HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

(DIVISION BENCH : HON. Mr. JUSTICE P.K. JAISWAL AND HON'BLE Mr. JUSTICE VIVEK RUSIA)

WRIT PETITION No.6304/2011

M/s. IDEA Cellular Ltd. ..PETITIONER.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

WRIT PETITION No.6645/2012

M/s. IDEA Cellular Ltd. ..PETITIONER.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

WRIT PETITION No.8408/2013

M/s. IDEA Cellular Ltd. ..PETITIONER.

VS.

Divisional Dy. Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

WRIT PETITION No.2760/2014

M/s. IDEA Cellular Ltd. ..PETITIONER.

VS.

Appellate Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

WRIT PETITION No.7534/2014

M/s. IDEA Cellular Ltd. ..PETITIONER.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

WRIT PETITION No.5517/2015

M/s. IDEA Cellular Ltd. ..PETITIONER.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

WRIT PETITION No.2328/2016

M/s. IDEA Cellular Ltd. ..PETITIONER.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

WRIT PETITION No.308/2017

M/s. IDEA Cellular Ltd. ..PETITIONER.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

WRIT PETITION No.6076/2018

M/s. Bharti Airtel Ltd. ..PETITIONER.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

VATA No.2/2013

M/s. IDEA Cellular Ltd. ..APPELLANT.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

VATA No.3/2013

M/s. IDEA Cellular Ltd. ..APPELLANT.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

VATA No.13/2014

M/s. IDEA Cellular Ltd. ..APPELLANT.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

VATA No.14/2014

M/s. IDEA Cellular Ltd. ..APPELLANT.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

VATA No.2/2015

M/s. IDEA Cellular Ltd. ..APPELLANT.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

VATA No.3/2015

M/s. IDEA Cellular Ltd. ..APPELLANT.

VS.

Assistant Commissioner, Commercial Tax. ..RESPONDENTS.
& others.

T.R. No.108/2017

M/s. BTA Cellcom. ..PETITIONER.

VS.

Commissioner, Commercial Tax & others. ..RESPONDENTS.

T.R. No.109/2017

M/s. BTA Cellcom. ..PETITIONER.

VS.

Commissioner, Commercial Tax & others. ..RESPONDENTS.

T.R. No.110/2017

M/s. BTA Cellcom. ..PETITIONER.

VS.

Commissioner, Commercial Tax & others. ..RESPONDENTS.

Shri Sumeet Nema, Senior Advocate with Shri Gagan Tiwari, Advocate for the Assesses.

Shri Romesh Dave, Government Advocate for the respondents/State.

Whether approved for reporting: Yes

ORDER
(Passed on 22/10/2018)

Per Vivek Rusia J:

All above writ petitions, VAT Appeals and T.R.s' involves common questions of law; hence all are being decided by this common order.

Interpretations of provisions of following enactments are involved in these cases:-

(i) Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (hereinafter referred as "**MP Entry Tax Act**")

(ii) Madhya Pradesh Commercial Tax Act, 1994 (hereinafter referred as "MPCT Act") and

(iii) Madhya Pradesh Value Added Tax Act, 2002 (hereinafter referred as "VAT Act").

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2. The Assesses and appellants company are engaged in the activities of providing telecommunication services are herein after referred as "**Assesse"**.

W.P. No.6304/2011 has been filed by the Assesse being aggrieved by order dated 29.3.2010 passed by Assessing Authority and order dated 30.4.2011 passed by the Appellate Authority, by which, entry tax has been imposed under the M.P. Entry Tax Act for the for the period 2007-2008 over various goods like building material, plant & machinery, computer hardware, computer software, furniture fixers, office-equipment, vehicle, CWIP plant & machinery, SIM cards, recharge voucher, marketing material, etc. brought within the local area.

W.P. No.6645/2012 has been filed by the Assesse being aggrieved by assessment order dated 16.4.2012 passed by the Assessment Authority, by which, entry tax has been imposed over various goods brought within the local area under the M.P. Entry Tax Act for the for the period 2009-2010.

W.P. No.2760/2014 has been filed by the Assesse being aggrieved by assessment order dated 21.12.2012 passed by the Assessment Authority, by which, entry tax has been imposed over various goods brought within the local area under the M.P. Entry Tax Act for the for the period 2008-2009.

W.P. No.8408/2013 has been filed by the Assesse being aggrieved by assessment order dated 19.3.2013 passed by the Assessment Authority, by which, entry tax has been imposed over various goods brought within the local area under the M.P. Entry Tax Act for the for the period 2010-2011.

W.P. No.7534/2014 has been filed by the Assesse being aggrieved by assessment order dated 31.7.2014 passed by the Assessment Authority, by which, entry tax has been imposed over various goods brought within the local area under the M.P. Entry Tax Act for the for the period 2011-2012.

W.P. No.5517/2015 has been filed by the Assesse being aggrieved by assessment order dated 28.2.2015 passed by the Assessment Authority, by which, entry tax has been imposed over various goods brought within the local area under the M.P. Entry Tax Act for the for the period 2012-2013.

W.P. No.2328/2016 has been filed by the Assesse being aggrieved by assessment order dated 30.1.2016 passed by the Assessment Authority, by which, entry tax has been imposed over various goods brought within the local area under the M.P. Entry Tax Act for the for the period 2013-2014.

W.P. No.308/2017 has been filed by the Assesse being aggrieved by assessment order dated 30.12.2015 passed by the Assessment Authority, by which, entry tax has been imposed over various goods brought within the local area under the M.P. Entry Tax Act for the for the period 2003-2004.

W.P. No.6076/2018 has been filed by the Assesse being aggrieved by assessment order dated 23.1.2018 passed by the Assessment Authority, by which, entry tax has been imposed over

various goods brought within the local area under the M.P. Entry Tax Act for the assessment year 2015-2016.

VATA No.2/2013 has been filed by the appellant u/s. 53 of M.P. VAT Act, 2002 against the order dated 23.10.2012 passed in the appeal by M.P. Commercial Tax Appellate Board, Bhopal for the period 2006-2007 (entry tax).

VATA No.3/2013 has been filed by the appellant u/s. 53 of M.P. VAT Act, 2002 against the order dated 23.10.2012 passed in the appeal by M.P. Commercial Tax Appellate Board, Bhopal for the period 2005-2006 (entry tax).

VATA No.13/2014 has been filed by the appellant u/s. 53 of M.P. VAT Act, 2002 against the order dated 22.7.2014 passed in the appeal by M.P. Commercial Tax Appellate Board, Bhopal for the period 2003-2004 (entry tax).

VATA No.14/2014 has been filed by the appellant u/s. 53 of M.P. VAT Act, 2002 against the order dated 22.7.2012 passed in the appeal by M.P. Commercial Tax Appellate Board, Bhopal for the period 2003-2004 (entry tax).

VATA No.2/2015 has been filed by the appellant u/s. 53 of M.P. VAT Act, 2002 against the order dated 3.9.2015 passed in the appeal by M.P. Commercial Tax Appellate Board, Bhopal for the period 2004-2005 (entry tax).

VATA No.3/2015 has been filed by the appellant u/s. 53 of M.P. VAT Act, 2002 against the order dated 6.4.2015 passed in the appeal by M.P. Commercial Tax Appellate Board, Bhopal for the period 2005-2006 (entry tax).

T.R. No.108/2017, **T.R. No.109/2017** and **T.R. No.110/2017** are references sent to this Court by M.P. Commercial

Tax Appellate Board, Bhopal vide order dated 26.12.2014 respectively for the period 1.4.1998 to 31.3.1999; 1.4.1999 to 31.3.2000; and 1.4.2000 to 31.3.2001 on following substantial questions of law :

> *"1. Whether the appellant who is engaged in the activity of providing telecommunication services to its customers not involving any activity of buying, selling, supplying or distributing of goods can be said to be a 'dealer carrying on business' within the meaning of the provisions of the M.P.C.T. Act, 1994 and whether the applicant can be said to be covered by the provisions of charging section of the M.P. Entry Tax Act, 1976 viz. Section 3(1) and be subjected to Entry Tax?*
>
> *2. Whether the appellant is liable to pay Entry Tax on goods imported from outside India on which Customs Duty has been paid as the said levy violates Article 286 of the Constitution of India and is also beyond the purview of Section 3 of the Entry Tax Act read with Section 2(aa) of the Act?*
>
> *3. Whether entry of SIM cards and Recharge Coupons is liable for Entry Tax despite the fact that these SIM Cards and Recharges Coupons have been held not to constitute goods by the Supreme Court and are only covered by Finance Act, 1994 as being liable to Service Tax?"*

The answer to the aforesaid questions would also decide the writ petitions challenging various assessment orders as well as appellate order passed by the appellate authority in respective first appeals filed under provision of MP **Entry Tax Act**.

3. The Assesse is a Limited Company incorporated and registered under the provisions of Companies Act, 1956. The Assesse Company is engaged in the activity of providing telecommunication services to its customer under the license granted by the Department of Telecommunication, Government of India. Under the said license, the Assesse has been authorized for establishing, maintaining and operating the basic telecommunication services in the service area. For the aforesaid purpose, the Assesse had established its Branches/Establishment Offices and transmission units for electromagnetic waves and radio frequencies in the entire State of Madhya Pradesh. According to the Assesse, its activities are purely service oriented activity and there is no involvement element of sale and porches of goods and same is also outside the purview of provisions of MPCT Act and thereafter VAT Act. Although later on, the Assesse company obtained a registration under the provisions of MPCT Act and VAT Act, 2002 in view of the amendment under Section 8(3)(b) of the Central Sales Tax Act in order to availing the concessional rates and tax rebate by way of form 'C' etc. The aforesaid benefit of concession was given under the provisions of MPCT Act (now, VAT Act, 2002) to encourage the telecommunication sector as a whole so that the Assesse could spread their network throughout the country. That while obtaining the registration the Assesse Company has declared its activity as that of providing telecommunication service as its principal activity. The Assesse obtained the aforesaid registration as a matter of abundant caution which cannot be presumed that it has accepted the applicability of the Commercial Tax Act and the Central Sales Tax Act as there is no business of sale and purchase. The Apex Court in case of ***Bharat Sanchar Nigam Limited and Others Vs. Union of India & Others, reported in (2006) 145 STC 91*** has already held that mobile service is nothing but an electromagnetic waves and

radio frequencies which do not constitute goods and no sale of goods as such is involved in the activity of providing telecommunication services. In order to provide the telecommunication services to its users, the telecommunication equipment, plant, machinery were brought within the local area of the State from outside place of Madhya Pradesh even from the outside of India. Such incident of taxation is under the MP Entry Tax Act is upon the dealer who is defined under the MACT / VAT Act and who in course of its business effects the entry of goods into the local area and since the Assesse is neither a dealer nor carrying on business as defined under the MACT/ VAT Act is not subjected to the tax under the MP Entry Tax Act. The respondents have levied the Entry Tax as well as penalty upon the Assesse for deferent periods.

4. Being aggrieved by the order of assessment, the Assesse preferred an appeal before the First Appellate authority who has dismissed and affirmed the order of assessing authority. In some cases, the Assesse preferred an appeal to the second appellate authority under Section 46(2) of the Madhya Pradesh VAT Act, 20202 before the Appellate Board. The Board has also maintained the order of assessment authority, hence in those matters assesse have filed, VAT appeals have been filed before this Court and which have been admitted by this Court on three substantial questions of law as reproduced above. In some cases the Appellate Board has send the reference to this court after framing three substantial questions of law as reproduced above.

5. The Assesse has assailed the impugned orders on the ground that the incident of MP Entry tax under Section 3(1) gets attracted if the dealer in course of his business brings the goods as specified either in schedule II or III into the local area. If such person who is affecting entry of goods is not a dealer in the course of business

as a dealer then no Entry Tax can be levied. Article 286 of the Constitution of India does not permit the State to levy tax on the sale and purchase of the goods which takes place into course of import or export out of territory of India. Since, the MP Entry Tax does not provide definition of word "Business" but same is defined in the VAT Tax Act, 2002 and same has been borrowed for applying the provisions of MP Entry Tax Act. The Assesse has assailed the impugned orders on the ground that the telecommunication services provided by the Assesse is not a business of buying, selling, supplying or distribution of goods, therefore, the Assesse by no stretch of imagination can be called as **Dealer** for the purpose of MP Entry Tax Act. The plant and machineries, electronic equipment etc. brought by the Assesse within the State of Madhya Pradesh in order to provide the telecommunication service which does not involve any processing of plant and machinery and any conversion of such plant and machinery into new or different commercial commodity does not constitute either used or consumption in the course of business by the dealer, hence, imposition of entry tax and penalty is wholly unjustified and arbitrary.

6. After notice, the State Government filed the return by submitting that the writ petition is not maintainable in which the Assesse has directly approached this Court against the assessment order or against the order passed by the first appellate authority without resorting the remedy of second appeal to the appellate board, hence, petition is liable to be dismissed on this preliminary grounds. On merit, it is submitted that the Assesse is engaged in the business of providing telecommunication services and purchased the goods in the course of business and also consuming/using such goods in order to provide the telecommunication services is definitely liable to pay the Entry Tax. The scope of definition of "Business" under Clause (d) Section 2 of the MP VAT Act, 2002 is very wide and according to

which any transaction of sale or purchase of good in connection with or incidental or ancillary to the trade, commerce, manufacture adventure or concerned are within the purview of Entry Tax. In order to provide the telecommunication services, the Assesse purchased the goods against the form “C” and is also got registered as dealer under the provisions of MP VAT Act and Sales Tax Act, 1956, therefore, liable to pay the tax under Madhya Pradesh VAT Act so also under the Entry Tax Act. Under Section 11 of the MP Entry Tax Act, the burden for proving that the dealer is not liable to pay the Entry Tax is on the dealer. Despite the decision of the Apex Court in case of ***Bharat Sanchar Nigam Limited*** (supra), the Assesse has continued with its registration under the Sales Tax Act and VAT Act . It is further submitted that that for levying the Entry Tax, the term called “on the entry of good into a local area from the outside, alone is relevant and it is immaterial that from where the goods come from.

7. The Apex Court in case of ***Assistant Commissioner (Intelligence) Vs. Nandram Construction Company, reported in (2001) 26 TLD 81 (SC)*** has held that for carrying on a business, it is not necessary that the goods brought must be sold. Any person who is engaged in the business of construction of immovable property was held to be a dealer and liable to pay purchase tax on the goods purchased from the registered dealer despite that, he is not selling the goods. Accordingly, the Assesse who is carrying on a business purchase the goods are not necessary to be saleable commodity. The Assesse is enjoying the benefit of Section 8(1) & 8(4) of the Central Tax Act, purchased the goods against form 'C', then cannot claim that it is not a dealer, therefore, the Assesse being a dealer is covered under the provisions of Section 3(1) of the MP Entry Tax Act. Since, the Assesse consumed or used the goods while providing the services is liable to pay the entry tax, hence, the petitions and appeals are liable to

be dismissed.

8. Shri Sumeet Nema, learned Senior Advocate appearing on behalf of the Assesse argued that when the Assesse started its activities in the State of Madhya Pradesh, the question whether the telecommunication service is covered under the Sales Tax/Commercial Tax and any element of sale of goods is involved in such activities was a doubtful issue, as such, the Assesse obtained the registration under the MPCT Act and the Central Sales Tax Act as a matter of abundant caution, but such registration can by no stretch of imagination make the Assesse a dealer and liable to pay Sales Tax/Commercial Tax. Thereafter Apex Court in case of ***Bharat Sanchar Nigam Limited*** (Supra) has held that the electromagnetic waves and radio frequencies do not constitute goods and no sale of goods as such is involved. The Assesse has brought various plants and machineries, electronic equipment etc. for installation in the State of Madhya Pradesh for the purpose of setting up the telecommunication network, but the Assesse is neither a dealer, nor carrying on business as defined under the MPCT Act, hence, not liable to pay the Entry Tax in its return. Since, the Assesse is not covered by charging section; no assessment could be made against it. According to Shri Nema, learned senior counsel appearing on behalf of the Assesse, Section 3 of the MP Entry Tax Act is a charging section and any person settled with the liability under the Act, must be shown that he falls within the charging section. Section 2(2) of the MP Entry Tax Act incorporates the definition of MP VAT Act, 2002 and according to which, any person who carry on the business of buying, selling, supplying and distribution of goods is a dealer. Since, the Assesse company is engaged in the service oriented activity i.e. telecommunication services, which is not a business of buying, selling, supplying or distribution of any goods hence the Assesse cannot said to be a dealer under the VAT Act so also under the

MP Entry Tax Act. He placed heavy reliance over the judgment passed by the Apex Court in case of ***Bharat Sanchar Nigam Limited*** (supra) in which it has been held that in a business of mobile network no element sale of goods are involved therein,the transaction is purely one of service activity as there is no transfer of right to use the goods at all. Shri Nema, learned senior Advocate has further placed reliance over the judgement passed in the case of ***Western Coalfields Limited Vs. Commissioner of Commercial Tax (MP), reported in (2007) 11 STJ 297 MP*** in which the division bench of this Court held that the definition of a dealer means a person who carries on a business of buying, selling, supplying or distributing the goods as in the case of Defence Department of the Government of India does not carry on the business of buying, selling, supplying or distributing the goods is not a dealer. Shri Nema, learned Senior Advocate further emphsised that the Assesse cannot be assessed SIMultaneously under Section 3(1) as well as under 3(2) of the MP Entry Tax Act. The assessing authority has levied the tax under sections 3(1) as same is applicable to a dealer who brings the goods in the course of business and Section 3(2) is applicable to any person who brings the good in the local area for consumption, use or sale, therefore, a dealer who is liable to pay the VAT under Section 3(1) is not a class of person notified under notification issued under Section 3(2) of the MP Entry Tax Act. The State of Madhya Pradesh issued a notification dated 31.03.1999 under Section 3(2) for the persons bringing goods into local area within the State of Madhya Pradesh i.e. telecommunication cable and accessories thereof. This establishes that Section 3(2) is applicable to a person other than the Dealers.

9. Shri Nema further submitted that there cannot be any charge of entry tax on the SIM (Subscriber Identity Module) card which is admittedly is not the good as per the decision of this Court

passed in case of **M/s Idea Cellular Ltd, Indore Vs. Assistant Commissioner of Commercial Tax, LTU,** decided by order dated 03.01.2017 passed in W.P.No.7631/2014 that SIM Card is nothing but device which helps the service provider to identify the subscriber. It has been observed that service provider also enables the subscriber to receive the service by means of electromagnetic waves, hence, the SIM card cannot be termed to be a good and even under Article 366 (12) SIM is not good as it has no intrinsic value and are not marketable or transferable, hence, the questions of law framed by this Court is liable to be answered in favour of the Assesse and impugned orders passed by the Assessment Officer and Appellate Authority are liable to be set aside.

10. Shri Nema learned senior counsel also addressed us on the point that Art. 286 of the Constitution of India does not permit the State to levy tax on sale and purchase on the goods which takes place in the course of import or export out of territory of India. The word 'including a place outside the state' do not mean ' outside the country'.

11. ***Per contra***, Shri Romesh Dave, learned Government Advocate appearing for the respondents/State of M.P. and ors. refuted the arguments of Shri Nema and argued that the Assesse company is still having the permanent registration certificate which used to be issued to the dealers under the relevant provisions of MPCT Act and now under the VAT Act. The Assesse company itself declared it's activity as a trading of FCT, sale-purchase of mobile phone, electronic products related to the SIM cards and other goods as per the list attached to the registration form, hence, the Assesse is estopped from raising the plea that it is not a dealer carrying the business within the meaning of provisions of the MACT and VAT act. The MP Entry Tax Act is levied on the goods mentioned in the registration certificate which are brought or being brought by the Assesse within the territory

of the Madhya Pradesh during the course of its business i.e. providing telecommunication service and sale of mobile, handset, sale of SIM card, sale of recharge voucher, rating of FCT etc. As per the definition of Section 2(1)(b), the Entry Tax means the entry of a good into a local area for consumption use or sale. The term "entry of good" is also defined under Section 2(1) (aa) and according to which entry of goods into the local area from any place outside for consumption, use & sale. The definition of goods and sale has been imported from the MP VAT Act, 2002. The charging section 3 shows the incident of levy of entry tax and the same is applicable to the Assesses.

12. The Apex Court in case of ***Bhagatam Rajeev Kumar Vs. CST, reported in 1995 Supp(1) SCC 673*** has held that the under Section 3 of the Entry Tax Act is on bringing of goods inside local area by a vehicle for consumption, use or sale irrespective of whether the sales tax is payable or not, hence, there is no merit on the contention raised by learned senior Advocate for the Assesse that the Assesse company being a registered dealer is not liable to pay sales tax and is also not liable to pay the Entry Tax . As per the definition of "business", it includes all commercial activities and also includes the transaction for not only selling, but also buying of the goods.

13. At last, Shri Dave, learned GA for the respondent/State has placed reliance over the latest judgement passed by the Bombay High Court in the case of ***Bharati Airtel Ltd Vs Mira Bhayandar Municipal Corporation***, reported in 2017 SCC Online Bomb 8555 in which it has been held that E-charge could not be subjected to levy of LBT (Local Body Tax), but LBT is leviable on the entry of goods into the limits of city for consumption, use or sale and the Taxing Authority well within its power can levy LBT on SIM card and recharge voucher for SIM card and physical form. The provisions of Entry Tax Act are identical to the provisions of Section 127 of the Maharashtra Municipal

Corporation Act, 1949. In view of the above, the issue is no more *res-integra*, hence, petitions as well as appeals are liable to be dismissed.

14. We have heard the learned counsel, gave anxious consideration to their submissions and perused the material available on record.

15. The core issue which is required to be answered first is that a dealer registered under the VAT Act, 2002 is only liable to pay Entry tax u/s. 3(1) of the Entry Tax Act. According to the Assesse it is company providing service not doing the business of sale and purchase of goods, therefore, not liable to pay Entry Tax also. The Madhya Pradesh Legislature has brought the Entry Tax Act in order to levy a tax on entry of goods into a local area of Madhya Pradesh for consumption, use or sale therein. Before coming into force of Entry Tax Act w.e.f. 2.10.1976, all local authorities used to collect Octroi on entry of any goods within their local area. In order to simplify such charging of Octroi by different local authorities, the State Government brought this enactment. As per definition u/s. 2(1)(aa), the entry of goods into local area means entry of goods into that local area from any place outside the State for consumption, use or sale therein. As per Section 2(1)(b), the Entry Tax means a tax on goods brought into local area for consumption, use or sale . For ready refrence section 2(1) (aa) and 2(1)(b) are reproduce below:-

> **Sec. 2 : Definitions**
> (1) In this Act unless the context otherwise requires, -
> 3(a).....
> 4[(aa)] entry of goods into a local area with all its grammatical variations and cognate expressions means entry of goods into that local area from any

> place outside thereof including a place outside the State for consumption, use or sale therein;
> (b) entry tax means a tax on entry of goods into a local area for consumption, use or sale therein levied and payable in accordance with the provisions of this Act 5[and includes composition money payable under Section 7-A;]

It is clear from the aforesaid two definitions that if the goods brought into the local area from outside the State for consumption, use or sale, the same is subjected to payment of Entry Tax as per value of the goods. Hence, the goods brought not only for its sale bur consumption and use is also material eventuality for payment of entry tax. It is also immaterial that who is bringing the good within the local area.

16. Section 2(1)(gg) defines 'registered dealer' as under the VAT Act. As per Section 2(1)(l), the value of goods in relation to a dealer or any person who has effected entry of goods into a local area shall mean the purchase price of such goods. As per definition given in Section 2(2), all those expressions, other than expression "goods" and "sale" which are used but are not defined in this Act and are defined in the VAT Act shall have the meanings assigned to them in that Act. Accordingly, the words "goods" and "sale" have their independent meaning in Entry Tax Act other than the meaning assigned in the VAT Act.

17. Section 3 of Entry Tax Act provides the incidence of charging of Entry Tax. As per Section 3(1), there shall be levied an Entry Tax on the entry in the course of business of a dealer of goods specified in Schedule-II into each local area for consumption, use or sale therein. As per Clause (iii) of Section

3(1), on entry of goods specified in Schedule-III, for consumption or use of such goods, but not for sale therein, there shall be a levy of Entry Tax. Therefore, as per Section 3(1), the Entry Tax is chargeable on a dealer if he brings the goods in his course of business within the local area either for sale, use or consumption as per Schedule-II or Schedule-III. Under sub-section (2)(a) of Section 3, the Entry Tax is payable on entry of such goods specified in Schedule-II and III by such person or class of person as notified by the State Government. As per proviso appended to Section 3(2), that if it is proved before the Assessing Authority that such goods have already been subjected to Entry Tax by any other person or dealer under this Act, then there shall be no levy of Entry Tax on a person or class of persons. Thus, it is clear that Entry tax is payable once either u/s. 3(1) or u/s. 3(2) of the Entry Tax Act by dealer or any person.

18. Shri Sumit Neema, learned senior counsel appearing for the Assesses, has rightly submitted that Section 3(1) is applicable to a registered dealer and Section 3(2) is applicable to any other person other than the dealer. If the dealer has been subjected to Entry Tax u/s. 3(1), then, no other person can be subjected to payment of Entry Tax u/s. 3(2) of the Entry Tax Act. If such person or class of persons satisfies the Assessing Authority that the dealer has already paid the Entry Tax on the goods, then he is not liable to pay the Entry Tax. Therefore, the Government cannot recover Entry Tax u/s. 3(1) as well as u/s. 3(2) on one person. If he is a dealer, then, he would not be covered u/s. 3(1) and if not a dealer, then he is liable to pay the Entry Tax u/s. 3(2) of the Entry Tax Act.

19. Now it is required to decide, whether the Assesse being

service provider not a dealer is liable to pay Entry Tax u/s. 3(1) or u/s. 3(2) of the Entry Tax Act?

20. Shri Sumit Neema, learned senior counsel appearing for the Assesses/appellants, fairly conceded that the Assesse is covered u/s. 3(2) of the Entry Tax Act because it is not registered dealer under the VAT Act.

21. The Division Bench of this Court in the case of **Sanjay Trading Co. V/s. Commissioner of Sales Tax & others : (1994) STC 589**, had held that M.P. Entry Tax Act is intended to levy Entry Tax on entry of specified goods into the local area for consumption, use or sale. The Entry Tax is not a tax on goods, but a tax on entry of goods into the local area for particular purpose. The words "liable to pay tax under the Sales Tax Act" clarifies the express the word "dealer" and do not clarify the expression "goods". Every dealer who is a registered dealer is liable to pay the tax under the Entry Tax Act. The Division Bench had no occasion to consider the provisions of Section 3(2). As held above, u/s. 3(1) only the dealer who is registered dealer under the VAT Act is liable to pay Entry Tax. U/s. 3(2), any person is liable to pay tax on entry of goods which has nothing to do with the 'sale' by him. The contention of the Assesse is that its activity is service oriented activity i.e. telecommunication services to its consumers. It may constitute a business in the wider sense, but not in the nature of buying or selling or distributing the goods as necessary to constitute "dealer" under the VAT Act read with Entry Tax Act. The Entry Tax was brought into force in the year 1976 when there was no concept of Service Tax which was introduced by Finance Act 1994 . The definition of 'dealer' is not confined to the business of

selling and buying; it is also an activity of supplying or distribution of goods for cash or other valuable consideration. Sec2(i) of VAT Act defines the word Dealer which is as follows:

(i) "Dealer" means any person, who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment or for commission, remuneration or other valuable consideration and includes -

(i) a local authority, a company, an undivided Hindu family or any society (including a co-operative society), club, firm or association which carries on such business;

(ii) a society (including a co-operative society), club, firm or association which buys goods from, or sells, supplies or distributes goods to its \members;

(iii) a commission agent, broker, a del-credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of the principal;

(iv) any person who transfers the right to use any goods including leasing thereof for any purpose, (whether or not for a specified period) in the course of business to any other person;

As per judgment of the apex Court in the case of BSNL (supra), providing of SIM Card to a customer is not a 'sale', but is a 'service'. But, the Assesse being the dealer is distributing or supplying the goods i.e. SIM cards by taking service charges in order to run his business of telecommunication services. The

assesse is supplying the SIM to it customer and taking service charges is covered under the definition of Dealer Therefore, the "course of business of a dealer of goods" cannot be given restrictive meaning for the purposes of Entry Tax. Under Sec 2(2) of the Entry tax all expression not defined in this act shall have same meaning under the VAT Act, hence only definition and meanings have been borrowed from VAT act in Entry Tax Act. That Entry Tax act nowhere says that it is applicable for only those dealer who are registered under VAT Act . The Entry Tax is not a part and parcel of VAT Act, where a dealer who is covered under the VAT Act is only liable to pay Entry Tax. Any businessman who brings the goods for consumption, use or sale is liable to pay Entry Tax whether he is a dealer under the VAT Act or not because, provisions of u/s. 3(2), are applicable to such person who is not engaged in any business and simply brings the goods within the local area for any purpose. Section 3(1) is applicable to those persons who are engaged in the business and effecting entries of the goods in the local area for use, sale and consumption in his course of business. Sec.2(d) of VAT Act defines the word Business which is as follows :-

(d) "Business " includes, -

> (i) any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern and irrespective of the volume, frequency, continuity or regularity of such trade, commerce, manufacture, adventure or concern; and

(ii) any transaction of sale or purchase of goods in connection with or incidental or ancillary to the trade, commerce, manufacture, adventure or concern referred to in clause (i), that is to say –

(a) goods whether or not they are in their original form or in the form of second hand goods, unserviceable goods, obsolete or discarded goods, mere scrap or waste material; and

(b) goods which are obtained as waste products or by-products in the course of manufacture or processing of other goods or mining or generation of or distribution of electrical energy or any other form or power;

Therefore, the Assesse is covered under the provisions of Section 3(1) of Entry tax Act .

22. The Assesse is providing service of telecommunication and in order to do the business, brings the plant & machinery, equipment, etc. to the local area for the use and consumption, therefore, Assesse is subjected to the liability of Entry Tax. The main concern of the Assesses is in respect of payment of Entry Tax on a SIM Card. As held by the apex Court in the case of BSNL (supra), the SIM Card is not ‘goods’ and the company is not engaged in the business of selling the SIM Card. The contention of the Assesse that the ‘goods’ has not been defined in the Entry Tax Act, but defined under the VAT Act. As per Entry 52 List II of Seventh Schedule of Entry Tax Act, the tax on an entry of a goods into the local area for consumption, use or sale therein. As per Article 366(12), goods include all materials, commodities and articles. As per judgment of apex Court in the case of BSNL (supra), the SIM Card cannot be termed as ‘goods’ even under Article 366(12) of the Constitution of India because SIM cards

have no intrinsic value, are not marketable and cannot be transferred. This Court in the case of M/S. IDEA CELLULAR LTD. V/s THE ASSISTANT COMMISSIONER OF COMMERCIAL TAX (W.P. No.7631/2014 decided on 3.1.20170 has held that the amount received by the cellular telephone company from its subscribers towards SIM Card will form part of the taxable value for levy of Service Tax as the SIM Cards are not sold as goods independent by the service provided. In view of the above verdict of apex Court as well as of this Court, the Assesse Company is not selling the SIM Cards to its customers, but it can safely be held that assesse is supplying SIM cards to its customers in order to provide service. Since, the SIM Card is being used and consumed in the course of business of service. Hence, it will fall under the incidence of Taxation under Section 3(1) of the Entry Tax Act.

23. In case of **Maheshwari Fish Seed Farm v. T.N. Electricity Board, (2004) 4 SCC 705**, the Apex court has held that the definition of the term in one statute does not afford a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally.

> *16. The learned Senior Counsel for the appellants invited our attention to the definition of the term "agriculture" as given in the definition sections or interpretation clauses of several other enactments such as sub-section (2) of Section 2 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, clause (b) of Section 2 of the Tamil Nadu Agricultural University Act, 1971, clause (a) of Section 2 of the Agricultural and Rural Debt Relief Scheme, 1990, so defining the term "agriculture" as to include therein "pisciculture". These definitions*

were pressed into service by Shri Iyer, the learned Senior Counsel, to support his submission for a similar meaning being assigned in the present case. Suffice it to observe that the common-parlance meaning of the term "agriculture", in the context in which it has been used and is arising for determination before us, cannot be determined by reference to definitions given in other statutes. This we say for more reasons than one. Firstly, none of the statutes referred to by Shri Iyer, the learned Senior Counsel, can be called statutes in pari materia. Secondly, it is common knowledge that the definition coined by the legislature for the purpose of a particular enactment is often an extended or artificial meaning so assigned as to fulfil the object of that enactment. Such definitions given in other enactments cannot be freely used for finding out meaning to be assigned to a term of common parlance used in an altogether different setting. And lastly, as Justice G.P. Singh points out in Principles of Statutory Interpretation (9th Edn., 2004, at p. 163):

"[I]t is hazardous to interpret a statute in accordance with a definition in another statute and more so when such statute is not dealing with any cognate subject or the statutes are not in pari materia."

24. The Division Bench of Bombay High Court in its recent judgment passed in case of **Bharti Airtel Ltd. V/s. Mira Bhayandar Municipal Corporation. : 2017 SCC OnLine Bom. 8555 = 2018 (3) Mah. Law Journal 430** has held that e-charge cannot be subjected to levy of Local Body Tax (LBT), but SIM card and Re-charge Voucher in the physical form are subject to levy of LBT. Para 21 of the aforesaid judgment is reproduced below :

> *"**21.** The SIM cards are normally made of plastic or paper. The SIM cards are capable of being brought and sold. The SIM cards have utility value. The SIM cards are capable of being transferred, stored and possessed. The concept of Sales Tax and LBT are not the same. LBT can be levied on the goods brought within the limits of a Municipal Corporation even if*

the same are not sold, but the same are brought either for consumption or use. Going by what is held by the Apex Court in paragraph 11 of its decision in the case of Idea Mobile, SIM cards are capable of being used by putting the same in a mobile phone handset. A SIM card is a portable memory chip used in cellular telephones. It is a tiny encoded circuit board which is fitted into the cell phones at the time of signing on as a subscriber. Even assuming that by itself the SIM cards have no intrinsic sale value, considering the nature of its use, it has a value in terms of money apart from its value as a portable memory chip. Even recharge vouchers which are made of paper or plastic are capable of being brought and sold. The same are capable of being used. The same are capable of being transferred, stored and possessed. The recharge vouchers or cards made up of paper or plastic may have a little value by itself, but the same are capable of being used and that its use has a value as the holder thereof can get a talk time or internet data which has a value in terms of money. SIM cards and recharge vouchers are tangible goods which are capable of being brought into the limits of a city. The same are capable of being used after the same are brought into the limits of a city. Hence, the same will be goods within the meaning of clause 25 of Section 2 of the said Act. In the decision of the Apex Court in the case of Idea Mobile, the High Court had come to the conclusion that the SIM card has no intrinsic sale value and therefore, the sales tax is not payable. But the Apex Court has not considered the question whether the SIM cards are capable of being used which is a relevant consideration for charging LBT."

Even otherwise it is important to mention here that the Assesses had obtained the registration under the VAT Act and supplied the

list of goods chargeable under the VAT Act. One hand assesse is counting with dealer registration certificate and other hand challenging the applicability of VAT Act and Entry Tax.

25. That as per definition of 2(1)(aa) " entry of goods into a local area" means " entry of goods into that local are from any place outside" hence assesse is liable to pay entry tax on goods brought from outside . Hence Entry tax is chargeable on entry of good into local area brought from outside other than that local area. The Division Bench of this Court in the case of **Sanjay Trading Co. V/s. Commissioner of Sales Tax & others : (1994) STC 589,** had held that M.P. Entry Tax Act is intended to levy Entry Tax on entry of specified goods into the local area for consumption, use or sale. The Entry Tax is not a tax on goods, but a tax on entry of goods into the local area for particular purpose. Hence it is immaterial whether good is coming from place outside the state or outside the country.

26. In case of **DDA v. Bhola Nath Sharma,reported in (2011) 2 SCC 54** the apex court has explained the word 'includes' used in definition clause and according to which the word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include

> *25. The definition of the expressions "local authority" and "person interested" are inclusive and not exhaustive. The difference between exhaustive and inclusive definitions has been explained in P. Kasilingam v. P.S.G. College of Technology7 in the following words: (SCC p. 356, para 19)*
> *"19. ... A particular expression is often defined by the legislature by using the word 'means' or the word 'includes'.*

Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that 'definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition'. (See Gough v. Gough8; Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court9, SCC p. 717, para 72.) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words 'means and includes', on the other hand, indicate 'an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions'. [See Dilworth v. Commr. of Stamps10 (Lord Watson); Mahalakshmi Oil Mills v. State of A.P.11, SCC p. 170, para 11.] The use of the words 'means and includes' in Rule 2(b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time."

26. In Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union12 this Court again considered the difference between the inclusive and exhaustive definitions and observed: (SCC p. 695, para 23)

"23. ... when in the definition clause given in any statute the word 'means' is used, what follows is intended to speak exhaustively. When the word 'means' is used in the definition ... it is a 'hard-and-fast' definition and no meaning other than that which is put in the definition can be assigned to the same. ... On the other hand, when the word 'includes' is used

in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word 'means' followed by the word 'includes' in [the definition of 'banking company' in] Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

27. In N.D.P. Namboodripad v. Union of India13 the Court observed: (SCC p. 509, para 18)

"18. The word 'includes' has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word 'include'. Webster's Dictionary defines the word 'include' as synonymous with 'comprise' or 'contain'. Illustrated Oxford Dictionary defines the word 'include' as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word 'includes' as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word 'include' is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word 'includes' is also used to connote a specific meaning, that is, as 'means and includes' or 'comprises' or 'consists of'."

(emphasis in original)

28. In Hamdard (Wakf) Laboratories v. Labour Commr.14 it was held as under: (SCC p. 294, para 33) "33. When an interpretation clause uses the word 'includes', it is prima facie extensive. When it uses the word 'means and includes', it will afford an exhaustive explanation to the meaning which for the purposes of the Act must invariably be attached to the

word or expression."

The questions of law framed in these petitions are reproduced and answered accordingly as under:

"1. Whether the appellant(Assesse) who is engaged in the activity of providing telecommunication services to its customers not involving any activity of buying, selling, supplying or distributing of goods can be said to be a 'dealer carrying on business' within the meaning of the provisions of the M.P.C.T. Act, 1994 and whether the applicant can be said to be covered by the provisions of charging section of the M.P. Entry Tax Act, 1976 viz. Section 3(1) and be subjected to Entry Tax?

Answer : The Assesse is engaged in the activities of supplying or distributing of goods for its consumption and use, is a dealer within the meaning of Entry Tax Act and covered by the charging section 3(1) of M.P. Entry Tax Act, 1976.

2. Whether the appellant is liable to pay Entry Tax on goods imported from outside India on which Customs Duty has been paid as the said levy violates Article 286 of the Constitution of India and is also beyond the purview of Section 3 of the Entry Tax Act read with Section 2(aa) of the Act?

Answer : That as per definition of 2(1)(aa) " entry of goods into a local area" means " entry of goods into that local are from any place outside" hence assesse is liable to pay entry tax on goods brought outside . Entry tax is chargeable on entry of good into local area brought from outside other than that local area.

3. Whether entry of SIM cards and Recharge Coupons is liable for Entry Tax despite the fact that these SIM Cards and Recharges

Coupons have been held not to constitute goods by the Supreme Court and are only covered by Finance Act, 1994 as being liable to Service Tax?"

Answer : SIM cards can be termed as 'goods' for the purposes of Entry Tax as the same is being used and consumed in order to provide service to the customer by the Assesses.

27. In view of the foregoing discussion, all these petitions/appeals/TR fails and are hereby dismissed.

No order as to costs.

(P.K. JAISWAL)
JUDGE.

(VIVEK RUSIA)
JUDGE.

Alok/-