IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.19829 & 19830 of 2004 and
W.P.M.Nos.23839 & 23840 of 2004 and
W.V.M.P.No.2208 & 2209 of 2005

Aircel Cellular Ltd.,
5th Floor, Spencer Complex,
No.769, Anna Salai,
Chennai - 600 002. ... Petitioner in both WPs.

Vs.

1. Central Board of Excise and Customs
Service Tax, Ministry of Finance,
Department of Revenue,
Government of India, New Delhi.

2. The Deputy Commissioner,
Service Tax, Chennai-II,
629, Anna Salai, Chennai - 600 035.

3. Union of India, Rep. by the Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi. ... Respondents in both WPs.

Prayer in W.P.No.19829 of 2004: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the records on the files of the first respondent herein in Circular No.46/9/02-ST dated 08.08.2002 and to quash the said circular along with the words "however, service tax is leviable with effect from 16.07.2001 on inter connection linked charges recovered by BSNL from BTSPs as well as CMSPs", occurring in para 7 of the Circular No.46/9/02-ST dated 08.08.2002 while directing the first respondent not to impose service tax under Section 66(1) read with Section 65(60) and Section 65(105)(zd) of the Finance Act, 1994, on interconnect usage charges realized from other service providers licensed under Section 4(1) of the Indian Telegraph Act, 1885 while marketing telecommunication services.

Prayer in W.P.No.19830 of 2004 : Petition filed under Article 226 of the Constitution of India to issue a WRIT OF MANDAMUS to direct the second respondent herein or their officers and agents to forbear from imposing or recovering service tax under Section 66 of the Finance Act, 1994 on interconnect usage charges collected by the petitioners from other Telegraph Authorities licensed under Section 4 of the Indian Telegraph Act, 1885 as proposed in the show cause notice in C.No.IV/16/116/2004/STC dated 20.04.2004 of the second respondent.

For Petitioner (in both Wps.)	:	Mr.Parthasarathy, for Mr.N.Inbarajan
For Respondents (in both WPs.)	:	M/s.Hema Muralikrishnan

COMMON ORDER

Heard Mr.Parthasarathy, learned counsel for, Mr.N.Inbarajan, learned counsel for the petitioner and M/s.Hema Muralikrishnan, learned counsel for the respondents.

2. The petitioner has filed W.P.No.19829 of 2004 challenging the Circular No. 46/9/02-ST dated 08.08.2002, in so far as it relates to paragraph 6 of the circular along with the words "however, service tax is leviable with effect from 16.07.2001 on inter connection linked charges recovered by BSNL from BTSPs as well as CMSPs" occurring in para 7 of the Circular No.46/9/02-ST dated 08.08.2002 while directing the first respondent not to impose service tax under Section 66(1) read with Section 65(60) and Section 65(105)(zd) of the Finance Act, 1994, on interconnect usage charges realized from other service providers licensed under Section 4(1) of the Indian Telegraph Act, 1885 while marketing telecommunication services.

3. W.P.No.19830 of 2004 has been filed by the petitioner seeking for issuance of a Writ of Mandamus, to forbear the second respondent from recovery of Service Tax under Section 66 of the Finance Act, 1994, no interconnect usage charges collected by the petitioner from other telegraphic authorities license under Section 4 of the Indian Telegraph Act, 1885 as proposed in the show cause notice dated 20.04.2004.

4. In the light of the subsequent development and issuance of the circular 91/2/2007-S.T. dated 12.03.2007, it may not be necessary for this Court to adjudicate the correctness of the main circular, as the Central Government has issued necessary clarification on the service tax applicability. The operative portion of the circular dated 12.03.2007 in Circular No. 91/2/2007-S.T., reads as follows:

"4.However, vide Finance Bill, 2007, a new definition of 'tele-communication service' has been incorporated vide clause (104) of Section 65 of the Finance Act, 1994 and IUC has been specifically incorporated in the definition of 'telecommunication service' to make it a taxable service. Further, any service provided or to be provided, to any person, by a telegraph authority in relation to 'telecommunication service' has been made taxable. This amendment will come into effect from a date to be notified by the Government after enactment of Finance Bill, 2007. Therefore, after this amendment comes into effect, service tax would be applicable to IUC charges.

5.It is, therefore, clarified that for the period prior to the date when the amended definition of "telecommunication service" comes into effect, service tax is not applicable to IUC. Accordingly, all contrary circulars/instructions issued in the matter are withdrawn. Pending cases may be decided in terms of this clarification."

5. The learned counsel for the petitioner pointed out that by placing reliance on the circular dated 12.03.2007, the Tribunal has considered similar issues, where show cause notice demand was made and set aside those demands, as service tax on IUC is not sustainable as clarified by the Government and some of the decisions being 2007 (7) S.T.R. 595 (Tri. - Ahmd.) [Reliance Telecom Ltd. Vs. Commissioner of Service Tax, Ahmedabad]; 2007 (7) S.T.R. 29 (Tri. - Ahmd.) [Fascel Ltd. Vs. Commissioner of Service Tax, Ahmedabad] and 2008 (12) S.T.R. 565 (Tri.- Ahmd.) [Bharti Airtel Ltd. Vs. Commissioner of Service Tax, Ahmedabad]

6. W.P.No.19829 of 2004 stands disposed of in the light of the clarification in Circular No. 91/2/2007-S.T. Dated 12.03.2007. W.P.No.19830 of 2004 is allowed and the respondents are restrained from demanding service tax for the said category of services. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

abr/vsm

To

1. Central Board of Excise and Customs
   Service Tax, Ministry of Finance,
   Department of Revenue,
   Government of India, New Delhi.

2. The Deputy Commissioner,
   Service Tax, Chennai-II,
   629, Anna Salai, Chennai - 600 035.

3. The Secretary,
   Union of India,
   Ministry of Finance,
   Department of Revenue, New Delhi.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.48699
+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.49152

W.P.Nos.19829 & 19830 of 2004

KK(CO)
CS/10/08/17