellant which is against the provisions of the Act. It has been prayed that the matter be remanded back to the Assessing Authority to finalize the Assessment afresh after considering the contentions raised by the appellant.

5. Sh. Sandeep Mandyal, Sr. Law officer of the department stated that there is nothing on record to show that liability of Entry Tax is of the sellers and not of

the appellant, as per tender conditions of sale and supply of goods raised at the time when goods were brought into the State. He stated that the petitioner has no case to agitate before this Tribunal as the issues raised herein have already been addressed by the authority below and their action may be upheld.

6. I have heard the Ld. Counsel and the Ld. Dept. counsel in detail, perused the record and the relevant provisions of law contained in the HP Tax on Entry of Tax into Local Area Act, 2010 (hereafter refer to as "Entry Tax Act") as well. As regards levy of Entry Tax, it is not in doubt nor in dispute that the appellant has, in fact, admittedly through his vendors effected entry of the concerned goods for consumption or use in the 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"*.

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 has been purchasing goods from outside the state for use of the same in telecom infrastructure within the State of Himachal Pradesh. Consequently, the appellant, by the act of having caused and effected entry of the relevant goods into local areas of the State for consumption or use, not only makes the appellant a dealer but also clearly and indisputably attracts 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 of the appellant about Assessing Authority levying the Entry Tax on the entire purchases irrespective of its use in works contract 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 telecom 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 use of goods and there is no merit in restricting the meaning of the word "use" employed in section 3(1) of the Entry Tax Act, as suggested for the appellant. The Hon'ble Supreme Court in Union of India v. 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."*** Entry 5 of the Schedule II to the Entry Tax Act only determines a rate of the charge of tax created by Section 3(1) of the Entry Tax Act.

It is clear from the combined reading of the above two provisions i.e. Section 2(1)(f) and Section 3 of HP TEGLA Act, 2010 that the BSNL was liable to pay Entry Tax to the government @5% on the value of those goods which were brought from outside the State.

7. The Appellant should have been well aware about the liability to pay Entry Tax as the appellant had procured/purchased the said material in its name and allowed use of its name and TIN in invoices which were raised for the purpose of transport of goods into the State. The name and TIN of the appellant, who is a registered dealer in the State, mentioned on the invoices as purchaser, clearly shows the liability to pay Entry Tax on to the appellant. Further, the appellant did not dispute the figure of Entry Tax liability determined by the assessing authority. There is thus merit in the action of Assessing Authority. The goods have been used and irrespective of the nature of use in the telecom infrastructure, the tax liability remains intact and is exigible under the provisions of the Entry Tax Act.

The plea of the appellant is thus contrary to the admitted facts and therefore the same deserves to be rejected. I agree with the reasons adduced by the Ld. 1<sup>st</sup> appellate authority in the impugned order dated 30-11-2016 which is a detailed one and a speaking order. The same is concurred to by this Tribunal also. The

Ld. Appellant has given detailed reasons regarding interpretation of Entry no. 5 of schedule-II of the Entry Tax Act supra, to explain the intention of the Entry and its applicability in this case. There is nothing in the Act to say that only work contracts were liable to be taxed under the Act. The Appellant's arguments that the Entry Tax should have been levied upon the respective vendors is incorrect because the concerned Goods were brought to the State by their vendors in the name of BSNL, using its TIN on the invoice, as stated by the Appellate Authority. For above reason and other reasons given in the order of the Appellate Authority, I find no merit in the Appeal, as already discussed above. The challenge to the constitutionality of the 2010 HP Tax on Entry of Goods into Local Area Act is not being dealt in this order since this Tribunal has no jurisdiction to take up such pleadings on Constitutionality of the Act or certain provisions of the Act.

8. Consequently, the impugned orders of the Assessing authority, Sanjauli circle, Shimla dated 27-02-2016 and of Ld. Appellate Authority-Cum-Addl Commissioner State Taxes and Excise SZ Shimla dated 30-11-2016 call for no interference and these are upheld.
9. Copy of this order be sent to the party concerned. File after due completion be Consigned to the record room.



(Akshay Sood)

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

Endst. No HPTT/CS/2023- 117 to 121

Dated 19/07/2023

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Assessing Authority, Sanjauli Circle, Shimla HP.
3. Bharat Sanchar Nigam Limited formerly registered as AGM MM BSNL  
SDA Complex, Kasumpti, Shimla.
4. Shri Rakesh Sharma. Advocate for the Appellant.
5. Sh. Sandeep Mandyal, Sr. Law officer, HQ.



Reader

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