



VATAP-52 and 53 of 2015 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. VATAP-52 of 2015 (O&M)

Global Mobile Infrastructure Pvt. Ltd.Appellant

vs.

Union Territory, Chandigarh and anr. ...Respondents

2. VATAP-53 of 2015 (O&M)

Global Mobile Infrastructure Pvt. Ltd.Appellant

vs.

Union Territory, Chandigarh and anr. ...Respondents

Reserved on:- 18.02.2025

Pronounced on :-05.04.2025

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Sandeep Goyal, Mr. Rishal Singla and
Ms. Alisha Chawla, Advocates, for the appellant (s).

Mr. Sumeet Jain, Addl. Standing counsel
for the respondents.

SUDEEPTI SHARMA, J.

1. The above mentioned two appeals have been preferred against order (s) dated 26.09.2014 passed by the Value Added Tax Tribunal Union Territory, Chandigarh (herein after to be referred as “Tribunal”) in Appeal No. 90 of 2010 (*VATAP No. 52-2015*) for A.Y 2006-2007 and Appeal No. 91 of 2010 (*VATAP No. 53-2015*) for A.Y



2007-2008, whereby the appeals filed by the appellant against order dated 08.10.2008, have been dismissed.

2. This judgment shall dispose of the above mentioned two appeals together, as common questions of law and facts are involved therein. However, for facility of reference, the facts are being taken from VATAP-53-2015.

BRIEF FACTS OF THE CASE

3. The appellant-company is engaged in the sale of distribution of telecommunication equipments for infrastructure services to telecom companies in India. The appellant company had purchased telecom equipment from M/s ZTE Corporation China, as per agreement dated 21.11.2006. The equipments were bought on a total credit basis for 24 months after which the payment was required to be made in installments by the appellant-company to M/s ZTE Corporation, China as per the agreement. Thereafter, the appellant company entered into a further agreement with M/s Spice Communications Ltd., on 20.12.2006 for supplying the equipments to them on a two years trial use basis and also gave an option to M/s Spice Communications Ltd to decide the purchase of said equipments at the end of two years trial period.

4. The Assistant Excise and Taxation Commissioner cum Designated Officer, U.T. Chandigarh, on the basis of inspection on the business premises of M/s Global Mobile Infrastructure Pvt. Limited 190, Ramdarbar, Industrial Area, Phase II, Chandigarh, conducted by



the ETO-cum-Designated Officer, U.T. Chandigarh on 15.04.2008, gave a notice under Section 30 of the Punjab Value Added Tax Act, 2005 read with Rule 39 of VAT Rules, 2005, after following due process. The appellant-company filed reply to the same. The Assistant Excise and Taxation Commissioner cum Designated Officer, U.T. Chandigarh passed provisional assessment order under Section 30 of Punjab Value Added Tax Act, 2005 and created demand of Rs.6,38,49,835/- for the assessment year 2007-2008, vide order dated 8.10.2008 and it was found that Appellant-Company had delivered goods to M/s Spice Communications Ltd., through delivery challans for the period from 1.01.2007 to 31.03.2007, 1.04.2007 to 31.03.2008 and 1.04.2008 to 12.04.2008 to the tune of Rs.21,54,71,671/-, Rs.1,45,70,14,348/- and Rs.3,88,10,763/- respectively. It was further found that the transaction is not shown in the returns for the year 2007-2008 on account of sale of goods to M/s Spice Communications Ltd.

5. The appellant-company then filed CWP No. 19404-2008 challenging the order dated 8.10.2008 and the same was dismissed as withdrawn, vide order dated 9.12.2008 to avail alternative remedy.

6. Against the above order dated 8.10.2008, the appellant-company filed appeal (s) before the Additional Excise and Taxation Commissioner, Chandigarh, who dismissed the same vide order dated 28.01.2010 and the appellant-company was held liable to pay tax on goods worth Rs.159,62,45,883 and further it was held by the Addl.



Excise and Taxation CommiOSSioner, Chandigarh that the appellant-company failed to pay the tax while filing the returns with a view to evade/avoid the payment.

7. The appellant-company then challenged the order dated 28.01.2010 before the learned Tribunal, who dismissed the appeal, vide order dated 26.09.2014. Hence, the present appeals.

SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES

8. Learned counsel for the appellant(s) contends that there is no transfer of goods for any consideration, therefore, the same would not amount to sale and could not be covered under the definition, as defined under Section 2 (zf) of the Punjab Value Added Tax Act, 2005 (hereinafter to be referred as “Act, 2005”). He further contends that the sale will be taxable for the year in which the goods are actually transferred for consideration and for the period in question, there is no such consideration and the advance received is also not sale.

9. Learned counsel for the appellant (s) further contends that if the right to use goods is to be taxed, it is only rental value of the goods, which can be taxed. Although, the appellant-company has not received any rent, therefore, the entire value of the goods cannot be taxed.

10. He has relied upon judgment of this Court in a case of ***GE Capitial Transportation Financial Services Ltd vs. State of Haryana and anr.***, [2013] 63 VST 329 (P&H).

11. Per contra, learned counsel for the respondent contends



that the goods were delivered by the appellant-company to M/s Spice Communications Pvt. Ltd. on trial basis for 24 months, which amounts to complete sale and, thus covered under the definition, as defined under Section 2(zf) (iv) of the Act, 2005.

12. He further contends that the amount of consideration is also mentioned in the agreement and goods are not returned till date. Further the price of goods is mentioned in the challans which are very much on record. As per the challans, most of goods are consumable, therefore, the price of goods would be sale price.

13. We have heard learned counsel for the parties and perused the whole records of the case.

14. Before proceeding further, it would be appropriate to reproduce the relevant portion of the impugned order dated 26.09.2014 of the learned Tribunal:-

“6. After hearing the parties and going through the record, I find that the appellant company M/s Global Mobile Infrastructure Pvt. Limited had been making sales of telecom equipment to M/s Spice Communication Ltd. ostensibly on trial basis. The appellant-company had transferred goods worth Rs. 21,54,71,671 during the period January - March 2007 and worth Rs. 1,45,70,14,348/- during the year 2007-08. The above mentioned sales had not been shown in the VAT returns filed by the appellant before the Excise and Taxation Department. The Assistant Excise and Taxation Commissioner has after due



process created a demand of tax amounting to Rs. 6,38,49,835/- for the period 2007-08. The appellant has raised two questions before this court; first, that the goods transferred on the basis of trial for two years as per agreement between the parties M/s Global Mobile Infrastructure Pvt. Ltd. and M/s Spice Communications Ltd, do not come within the definition of sale; and second: sale, if any, will take place after two years subject to approval/acceptance of transferred goods by M/s Spice Communications Ltd. In this regard, the Ld. Counsel for the appellant has submitted three agreements: first one between Spice Mobile Pvt. Ltd. and ZTE Corporation, China dated 21.11.2006, the second one, executed between Spice Mobile Pvt. Ltd. and Spice Communications Private Limited on 22.12.2006; and third one, executed between Global Mobile Infrastructure Pvt. Ltd. and Spice Communications Private Limited on 12.6.2007. After perusing the agreements executed between the parties it is found that all these agreements are unregistered documents. The liability to pay VAT for transactions that constitute 'Sale' cannot be obliterated by entering into private agreement between the parties that tend to negate a transaction that otherwise qualifies as a 'Sale'. The appellant company is governed by the VAT provisions applicable to UT, Chandigarh which nowhere provide for transaction in the nature of "sale on



trial basis for a period of two years or more". The definition of sale has been given in Section 2 (zf) which is reproduced below:

2(zf) "Sale" with all its grammatical or cognate expressions means any transfer of property in goods for cash, deferred payment or other valuable consideration and includes:-

iv) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

A perusal of above mentioned Section and the transfer of goods that has taken place makes it clear that the goods transferred by the appellant company are covered under the definition of 'Sale'. I also find that the appellant transferred goods through delivery challan which contains the value of the transferred goods. It is also seen that two years period has already passed after the transfer of goods. During the course of the arguments, the Ld. Counsel was asked whether the goods transferred on trial basis for two years have been received back but he failed to give the answer in the affirmative. Nor any such documentation has been shown to this court or to the authorities below. It is clear that the goods transferred had already been consumed. The delivery of these goods by the appellant



Company to M/s Spice Communications Ltd. thus necessarily constitutes a sale. In view of all the facts on record and after taking into account submissions made by both the sides, it is held that the appellant had tried to evade tax and deliberately had not shown the value of goods in the VAT returns filed before the Department to avoid tax. Therefore, I see no merit in the present appeal and dismiss the same being devoid of merits.”

15 Undisputedly, the appellant-Company entered into three similar agreements on 21.11.2006, 12.06.2007 and 16.07.2007 with M/s ZTE Corporation, China for supply of telecommunications equipments subject to approval by the end-user i.e Telecom Company.

16. The appellant-company further entered into agreements with M/s Spice Communications Pvt. Ltd. on 20.12.2006 and 16.07.2007 for further supply of the goods received from M/s ZTE Corporation, China on trial use basis subject to final approval after the equipment satisfies the technical requirements.

17. The dispute in the present case is as to whether the goods supplied by the appellant-company on trial basis to M/s Spice Communications Pvt. Ltd, amounts to sale or not.

18. The relevant portion of the agreement dated 20.12.2006 between Spice Mobile Pvt. Ltd and Spice Communications Pvt. Ltd reads as under:-

“Spice Mobile has agreed to on supply the equipment to



Spicecom on a 2 year trial use basis. Spicecom may at its option decide to purchase the said equipment at the end of the 2 year trial use provided that the equipment achieves the key performance indicators in accordance with the terms and conditions thereof.

Now therefore, based on mutual covenants mentioned above, both parties mutually agree to enter into this agreement based on the followings terms and conditions.”

xxxx

xxxx

xxxx

Article 2 Scope of Agreement

2. Spice Mobile shall provide on trial basis for a period of 24 months from the date of each supply, to Spicecom the listed Equipment in the Bill of Quantities (BOQ) under the conditions and terms of this Agreement. In the event of Spice Mobile supplying the Equipments and Services in accordance with this Agreement and meeting the Key Performance Indicators during the said respective trial period of 24 months from the date of each supply, Spicecom may decide to purchase each of the respective Equipments by accepting each such Equipments, failing which Spicecom shall return each of such Equipments on as is where is basis at the end of the respective trial period of 24 months from the date of each supply. Spice Mobile or any Supplier designated by Spice Mobile in this behalf, shall provide

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ARTICLE 6: TERMS OF PAYMENT



Payment Schedule Subject to Article 2.1 of Part I and Article 8 of Part-II, the payment will be made in accordance with Clause 6.1 hereof

6.1 Payment for Equipment Price

(a) Interest free Security Deposit equivalent to Twenty Five percent (25%) of the priced BOQ on demand shall be paid to Spice Mobile within fifteen (15) Days from the date of receipt of such demand. In the event of Spicecom accepting the Equipment at the end of 24 months trial period from the date of each supply, the interest free Security Deposit will be treated by the parties as payment towards the Equipment Price upon receipt of Invoice from Spice Mobile.

(b) the balance Payment of the price, net of adjustments as set out in the respective invoice shall be paid as follows: Four quarterly payments of equal value through Escrow Account at the end of the said 24 months trial period from the date of each supply with equal value during the third year, namely

- i) 1st payment of Eighteen point Seventy Five percent (18.75%) of the price set out in the Invoice in the 27th month from the date of each supply.*
- ii) 2nd payment of Eighteen point Seventy Five percent (18.75%) of the price set out in the Invoice in the 30th month from the date of each supply.*



iii) 3rd payment of Eighteen point Seventy Five percent (18.75%) of the price set out in the Invoice in the 33rd month from the date of each supply; and

iv) 4th payment of Eighteen point Seventy Five percent (18.75%) of the price set out in the Invoice in the 36th month from the date of each supply.

However, Spicecom at its discretion may also pre-pay, ahead of schedule, the entire/partial amount any time after 24 months period from the date of each supply.

However, in the event of non-compliance of Article 8 of Part-II or in the event Spicecom not accepting any such Equipment (s), Spice Mobile shall forthwith and not later than 15 days refund the Security Deposit amount received from Spicecom under this Article 6.1 (a).

6.2.1 The said payment shall be made wholly in equivalent Indian Rupees to the United States Dollars or any other currency mutually agreed.”

19. A perusal of the above referred to agreement shows that the requirement as per Article 2 is that the trial period is for 24 months and Spice Com may decide to purchase each of the respective equipments by accepting each such equipments, failing which Spice Com shall return each of such Equipments on “as is where is” basis at the end of the respective trial period of 24 months from the date of



each supply.

20. Further Article 8 as referred to above specifically states that the Spice Mobile shall despatch the equipments within 15 days after receipt of security deposit from Spice Com as specified in Article 6.1 (***Payment for Equipment Price***) of the agreement.

21. The delivery challan in the remark column shows that the material is being sent on trial basis.

22. A perusal of the agreement between the appellant-Company and Spice Communications Pvt. Ltd. shows that the goods were transferred/supplied on trial use basis for a period of 24 months. It is specifically mentioned in the agreement that if the Spice Communications does not decide to purchase each of the respective equipments by accepting each, it shall return each of such equipment. Further, if the Spice Communications Pvt. Ltd. does not intend to purchase the equipments at the end of 2 year trial period, it shall return each of such equipment.

23. Undisputedly, in the present case, the goods are not returned till date.

24. It would be relevant to reproduce definition of sale, as defined under Section 2(zf) of Act, 2005:-

(zf) “sale” with all its grammatical or cognate expressions means any transfer of property in goods for cash, deferred payment or other valuable consideration and includes -

(i) transfer, otherwise than in pursuance of a contract, of property



in any goods for cash, deferred payment or other valuable consideration;

(ii) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) delivery of goods on hire-purchase or any system of payment by instalments;

(iv) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration; and

(vii) every disposal of goods referred to in Explanation (4) to clause (t) of this section;

and such transfer, delivery or supply of any goods shall be deemed to be a sale of these goods by the person making the transfer, delivery or supply to a person to whom such transfer, delivery or supply is made, but does not include a mortgage, hypothecation, charge or pledge.”



or receivable would be quantified as turnover?

7. In terms of [Article 366 \(29A\)\(d\)](#) of the Constitution, sale includes sale and purchase of goods including the transfer of the right to use in goods for any purpose whether or not for a specific period for cash, deferred payment or other valuable consideration. The “sale”, as defined under the Act is in tune with the said provisions in the Constitution. In terms of the provisions of the Constitution and the Act, sale and purchase of the goods by fiction of law would include right to transfer of goods in respect of any lending transaction. Thus the transaction of lease is a deemed sale, but whether the gross turnover is to be quantified in respect of the lease rentals received or receivable during the year or the entire lease rentals to be received during the entire period of lease would form part of gross turnover of the year is the question requires to be examined.

8. The Hon'ble supreme Court in 20th [Century Finance Corporation Ltd.](#)'s case [2000] 119 STC 182 (SC), has held to the following effect:-

"(26) Next question that arises for consideration is where is the taxable event on the transfer of the right to use any goods. [Article 366\(29A\)\(d\)](#) empowers the State legislature to enact law imposing sales tax on the transfer of the right to use goods. The various sub-clauses of clause (29A) of [Article 366](#) permit the imposition of tax thus: sub-clause (a) on transfer of property in goods; sub-clause (b) on transfer of property in goods; sub-clause (c) on delivery of goods; sub-clause (d) on transfer of the right to use goods; sub-clause (e) on supply of goods; and sub-clause (f) on supply of services. The words and such transfer, delivery or supply.... ‘in the latter portion of clause (29A), therefore, refer to the words transfer, delivery and supply, as applicable, used in the various sub-clauses. Thus, the transfer of goods will be a deemed sale in the cases of



sub-clauses (a) and (b), the delivery of goods will be a deemed sale in case of sub-clause (c), the supply of goods and services respectively will be deemed sales in the cases of sub-clauses (e) and (f) and the transfer of the right to use any goods will be a deemed sale in the case of sub-clause (d). Clause (29A) cannot, in our view, be read as implying that the tax under sub-clause (d) is to be imposed not on the transfer of the right to use goods but on the delivery of the goods for use. Nor, in our view, can a transfer of the right to use goods in sub-clause (d) of clause (29A) be equated with the third sort of 'bailment' referred to in Bailment by Palmer, 1979 edition, page 88. The third sort referred to there is when goods are left with the bailee to be used by him for hire, which implies the transfer of the goods to the bailee. In the case of sub-clause (d), the goods are not required to be left with the transferee. All that is required is that there is a transfer of the right to use the goods. In our view, therefore, on a plain construction of sub-clause (d) of Clause (29A), the taxable event is the transfer of the right to use the goods regardless of when or whether the goods are delivered for use. What is required is that the goods should be in existence so that they may be used. And further contract in respect thereof is also required to be executed. Given that, the locus of the deemed sale is the place where the right to use the goods is transferred. Where the goods are when the right to use them is transferred is of no relevance to the locus of the deemed sale. Also of no relevance to the deemed sale is where the goods are delivered for use pursuant to the transfer of the right to use them, though it may be that in the case of an oral or implied transfer of the right to use goods, it is effected by the delivery of the goods.

(27) [Article 366\(29A\)\(d\)](#) further shows that levy of tax is not on use of goods but on the transfer of the right to use goods. The right to use goods accrues only on account of the transfer of right. In other



words, right to use arises only on the transfer of such a right and unless there is transfer of right, the right to use does not arise. Therefore, it is the transfer which is sine qua non for the right to use any goods. If the goods are available, the transfer of the right to use takes place when the contract in respect thereof is executed. As soon as the contract is executed, the right is vested in the lessee. Thus, the situs of taxable event of such a tax would be the transfer which legally transfers the right to use goods. In other words, if the goods are available irrespective of the fact where the goods are located and a written contract is entered into between the parties, the taxable event on such a deemed sale would be the execution of the contract for the transfer of right to use goods. But in case of an oral or implied transfer of the right to use goods it may be effected by the delivery of the goods."

9. As per [Section 2\(ze\) \(iv\)](#) of the Act, "sale" means a transfer of property in goods when the transfer of the right to use any goods for any purpose is made. Therefore, the transfer of the vehicle on rentals is a sale falling within [Section 2\(ze\)](#) of the Act as held by the Hon'ble Supreme Court in 20th Century Finance Corporation Ltd.'s case (*supra*). The explanations appended to [Section 2\(zg\)](#) of the Act, does not deal with the sale price falling in clause (iv) of [Section 2\(ze\)](#). Explanation (i) appended to [Section 2\(zg\)](#) deals with the transfer of property in goods involved in the execution of the works contract whereas explanation (ii) deals with the delivery of goods on hire purchase. The taxable turnover in terms of [Section 2\(zn\)](#) of the Act is to be computed in terms of [Section 6](#) of the Act. [Section 6](#) of the Act permits the deductions, which are to be made from the gross turn over, but right to transfer goods for the purpose of use does not find mention in any of the provisions of [Section 6](#) of the Act.

10. Faced with such a situation, the definition of tax period and



turnover as defined in Haryana Value Added Rules, 2003 (for short 'the Rules') becomes relevant. The tax period in terms of Rule 2(zf) of the Rules means a period of time usually a month, a quarter or a year for which tax payable by a dealer is quantified. In the present case, the return filed by dealer is on yearly basis. The turnover is aggregate of the goods sold or purchased by a dealer during a tax period in terms of Rule 2 (zg) of the Rules. Since the transfer of the right of use in the vehicle is the sale falling within the definition of [Section 2\(zf\)](#), therefore, the rentals received or receivable during the tax period is the sale price received by the dealer, exigible to tax in a Financial Year. The right to use vehicle is dependent upon the monthly payment of rentals and therefore, the monthly rentals received or receivable by the dealer is a turnover and consequently the sale price.

11. In view of the said fact, we find that the orders passed by the Authorities under the Act are not sustainable. The lease rental received or receivable during the tax period only, as a right to use goods, is the turnover forming part of sale price.”

30. A perusal of the above referred to judgment shows that the facts of the same are distinguishable from the facts of the present case since the substantial question of law in the above referred to judgment reads as under:-

“Whether in the facts and circumstances of the present case, the Haryana Tax Tribunal, Chandigarh has correctly passed an order that the lease rentals for the entire lease period is a sale price when the appellant delivered the goods, therefore, the lease amount received or receivable would be quantified as turnover?”

31. Further in the above referred to judgment, the appellant-



company entered into agreement for lease of vehicles whereas in the present case, the goods were delivered to use for a period of 24 months, which was trial period, on the terms of the payment as mentioned in Article 6 of the agreement at the end of said 24 months trial period, if equipments are acceptable to M/s Spice Communications Pvt. Ltd. Further Article 6 of the agreement refers to the terms of the payment and installments after a period of 24 months, which amounts to deferred payment, as per the definition of sale referred to above.

32. Since the admitted fact of the appellant-company is that the equipments are not returned till today, therefore, as per agreement between the appellant-company and M/s Spice Communications Pvt. Ltd, after 24 months from the date of agreement, till date, the equipments were consumed by M/s Spice Communications Pvt. Ltd. and never returned, which as per agreement would amount to sale.

33. A bare perusal of the agreement as well as definition of sale shows that since the delivery of goods in the present case is on trial basis and deferred payment as per Article 6 (Terms of Payment), therefore, the learned Tribunal has rightly held that delivery of the goods by the Appellant-Company to M/s Spice Communications Pvt. Ltd. constitute a sale.

34. In view of the above, we do not find any infirmity in the impugned orders dated 26.09.2014 passed by the learned Tribunal in “Appeal No. 90 of 2010 (*VATAP No. 52-2015*) for A.Y 2006-2007 and Appeal No. 91 of 2010 (*VATAP No. 53-2015*) for A.Y 2007-2008”. The same are upheld.



- 35. Accordingly, the appeals are dismissed.
- 36. All the pending application (s), if any, also stand disposed of.

(ARUN PALLI)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

05.04.2025

Gaurav Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No