GAHC010125572017

2025:GAU-AS:10822

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1861/2017

ANAMIKA MOTORS
GAR ALI ROAD, SHANKARPUR JORHAT- 785014, ASSAM A PARTNERSHIP FIRM REGISTERED UNDER THE INDIAN PARTNERSHIP ACT, 1932 AND HAVING ITS PRINCIPLE PLACE OF BUSINESS AT JORHAT, ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY SRI RAJENDAR KUMAR GOYAL, THE MANAGING PARTNER OF THE PETITIONER FIRM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, DEPARTMENT OF FINANCE AND TAXATION, DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER OF TAXES
KAR BHAWAN DISPUR GUWAHATI- 781006.

3:THE SUPERINTENDENT OF TAXES JORHAT UNIT JORHAT

4:THE UNION OF INDIA
REP. BY THE SECRETARY TOT HE GOVT. OF INDIA
MINISTRY OF FINANCE NORTH BLOCK
CABINET SECRETARIAT RAISINA HILLS NEW DELHI - 11000

Advocate for the Petitioner : MR.S P SHARMA, DR.ASHOK SARAF,MR.P BARUAH,MR.P DAS,MR.Z ISLAM

Advocate for the Respondent : ASSTT.S.G.I., SC, FINANCE & TAXATION

Linked Case : WP(C)/1860/2017

ANAMIKA MOTORS
GAR ALI ROAD
SHANKARPUR JORHAT- 785014
ASSAM A PARTNERSHIP FIRM REGISTERED UNDER THE INDIAN PARTNERSHIP ACT

1932 AND HAVING ITS PRINCIPLE PLACE OF BUSINESS AT JORHAT
ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY SRI RAJENDAR KUMAR GOYAL THE MANAGING PARTNER OF THE PETITIONER FIRM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE AND TAXATION
DISPUR GUWAHATI - 781006.

2:THE COMMISSIONER OF TAXES KAR BHAWAN DISPUR GUWAHATI - 781006.

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4:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE NORTH BLOCK
CABINET SECRETARIAT RAISINA HILL NEW DELHI- 110001.

Advocate for : MR.S P SHARMA
Advocate for : appearing for THE STATE OF ASSAM and 3 ORS.

Linked Case : WP(C)/1854/2017

ANAMIKA MOTORSJORHAT- 785014
ASSAM A PARTNERSHIP ACT
1932 AND HAVING ITS PRINCIPLE PLACE OF BUSINESS AT JORHAT
ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY BY SRI RAJENDAR KUMAR GOYAL
THE MANAGING PARTNER OF THE PETITIONER FIRM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE AND TAXATION DISPUR GUWAHATI - 781006.

2:THE COMMISSIONER OF TAXES KAR BHAWAN DISPUR GUWAHATI – 781006

3:THE SUPERINTENDENT OF TAXES JORHAT UNIT JORHAT

4:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE NORTH BLOCK CABINET SECRETARIAT
RAISINA HILL NEW DELHI- 110001

Advocate for : MR.P BARUAH
Advocate for : ASSTT.S.G.I. appearing for THE STATE OF ASSAM and 3 ORS.

Linked Case : WP(C)/1853/2017

ANAMIKA MOTORSGAR ALI ROAD SHANKARPUR JORHAT- 785014
ASSAM A PARTNERSHIP ACT
1932 AND HAVING ITS PRINCIPLE PLACE OF BUSINESS AT JORHAT
ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY BY SRI RAJENDAR KUMAR GOYAL THE MANAGING PARTNER OF THE PETITIONER FIRM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE AND TAXATION
DISPUR GUWAHATI - 781006.

2:THE COMISSIONER OF TAXES KAR BHAWAN DISPUR GUWAHATI - 781006.

3:THE SUPERINTENDENT OF TAXES JORHAT UNIT JORHAT.

4:UNION OF INDIA REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE NORTH BLOCK CABINET SECRETARIAT
RAISINA HILL NEW DELHI- 110001.

Advocate for : MR.Z ISLAM
Advocate for : appearing for THE STATE OF ASSAM and 3 ORS.

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 31-07-2025
Date of Judgment: 31-07-2025

Judgment & Order(Oral)

Heard Dr. Ashok Saraf, learned senior counsel, assisted by Mr. P. Baruah, learned counsel, appearing on behalf of the petitioner, in all these 4(four) writ petitions. Also heard Mr. B. Choudhury, learned standing counsel, Finance & Taxation Department, appearing on behalf of respondents No. 1, 2 & 3.

2. The petitioner, herein, by way of instituting the writ petitions being WP(c)1853/2017, WP(c)1854/2017, WP(c)1860/2017, and WP(c)1861/2017, has assailed the assessment order, all dated 15-12-2016, passed by the Superintendent of Taxes, Jorhat, under Section 36 of the Assam Value Added Tax, 2003, for the assessment years i.e. 2011-2012; 2012-2013; 2013-2014; and 2014-2015, and the subsequent notice of demand, all dated 16-12-2016, whereby, the value added tax (VAT) has been levied upon the petitioner, herein, for handling/logistic charges, charged by it, on the ground that such charge being taxable under the provisions of the Finance Act, 1994, and the service tax payable having been paid, the said charges could not have been brought within the ambit of "sale price" as defined under the provisions of Section 2(44) of the Assam Value Added Tax, 2003.

3. As the above-noted 4(four) writ petitions involve the same facts and the question of law emerging being also the same; they were heard analogously and are disposed of by this common judgment & order.

4. For the sake of convenience, the facts, as set-out by the petitioner in WP(c)1853/2017, is being considered.

5. As projected in the said writ petition, the petitioner, herein, is engaged in the sale and service of vehicles. In the course of its business of selling vehicles to its customers; the petitioner, herein, charged certain amounts on account of handling/logistic charges, viz. delivery ceremony, waxing/ polishing of the vehicle after delivery, fuel given to the customer after delivery, driver costs for dropping the vehicle at customer's home, home visit by sales personnel for post-sales follow-up, home visit by service advisor post-sales and other handling costs, etc..

6. It is further projected in the above-noted writ petition that the charges so levied on the customer, were all on account of service rendered by the petitioner, after the sale of the vehicle, is completed and accordingly, the same cannot be said to be a part of the sale price of the vehicle, in question.

7. The Superintendent of Taxes, Jorhat, i.e. respondent No. 3, issued a show cause notice, dated 14-07-2016, directing the petitioner, herein, to show cause for assessment under Section 34 and for imposition of penalty under section 90 of the Assam Value Added Tax, 2003, for the assessment year 2011-2012. In the said notice, it was highlighted that as per the clarification received from the District Transport Officer, Jorhat; the petitioner was not empowered to collect any additional charges other than the fees and road tax applicable under the provisions of the Motor Vehicles Act, 1988, and the rules framed thereunder. It was further projected that insurance and road tax should be the only legitimate charges which are permissible to be charged by the petitioner, herein, from its customers. The Respondent No. 3, herein, accordingly, drew satisfaction that the petitioner had delivered the vehicles to its customers by issuing invoices and sale certificates without charging Value Added Tax(VAT) on the full amount of consideration and therefore, evaded taxes. It may be mentioned here that similar notices, all dated 14-07-2016, were issued to the petitioner, herein, for the assessment years 2012-2013, 2013-2014 and 2014-2015.

8. The petitioner, on receipt of such show cause notice, dated 14-07-2016, submitted its reply and therein, highlighted that during the year 2011-2012, it had charged certain amounts as logistic/handling charges from its customers and had also set-out the services rendered by it against the said charges so levied. It was contended by the petitioner, herein, in the said reply that the

charges so levied were on account of the services rendered by it after the sale of the vehicles was completed. It was further brought on record that the service tax being leviable for the handling/ logistic charges and the same being already paid; no Value Added Tax(VAT) would be permissible to be levied on the same component. The petitioner, herein, further clarified that it had not charged anything for providing services of registration and/or insurance and the handling/logistic charges were charged for providing extra services and accordingly, requested the respondent No. 3, herein, to drop the proceedings sought to be initiated against the petitioner in terms of the show cause notices issued in the matter.

9. The Respondent No. 3, thereafter, vide notice, dated 03-10-2016, issued a further show cause to the petitioner intimating that the petitioner shall now be assessed under the provisions of Section 36 of the Assam Value Added Tax, 2003, for the year 2011-2012 instead of Section 34, thereof, as had been so informed in terms of the earlier show cause notice. The petitioner was also directed to show cause as to why penalty under the provisions of Section 90 of the Assam Value Added Tax, 2003, should not be imposed upon it for evading taxes payable under the said Act of 2003, as intimated by the earlier show cause notices. Similar show cause notices, all dated 03-10-2016, were also issued to the petitioner for the assessment years 2012-2013, 2013-2014 and 2014-2015, respectively.

10. The petitioner, herein, submitted its reply to all the show cause notices as issued to it and therein, highlighted that the handling/logistic charges charged by it, did not form part of the sale price of the vehicle, in question, and further the said amount collected by it, was liable to service tax and due service tax has already been paid by it. The petitioner further contended that

the service tax having been paid; the said charges levied by it, cannot be brought within the purview of the Assam Value Added Tax, 2003, and no Value Added Tax(VAT) was leviable, thereon. With regard to the penalty under the provisions of Section 90 of the said Act of 2003, the petitioner had clarified that the same is not applicable in the case of the petitioner, herein, as there was no *mens rea* on the part of the petitioner, inasmuch as, the petitioner *bonafidely* acted on the basis of the binding decisions of the Hon'ble Supreme Court as well as various judicial pronouncements of the High Courts of the country, that once service tax is liable on a particular consideration, no Value Added Tax(VAT) can be levied on the same. The petitioner, herein, has further submitted that there being no *mens rea* on the part of the petitioner, in the matter; penalty was not permissible to be imposed upon it.

11. The respondent No. 3, herein, on receipt of such a reply from the petitioner, proceeded to complete the assessment of the petitioner vide separate orders, dated 15-12-2016, under the provisions of Section 36 of the Assam Value Added Tax, 2003, for the year 2011-12, 2012-2013, 2013-2014, and 2014-2015. In the assessment orders, no penalty, however, came to be imposed upon the petitioner, herein. In terms of the said assessment orders, notice of demand for the assessment years involved, all dated 16-12-2016, came to be issued to the petitioner, herein.

12. Being aggrieved by the assessment orders, all dated 03-10-2016, as well as the notices of demand issued in pursuance thereof, all dated 16-12-2016; the petitioner, herein, has instituted the present proceedings before this Court.

13. Dr. Saraf, learned senior counsel, appearing for the petitioner, after briefly highlighting the nature of the services rendered by a dealer during and

after the process of a sale of a vehicle, has submitted that the handling/logistic charges charged by the petitioner, herein, from its customers, were so charged separately and the same was so done after the sale of the vehicle, was complete. The learned senior counsel has further submitted that most of the services rendered by the petitioner, herein, for which, handling/logistic charges were so received; were based on the request made by the petitioner for carrying-out certain works after the sale of vehicle was so completed.

14. Dr. Saraf, learned senior counsel, has, at the outset, highlighted that the vehicle, in question, was in a deliverable state and no addition, thereto, was so mandated before completion of the sale involved. The learned senior counsel has further submitted that on receipt of the sale price of the vehicle, the property in the goods, is transferred to the customer under contract of sale. On receiving the price of the goods, the petitioner issues a gate pass under the name of the customer who is the purchaser and also issues a sale certificate in the prescribed statutory form showing delivery of the vehicle. The learned senior counsel has further contended that the sale, as such, is completed both as regards the transfer of the property of the vehicle to the purchaser as well as the delivery, thereof. The handling/logistic charges, charged by the petitioner, are on account of post-sale services rendered by the petitioner and the same would be taxable under the Finance Act, 1994.

15. Dr. Saraf, learned senior counsel, has further submitted that the due amount of service tax as assessed, being paid by the petitioner, herein, there was no occasion for the State Respondents to impose Value Added Tax(VAT) on the same transaction, by construing the same, to be also a part of the sale consideration received by the petitioner for the sale of the vehicle, in question.

The learned senior counsel, by referring to the provisions of the Assam Value Added Tax, 2003, has submitted that the definition of "sale price" as set-out in the provisions of Section 2(44) of the Assam Value Added Tax, 2003, defines the same as the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of goods at the time of or before delivery of the goods. The learned senior counsel has further submitted that the handling/logistic charges levied by the petitioner, herein, is not a valuable consideration paid or payable for the sale of the vehicle, in-as-much as, such charges are charged for the services rendered by the petitioner after completion of the sale and accordingly, it cannot be considered as sale price for the vehicle. The learned senior counsel has reiterated that the vehicles are in specific and deliverable state and transfer of property in goods in pursuance of the sale contract takes place against the payment of the price of the goods i.e. the vehicles, herein.

16. Dr. Saraf, learned senior counsel, has further submitted that the handling/logistic charges collected by the petitioner, herein, would not be permissible to be considered as valuable consideration paid or payable to a dealer for any sale made. Further the said charges also cannot be regarded as any sum charged for anything done by the dealer in respect of the goods at the time or before the delivery, thereof. The learned senior counsel has submitted that the handling/logistic charges would not come within the ambit of the extended meaning of the expression "sale price" since the same does not contribute a sum charged for anything done by the petitioner in respect of the goods at the time or before delivery, thereof; the same being a post delivery service rendered by the petitioner, herein, the same would only be taxable under the Finance Act, 1994, and the service tax having been paid by the petitioner; the steps taken by the State Respondents in imposing the Value Added Tax(VAT), on such circumstances, would be clearly impermissible

and the assessments made and the notices of demand issued in consequence, thereof; would mandate an interference from this Court.

17. Dr. Saraf, learned senior counsel, has further submitted that it is a settled position of law that either a transaction is chargeable to Value Added Tax(VAT), or, it shall be chargeable to service tax. The learned senior counsel has submitted that the same transaction cannot be made chargeable to both the taxes, as both taxes are mutually exclusive.

18. Dr. Saraf, learned senior counsel, in support of his submissions, has placed reliance on the following decisions:

(i). The decision of the Hon'ble Supreme Court in the case of **Imagic Creative(P) Ltd. v. Commissioner of Commercial Taxes & anr.,** reported in **(2008) 2 SCC 614;**

(ii). The decision of the Delhi High Court in the case of **Commissioner, VAT, Trade and Taxes Department v. International Travel House Ltd.** reported in **2009 SCC OnLine Del 2749;**

(iii). The decision of the Tripura High Court in the case of **Oil Field Instrumentation (India) Ltd. v. The State of Tripura & Ors.,** reported in **2014 SCC OnLine Tri 749;**

(iv). The decision of the Madras High Court in the case of **Srinivasa Timber Depot & Ors. v. Deputy Commercial Tax Officer, Choolai Division, Madras -29 & Ors.,** reported in **1968 SCC OnLine Mad 215;** and

(v). The decision of the Bombay High Court in the case of **Additional Commissioner of Sales Tax, VAT III, Mumbai Vs. Sehgal Autoriders Pvt. Ltd**. reported in **2011 SCC OnLine Bom 872.**

19. Dr. Saraf, learned senior counsel for the petitioner, in the above premises, has prayed that the impugned assessment orders, all dated 15-12-2016, and the notices of demand, all dated 16-12-2016, issued by the Superintendent of Taxes i.e. respondent No. 3, to the petitioner, herein, for the assessment years 2011-2012, 2012-2013, 2013-2014 and 2014-2015, would mandate an interference by this Court.

20. Per contra, Mr. Choudhury, learned standing counsel, Finance & Taxation, at the outset, by referring to the definition of "sale price" as set-out in the provisions of Section 2(44) of the Assam Value Added Tax, 2003, has submitted that the same having included within its ambit, any sum charged for anything done by the dealer in respect of the goods at the time of, or, before the delivery of the goods, the handling/logistic charges, charged by the petitioner being definitely not charged as the cost of freight, or, delivery, or, cost of installation, in cases where such cost is separately charged; the said charge is deemed to be included in the sale price of the vehicle, in question. The amount being paid by the customer during the process of the sale of the vehicle, in question, and not being a charge so levied after the sale/delivery of the vehicle, in question, was complete; the said charges would form the part of the sale price and accordingly, Value Added Tax(VAT) would also be leviable, thereon.

21. Mr. Choudhury, learned standing counsel, has submitted that the petitioner, herein, has artificially culled-out a part of the sale transaction as a service which, admittedly, in the facts of the matter involved, would not be permissible. The said aspect of the matter coming to the notice of the Department concerned and clarification, thereon, being received from the District Transport Officer, Jorhat, which had brought to the forefront that a car

dealer was not permitted to collect any additional charges other than the fees and road tax applicable under the provisions of the Motor Vehicle Act, 1988, and the rules framed thereunder; the charges levied by the petitioner, herein, as handling/logistic charges, are, in fact, considerations so charged towards the sale of the vehicle, in question and accordingly, the petitioner, herein, is liable to pay Value Added Tax(VAT) thereon, also.

22. In the above premises, Mr. Choudhury, learned standing counsel, Finance & Taxation, has further submitted that the assessment orders passed in the matter for the financial years involved as well as the notices of demand made; would not mandate an interference from this Court.

23. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

24. The rival contentions of the parties to the proceedings, have brought to the forefront an issue as to whether the handling/logistic charges, charged by the petitioner, herein, would amount to be a sum charged at the time, or, before the delivery of the vehicle and would be, therefore, included in the meaning of the term “sale price” as set-out in Section 2(44) of the Assam Value Added Tax, 2003, and thereby, rendering the same, liable to Value Added Tax(VAT). The petitioner has projected that in course of its business of selling vehicles to its customers, it charges certain amount on account of handling/logistic charges. Such charges were on account of delivery ceremony, waxing/polishing of the vehicle after delivery, fuel given to the customer after delivery, driver cost for dropping the vehicle at the customer's home, home visit by sales personnel for post-sales follow up, home visit by service advisor post-sales and other handling costs. It is further projected that a lump-sum

amount on account of the same, is charged by the petitioner, herein, from its customers for the said service rendered. The projection of the petitioner is further to the extent that the said charges are so levied by it after the sale of the vehicle, in question, is complete. Accordingly, it is projected that the same cannot be construed to be inclusive in the sale price of the vehicle sold.

25. The Assam Value Added Tax, 2003, was enacted w.e.f. 01-05-2005, to provide for imposition and collection of tax on sale and purchases of good in the State of Assam and for matters connected therewith and incidental thereto. The power of the State Legislature to impose a tax on the sale and purchase of goods was derived from Entry 54 of List II of the Seventh Schedule to the Constitution of India. Section 10 of the Assam Value Added Tax, 2003, mandates that every dealer who is liable to pay tax for any year under Section 7 of the Act, shall pay output tax on the taxable turnover for such year. The term "taxable turnover" has been defined by Section 2(54) of the Act of 2003 as under:

> "***(54) "taxable turnover" means the turnover on which a dealer is liable to pay tax as determined after making such deductions from his gross turnover and in such manner as may be prescribed."***

The term "gross turnover" has been defined by Section 2(23) of the Act, as under:

> "***(23) "gross turnover" means, -***
>
> ***(i) for the purpose of levy of tax, the aggregate of the amount of sale price received or receivable by a dealer whether as principal, agent or in any other capacity in respect of sale of all taxable and tax-free goods, at all places of business in the State, during any prescribed period, including sale price in respect of sales in the course of inter-state trade or commerce or sales outside the State or sales in the course of import into or export out of the territory of India.***
>
> ***Explanation.- The amount received by a dealer on account of price variation or price escalation in respect of sale or supply of goods shall be deemed to form part of Gross Turnover of the financial year during which it is actually received;***
>
> ***(ii) for the purpose of levy of tax, the aggregate of the amounts of purchase price paid and payable by a dealer in respect of all purchases of goods made by him during any prescribed period."***

As such, the aggregate amount of sale price received, or, receivable by a dealer, is termed as gross turnover.

26. The term "sale price" has been defined by Section 2(44) of the Assam Value Added Tax, 2003, as under:

> "***(44) "sale price" means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of goods at the time of or before delivery of the goods other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged."***

27. A consideration of the definition of the term "sale price" brings to the forefront that it means the amount of valuable consideration paid, or, payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of the goods at the time of, or, before delivery of the goods. The vehicles, involved in the matter, were in specific and deliverable state and could be delivered to the customer, as such. The transfer of the property in the goods in pursuance of the sale contract, took place against the payment of the price of the goods i.e. the vehicle, herein, and the delivery of the goods, was affected by the petitioner to its customer. The services now rendered by the petitioner which is charged under the heading "handling/logistic charges" also includes services rendered by the petitioner at the specific request of the customer after the vehicle, in question, was transferred to the customer and it had become the property of the buyer.

28. The first part of section 2(44) of the definition while defining the "sale price" brings within its purview, the consideration paid, or, payable to a dealer for the sale. The second part of the definition which is of an inclusive nature brings within its purview, any sum charged for anything done by the seller in respect of the goods at the time of, or, before the delivery of the goods other than the cost of freight, or, delivery of cost of installation but the delivery, or,

the cost of installation, in case, where such cost is separately charged. In the case on hand, the transfer of the property in goods in pursuance of the sale contract, has taken place on payment of the price of the vehicle which is already fixed; the handling/logistic charges being a charge for the service rendered after completion of the sale of the vehicle, in question, in the considered view of this Court; it cannot be held to be forming part of the consideration paid, or, payable to the petitioner for sale of the vehicle.

29. This Court notes that the various services provided by the petitioner, herein, to the customer under the heading "handling/logistic charges" also has an element of a request being made, in this connection, by the customer concerned, which would be permissible to be so executed only after the transfer of the vehicle to the customer, had occasioned. Accordingly, the handling/logistic charges, charged, in the considered view of this Court; would not come within the ambit of the extended meaning of the expression "sale price" under section 2(44) of the Assam Value Added Tax, 2003.

30. In the case of ***Imagic Creative(P) Ltd.***(supra); the Hon'ble Supreme Court held that payment of service tax as well as Value Added Tax(VAT) are mutually exclusive and they should held to be applicable with regard to the respective parameters of service tax and the sales tax, as envisaged in a composite contract as contra-distinguished from an individual contract. The Hon'ble Supreme Court held that it is difficult to hold that in a case of this nature, sales tax would be payable on the value of the entire contract, irrespective of the element of service provided. Relevant paragraphs of the said judgment, is reproduced, hereinbelow:

> "***27. What, however, did not fall for consideration in any of the aforementioned decisions is the concept of works contract involving both service as also supply of goods constituting a sale. Both, in Tata Consultancy [(2005) 1 SCC 308] as also in Associated Cement Companies [(2001) 4 SCC 593] what was in issue was the value of the goods and only for***

the said purpose, this Court went by the definition thereof both under the Customs Act as also the Sales Tax Act to hold that the same must have the attributes of its utility, capability of being bought and sold and capability of being transmitted, transferred, delivered, stored and possessed. As a software was found to be having the said attributes, they were held to be goods.

28. We have, however, a different problem at hand. The appellant admittedly is a service provider. When it provides for service, it is assessable to a tax known as service tax. Such tax is leviable by reason of a parliamentary statute. In the matter of interpretation of a taxing statute, as also other statutes where the applicability of Article 246 of the Constitution of India, read with the Seventh Schedule thereof is in question, the Court may have to take recourse to various theories including "aspect theory", as was noticed by this Court in Federation of Hotel & Restaurant Assn. of India v. Union of India [(1989) 3 SCC 634].

29. If the submission of Mr Hegde is accepted in its entirety, whereas on the one hand, the Central Government would be deprived of obtaining any tax whatsoever under the Finance Act, 1994, it is possible to arrive at a conclusion that no tax at all would be payable as the tax has been held to be an indivisible one. A distinction must be borne in mind between an indivisible contract and a composite contract. If in a contract, an element to provide service is contained, the purport and object for which the Constitution had to be amended and Clause (29-A) had to be inserted in Article 366, must be kept in mind.

30. We have noticed hereinbefore that a legal fiction is created by reason of the said provision. Such a legal fiction, as is well known, should be applied only to the extent for which it was enacted. It, although must be given its full effect but the same would not mean that it should be applied beyond a point which was not contemplated by the legislature or which would lead to an anomaly or absurdity.

31. The court, while interpreting a statute, must bear in mind that the legislature was supposed to know law and the legislation enacted is a reasonable one. The court must also bear in mind that where the application of a parliamentary and a legislative Act comes up for consideration; endeavours shall be made to see that provisions of both the Acts are made applicable.

32. Payments of service tax as also VAT are mutually exclusive. Therefore, they should be held to be applicable having regard to the respective parameters of service tax and the sales tax as envisaged in a as contract composite contradistinguished from an indivisible contract. It may consist of different elements providing for attracting different nature of levy. It is, therefore, difficult to hold that in a case of this nature, sales tax would be payable on the value of the entire contract, irrespective of the element of service provided. The approach of the assessing authority, to us, thus, appears to be correct."

31. The Delhi High Court in the case of ***International Travel House Ltd.*** (supra), at paragraph No. 10, held, as under:

"***10. Where the sale is distinctly discernible in the transaction, i.e., the contracts are by intention of the parties severable so that there are separate values with respect to goods and services, only then can one not deny the legislative competence of the State to levy sales tax on the value of the goods. This, however does not allow the State to entrench***

upon the Union List and tax services by including the cost of such services in the value of goods. Even in the composite contracts, which are by legal fiction deemed to be divisible under article 366(29A), the value of goods involved in the execution of the whole transaction cannot be assessed to sale."

32. The High Court of Tripura in the case of ***Oil Field Instrumentation(India) Ltd.***(supra), held that no person can be directed to pay both sales tax and service tax on the same transaction. Paragraph Nos. 29 and 30, thereof, is extracted hereinbelow:

"***29. The first condition of the rate schedule shows that service tax is to be paid by the bidder but the bidder can claim it from the ONGC. It is not disputed that service tax has been paid on all the payments made. It is urged by Dr. Saraf, learned Sr. counsel for the State that only element 'E' is a service and the rest is only hiring charges. We are unable to agree with this submission. Under element 'A' the mobilization charges include the charges for crew, expertise, consultancy, maintenance, spares and all taxes excepts service tax. There are elements of service and not only transfer in the right to use goods. Similar language is employed in Elements 'B', 'C', 'D' and 'F'. Under element 'G' service tax if payable has to be in addition to the contractor. As pointed above, service tax is actually being paid.***

30. As has been held by the Apex Court either a transaction shall be exigible to sales tax/VAT or it shall be exigible to service tax. Both the taxes are mutually exclusive. Whereas sales tax and value added tax can be levied on sales and deemed sales only by the State, it is only the Central Government which can levy service tax. No person can be directed to pay both sales tax and service tax on the same transaction. The intention of the parties is clearly to treat the agreement as a service agreement and not a transfer of right to use of goods. We are also clearly of the view that it is impossible from the terms of the contract to divide the contract into two portions and since the petitioners have paid service tax they cannot be also asked to pay value added tax. As held by the Delhi High Court in Commissioner, VAT, Trade and Taxes Department Vs. International Travel House Ltd. (supra), if there is a conflict between the Central law and the State Act then the Central law must prevail. The Petitioner or the ONGC cannot be burdened with two different taxes for the same transaction."

33. In the case of ***Srinivasa Timber Depot***(supra), a Division Bench of the Madras High Court was called upon to consider whether an amount recovered by the assessee, who was a dealer in timber as "lot coolly charges", would form part of the sale price under the Tamil Nadu General Sales Tax Act, 1959. These charges were collected for the service rendered for taking out logs of timber from the place of storage in order to place them before the customer for selection and approval. On these facts, the Division Bench held that these charges were not paid exclusively for the services rendered in respect of the

goods sold, but for services rendered by the workmen for the purposes of enabling the purchaser to select the goods. Hence, the charges were said to have been recovered de hors the sale. In that context, while interpreting the expression "any sums charged for anything done by the dealer in respect of the goods"; the Madras High Court, held, as under:

> "***It is now well settled that the expression "sale of goods" in the State Legislative entry bears the same meaning and scope as it has been understood in the legislative practice of this country since the enactment of the Sale of Goods Act. The object of the Madras General Sales Tax Act is to levy a general tax on the sale or purchase of goods in the State. It is clear, therefore, that what could legitimately be brought to tax under the Act is the aggregation of the consideration for the transfer of property in the goods. Obviously, it should follow that service charges cannot be equated to consideration for transfer of property in the goods. In the Explanation referred to, if understood in the context, as it should be, "any sums charged for anything done by the dealer in respect of the goods" can only relate to something done by the dealer in respect of the goods which involves transfer of property in the goods and for consideration. The further condition is that something should have been done in respect of the goods at the time of, or before the delivery of the goods. So what is chargeable to tax is not any sum charged at the time of or before the delivery of the goods, but any sum, charged for transfer of property in the goods, involved in anything done by the dealer in respect of the goods at the time specified by the Explanation. The Explanation read in the abstract is, of course, of wide scope and may possibly take in any sum charged for anything done by the dealer in respect of the goods whether or not it involved also transfer of property in the goods. But, as we said, the fact that it is an Explanation to the definition of "turnover" and the "turnover" is but the aggregate amount of the consideration of sales shows that it has to be read in the context and not de hors it."***

The above decision was carried upon appeal before the Hon'ble Supreme Court in the case of ***State of Tamil Nadu v. Srinivasa Timber Depot***, reported in ***(1991) 80 STC 393(SC)***, wherein, the Hon'ble Supreme Court held that the statement of principle was in accordance with law and dismissed an appeal by the State.

34. The Bombay High Court, again, in the case of ***Sehgal Autoriders Pvt. Ltd***.(supra), examining the question as to whether the service charges received from the customer for registration of the motor-cycle, formed a part of the sale price. The Bombay High Court examining the provisions of the Maharashtra Value Added Tax Act, 2002, as well as the Central Motor Vehicle Rules, 1989, held, as under:

"***In the present case, there is no reason to fault the finding of the Tribunal that the goods which form the subject-matter of the contract between the respondent and its buyer are in a specific and deliverable state. The transfer of property in the goods in pursuance of the sale contract takes place against the payment of the price of the goods. Delivery of the goods is effective by the seller to the buyer. The obligation under the law to obtain registration of the motor vehicle is cast upon the buyer. The service of facilitating the registration of the vehicle which s rendered by the seller-assessee is to the buyer and in rendering that service, the seller acts as an agent of the buyer. The handling charges which are recovered by the respondent cannot therefore be regarded as forming part of the consideration paid or payable to the respondent for the sale. Those charges cannot fall within the extended meaning of the expression, "sale price", since they do not constitute a sum charged for anything done by the seller in respect of the goods at the time of or before the delivery thereof."***

35. In the light of foregoing decisions of the Hon'ble Supreme Court as well as of the various High Courts; this Court holds that the handling/logistic charges, charged by the petitioner, herein, are in the nature of post-sale services rendered by the petitioner and the same is taxable under the Central Act, namely, the Finance Act, 1994. The petitioner, herein, has already paid service tax to the Central Government under the Finance Act, 1994, and the transaction, in question, being services under the Central Act, the State cannot impose Value Added Tax(VAT) on the said transaction, treating the same to be sale, inasmuch as, the said Act cannot come in conflict with the Central Act and even, if such conflict arises; the Assam Value Added Tax, 2003, must give way to the provisions of the service tax in the Finance Act, 1994. This Court is of the further considered view that since the transaction, in question, is a taxable service as defined in the Finance Act, 1994, and taxed accordingly, any other interpretation will lead to overlapping and has to be avoided as otherwise the same will be taxed both as services and goods.

36. This Court further holds that in view of the fact that the petitioner, herein, has already paid tax to the Central Government under the provisions of the Finance Act, 1994, the transaction, in question, being service, 'taxable' under the Central Act; the question of imposition of Value Added Tax(VAT) in respect of the transaction, in question, under the Assam Value Added tax Act,

2003, does not arise and consequently, the impugned action of the respondent No. 3, herein, in levying Value Added Tax(VAT) on the handling/ logistic charges charged by the petitioner under the said Assam Value Added Tax Act, 2003, is absolutely illegal and without jurisdiction and in that view of the matter, the impugned orders of assessment, all dated 15-12-2016 and the notices of demand, all dated 16-12-2016, issued in pursuance thereof, are liable to be interfered with.

37. It is a settled proposition of law that either, a transaction is chargeable to Value Added Tax(VAT), or, it shall be chargeable to service tax. Whereas Value Added Tax (VAT) can be levied on 'sale' by the State, it is the Central Government that can levy service tax. No person can be directed to pay both Value Added Tax(VAT) and Service Tax on the same transaction. In the case on hand, the petitioner, herein, in its reply, dated 08-08-2016, has specifically stated that handling/logistic charges collected by it, were taxable under the Finance Act, 1994, and the petitioner was paying service tax on the said amount collected by it and thereby, the said amount cannot form part of the sale price and thereby, the same is not taxable under the Assam Value Added Tax, 2003.

38. This Court, accordingly, holds that the handling/logistic charges would not fall within the extended meaning of the expression “sale price” since it did not constitute a sum charged for anything done by the seller in respect of the goods at the time, or, before the delivery, thereof.

39. In the light of the discussions made hereinabove; this Court is of the considered view that the petitioner, herein, has successfully been able to dispel the conclusions reached by the Superintendent of Taxes, Jorhat, i.e.

respondent No. 3, in the impugned assessment orders, holding the handling/ logistic charges levied by the petitioner, to be inclusive within the meaning of the expression "sale price" of the vehicle, in question and thus, taxable under the Assam Value Added Tax, 2003.

40. In view of the above discussion; the impugned assessment orders, all dated 15-12-2016, for the assessment years i.e. 2011-2012; 2012-2013; 2013-2014; and 2014-2015, and the subsequent notice of demand, all dated 16-12-2016, whereby, the value added tax(VAT) has been levied upon the petitioner, herein, for handling/logistic charges, charged by it, are not found sustainable and the same are hereby set aside and quashed.

41. With the above directions, all these 4(four) writ petitions, accordingly, stand allowed and disposed of.

JUDGE

Comparing Assistant