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E-Commerce: The VAT Conundrum

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E-Commerce: The VAT Conundrum

The e-commerce boom and build-up of online sales, has opened up a massive opportunity for the online service providers/aggregators. Popularity of the online market places has however, also brought with it certain legal and regulatory challenges especially in relation to taxability of the online aggregators.

One such issue that the online aggregators seem to be grappling with is applicability of value added tax ("VAT"). In one of its recent judgements, the Kerala High Court dealt with this issue, in the matter of *Flipkart Internet Private Limited and Ors. v. State of Kerala and Ors.* (2015 (5) KHC 522). The state revenue authorities had imposed a penalty on the petitioner (Flipkart Internet Private Limited and others) under the Kerala Value Added Tax Act ("Act"), on the ground that the petitioner had not registered itself as a 'dealer' under the Act and not filled returns and maintained true and correct accounts as mandated under the said Act.

Contentions of the petitioner: The order of the authorities was challenged on the ground that the petitioner was merely a service provider, who is not engaged in the business of sale or purchase of goods and therefore cannot be termed as a 'dealer' under the Act. The petitioner pointed out that it merely facilitates transactions of sale and purchase through its online portal and, after an online customer identifies a product of his choice, the seller of the particular product is notified of the choice of the customer and he, in turn, raises an invoice on the customer and makes arrangements for the delivery of the product to the customer. Further, depending on the nature of the sale transaction, whether intra-state or inter-state, the seller of the product pays tax either under the local Act or under the Central Sales Act, and the fact of payment of tax is indicated in the invoice issued to the customer. The petitioner

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contended that it has absolutely no role to play in the transaction of sale and purchase and hence it could not have been proceeded against under the penal provisions of the Act.

Decision of the Court: The Kerala High Court agreed with the contentions of the petitioners and quashed the penalty orders imposed. It held that the notice issued by the authorities was silent on the fact how the petitioner was considered as a 'dealer', and the authorities didn't enter a specific finding with reasons as to whether there was any sales effected by the petitioner. Also, there was uncertainty as to whether the transactions in question had to be treated as local sales/intra-state sales *vis-a-vis* inter-state sales. The Court was of the view that the impugned orders reflected a patent non-application of mind by the revenue authority and seemed arbitrary.

Implications: While this judgement of the Kerala High Court, does not end up settling the VAT liability issue, its persuasive value in other states and likely influence on the ongoing discussions between the various players on this issue has definitely been welcomed by the online service providers. There, does appear to be certain hope in the e-commerce industry that to ease the confusion on the matter, the government may issue a clarification for the e-commerce companies that operate marketplaces (and only provide a platform for the sales transactions), so that they are not made subject to the same taxes as brick and mortar retailers.

Feedback

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