HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

(1) Civil Writ Petition No.17574 of 1995
Date of Decision: 02.02.2015

Union of India and another

...Petitioner

Versus

State of Haryana and another

...Respondents

(2) Civil Writ Petition No.1628 of 1998

Union of India and another

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Gurpreet Singh, Addl. Central Government Standing Counsel for the petitioners.
for the petitioners.

Ms. Mamta Singhal Talwar, AAG, Haryana.

<u>RAJIVE BHALLA, J(ORAL)</u>

Apart from praying for issuance of a writ holding that the amendment to Section 2(1)(iv) of the Haryana General Sales Tax Act, 1973, is ultra vires, the Union of India prays that order dated 29.09.1995, passed by the Excise & Taxation Officer-cum-Assessing

Officer, Ambala Cantt, District Ambala, directing the Union of India to deposit Rs.62, 59,000/- as sales tax liability, is illegal, without jurisdiction and contrary to the very nature of the transaction.

Counsel for the petitioner submits that controversy in the present petition has been settled by the Supreme Court in ***Bharat Sanchar Nigam Ltd. and another*** ***v.*** ***Union of India and others, 2006(3) SCC 1,*** in favour of the petitioner, by holding that telecom facilities are a service and do not involve an element of sale. The petitioner is, therefore, not liable to pay sales tax, under the Haryana General Sales Tax Act, 1973. Counsel for the petitioner further submits that Civil Writ Petition No.18913 of 2003 (***M/s Bharat Sanchar Nigam Limited*** ***v.*** ***State of Haryana and others***), was allowed by a Division Bench by setting aside the assessment order and remitting the matter to the Assessing Officer for taking a fresh decision in the matter. The Assessing Officer, has after considering the matter afresh, held that sales tax is not leviable. The petitioner's case is fully covered by aforesaid judgments. The writ petition may, therefore, be allowed, the impugned order may be set aside and the State of Haryana may be directed to refund the amount paid by the petitioner as sales tax.

Counsel for the State of Haryana is not in a position to raise any argument against the law declared by the Hon'ble Supreme Court in ***Bharat Sanchar Nigam Ltd. and another*** (supra).

We have heard counsel for the parties, perused the impugned order, the judgment of the Supreme Court in ***Bharat Sanchar Nigam Ltd. and another*** (supra) and the order passed by a

Division Bench of this Court.

The Supreme Court having held in ***Bharat Sanchar Nigam Ltd. & another*** (supra) that telecom services provided by the petitioner are in a nature of a service and not a sale, the assessment order levying sales tax is without authority of law. Consequently, we allow the writ petition, set aside the impugned orders and in terms of order dated 04.09.2006, passed in Civil Writ Petition No.18913 of 2003, remit the matter to the Assessing Officer, for adjudication afresh, within three months of receipt of a certified copy of this order.

As regard the prayer for refund of sales tax paid or recovered from the petitioner, the Assessing Officer, shall pass an order after considering judgment in ***Bharat Sanchar Nigam Ltd. & another*** (supra), failing which the petitioner shall be entitled to seek refund, in accordance with law.

The petitioner is directed to appear before the Assessing Officer , for further proceedings on 16.03.2015.

(RAJIVE BHALLA)
JUDGE

February 02, 2015 **(B.S.WALIA)**
nt **JUDGE**