

Revenue department cannot vivisect the business agreement to create demand

The Hon'ble Bombay High Court in *Piramal Enterprises Ltd v. The State of Maharashtra [Writ Petition No. 2836 of 2021 dated June 11, 2024]*, held that clauses of business transfer agreement should be understood with the context it is entered into by parties, pick and choose approach adopted by the revenue to dissect the agreement, giving it a different meaning than by which it is entered into, is not sustainable, set aside the demand.

Facts:

M/s. Piramal Enterprises Ltd. (**"the Petitioner"**), was the manufacturer of pharmaceuticals, entered into a Business Transfer Agreement (BTA) with M/s. Abbott Healthcare Pvt. Ltd. (**"Transferee Company"**) to transfer, sell, assign, convey and deliver "the Base Domestic Formulations Business" on a going concern on a slump sale basis as defined under Section 2(42C) of the Income Tax Act,1961.

Later, the BTA was amended so to include other tangible and intangible assets in the BTA viz. trade name, logo, goodwill etc.

The intent to add intangible assets (trade name, logo, goodwill) was to avoid situation in public regarding the genuineness of the products which is after the transfer sold by the transferee Company.

The Revenue Department assessed the Petitioner under Section 25 of the Maharashtra Value Added Tax Act,2002 (**"the MVAT Act"**) and held that the transaction effected under the BTA, was a transfer of a business "on a going concern basis" and hence, not exigible to the VAT.

Accordingly, the consideration received towards sale of the business was excluded from the turnover of the Petitioner, for the purpose of levy of VAT.

Later in 2017, the Petitioner was served with a show cause notice to review the assessment, stating that business transfer was incorrectly allowed as a slump sale, on the ground that one of the clause of BTA states that allocation of cash consideration for stamp duty purposes included consideration for tangible, intangible, movable and immovable assets, which was required to be considered as "turnover" of the petitioner's sales for the said period.

The Petitioner submitted detailed reply, rejecting the contentions of the Revenue department on the ground that itemized break-up of the total consideration being provided by the parties purely for the stamp duty purpose, the whole transaction cannot be vivisected if the contract is of transfer of business.

The Revenue department confirmed the demand on the ground while there has been a transfer of the entire business, there was also a transfer of right to use by the Petitioner of certain intellectual property rights namely trade name, logo, goodwill etc. for a fixed period of time in the BTA.

Aggrieved by the Order of the Revenue department the Petitioner filed writ petition before the Hon'ble Bombay High court.

Issue:

Whether transfer of right to use intangible asset in business transfer agreement for specified period would construe as sale of goods, leviable to tax under the MVAT Act?

Held:

The Hon'ble Bombay High Court in ***Writ Petition No. 2836 of 2021*** held as under:

- Noted that, the BTA is a commercial scheme wherein the parties have specifically defined the business and all its material ingredients including the tangible and intangible assets.

- Further noted that, one of the clause the BTA states about allocation of cash consideration on the basis of assets, the same is purely in the context of what has been agreed for stamp duty purpose between the parties.
- Stated that, the Revenue authority adopted pick and choose approach in dissecting the agreement to give a different meaning to such clause of BTA, so as to construe the same to be not part of a slump sale, making some portion of assets under BTA exigible to VAT.
- Further stated that, it is not permissible for the authorities to vivisect the contract particularly where intent of the parties is clear in regard to the terms and conditions of the BTA, in the present case transfer of business as a whole in its entirety as a slump sale.
- Observed that, authority was required to consider the clauses of BTA as a person of commerce would consider, appreciate and understand such clauses in terms of their commercial efficacy, even in applying the provisions of the MVAT Act, more particularly when the parties in relation to a slump sale were permitted under one of the legislations namely under the Income Tax Act, to attribute values to different tangible assets and intangible assets.
- Stated that, the intangible assets were integral elements in the transfer of business as contemplated by the parties under the BTA, the same were required to be transitioned on well accepted commercial rationale, so as to achieve a gradual and complete transfer of business as designed by the parties.
- Held that, the Revenue authority has travelled far beyond the jurisdiction its powers under Section 25 of the MVAT Act,
- Set aside the impugned order being not sustainable.

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