IN THE HIGH COURT OF JUDICATURE AT MADRAS

25.01.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH
AND
The Hon'ble Dr. Justice ANITA SUMANTH

C.M.A. No.78 of 2012

Commissioner of Central Excise
and Service Tax,
1, Williams Road, Cantonment,
Tiruchirapalli-620 001. .. Appellant

Versus

1.M/s.Bharat Communications,
151/36, Arasu Plaza,
Big Street, Pattukkottai,
Thanjavur District.

2.Customs Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe-1,
1st Floor, 26 Haddows Road,
Chennai-600 006. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final Order No.961/2009 dated 07.08.2009 passed by the Customs Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai.

For Appellant .. Mr.T.R.Senthil Kumar

For Respondents .. R1 No appearance
R2 Tribunal

JUDGMENT

(Judgment of this Court was delivered by ANITA SUMANTH, J.)

This Civil Miscellaneous Appeal is filed by the Department calling in question the correctness of the order passed by the Customs Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai, dated 07.08.2009 in Final Order No.961/2009 and has been admitted on 12.01.2012 for consideration of the following substantial questions of law:

> *"1. Whether in the facts and circumstances discussed in the grounds, the CESTAT is correct in ignoring the settled position of law as to liability of service tax on the "Business Auxiliary Service" in promoting and marketing pre-paid and post paid cellular cards (SIM Cards) to facilitate the telephone service provided by the BSNL to reach the ultimate customer and holding that 1st respondent a franchisee of BSNL is not liable to pay service tax on the business auxiliary service service provided by them to their client BSNL?*
>
> *2.Whether the distribution and marketing of pre-paid and post paid cellular cards (SIM cards) of BSNL to the ultimate customers of BSNL facilitating the telephone service of BSNL is liable for service tax as a taxable service falling under the "Business Auxiliary Service" in terms of the Section 65(19) of the Finance Act, 1994?"*

2. Circular instruction issued by the Central Board of Excise and Customs, New Delhi in F.No.390/Misc./163/2010 J.C. dated 17.12.2015 stipulates that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.15 lakhs. In the instant case, the tax effect is less than the monetary limit imposed and the appeal is, hence, dismissed as not pressed, preserving the substantial question of law for determination in an appropriate case. No costs.

(H.G.R.,J) (A.S.M.,J)
25.01.2017

vga

HULUVADI G.RAMESH, J
AND
Dr.ANITA SUMANTH,J

vga

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