

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.12791 to 12796 of 2008

W.P.No.12791 of 2008:

Jayalakshmi Infocom
Rep. by its Proprietor
P.Baskar

... Petitioner in W.P.No.12791 - 12793/2008

Sri Sarathi Telelinks,
New Door No.144, Old No.97,
Kadpadi Road, Vellore 632 004,
Rep. By its Managig Partner,
S. Sridhar

... Petitioner in W.P.No.12794 - 12796/2008

Vs.

1.The Assistant Commissioner of Central Excise,
Vellore Division,
Central Revenue Building,
Vellore - 632 001.

2.Bharat Sanchar Nigam Limited (BSNL)
Rep. by its General Manager,
Cellular Service,
Trichy.

... Respondents in W.P.No.12791-12794 & 12796 /2008
...1st and 3rd Respondent in W.P.12795 of 2008

3. The Commissioner of Central Excise(Appeals),
26/1, Mahatma Gandhi Road, Chennai -34.

... 1st Respondents in W.P.No.12795/2008

Prayer in W.P.No.12791 of 2008:

Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records of the 1st respondent dated 31.01.2008 in C.No.IV/16/291/2006-STC, in Order-in-original No.5/2008, 30/03/2007 in C.No.IV/16/161/2005-STC, in Order-in-original No.15/2007, dated 05.12.2005 C.No.IV/16/161/2005-STC, in Order-in-original No.61/2005, dated 31.01.2008 C.No.IV/16/290/2006-

STC, in Order-in-original No.6/2008, dated 31/03/2006 Order-in-Appeal No.40/2006 (MIII) (ST), dated 30/03/2007 C.No.IV/16/290/2006-STC, in Order-in-original No.14/2007 respectively and quash the same.

For Petitioner : Mr.T.Mahendran
M/s.McGan Law Firm

For Respondents : Mr.S.Rajasekar for R1
Junior Standing Counsel
Mr.M.Vaidyanathan for R2

C O M M O N O R D E R

W.P.Nos.12791 to 12794 and 12796 of 2008 have been filed seeking issuance of Writ of Certiorari to call for the records of the first respondent dated 31.01.2008, 30.03.2007, 05.12.2005, 31.01.2008 and 30.03.2007 respectively, in C.Nos.IV/16/291/2006-STC, IV/16/61/2005-STC, IV/16/61/2005-STC, IV/16/290/2006-STC and IV/16/290/2006-STC in Order-in-original Nos.5/2008, 15/2007, 61/2005, 6/2008 and 14/2007 respectively and to quash the same.

2.W.P.No.12795 of 2008 has been filed seeking issuance of Writ of Certiorari to call for the records of the first respondent dated 31.03.2006 order-in-Appeal No.40/2006(M-111) (ST) and quash the same.

3.The petitioners are dealers in SIM card and Recharge Coupon of the Bharat Sanchar Nigam Limited. The impugned show cause notices have been issued to the petitioners demanding them to pay service tax. The petitioners have filed these writ petitions on the ground that the Telecom Services being separately classified, even assuming that the petitioners are rendering any service that is related to the specific service, the service of the petitioners cannot be brought under the general classification.

4.When these writ petitions were taken up, the learned Junior Standing Counsel has submitted that the petitioners have to file necessary objections to the impugned show cause notices, meeting out all the points raised therein and if that is done, the same will be considered by the first respondent and after affording an opportunity to the petitioners, appropriate orders would be passed in accordance with law.

5.Taking note of the above submission, the writ petitions are disposed of directing the petitioners to file their objections to the impugned show cause notices, meeting out all the points raised therein, within a period of two weeks from the

date of receipt of a copy of this order. On receipt of the objections, the same shall be considered by the first respondent on merits and in accordance with law, and necessary orders be passed within a period of four weeks therefrom, after affording due opportunity to the petitioners.

6.The writ petitions are accordingly disposed of. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Assistant Commissioner of Central Excise,
Vellore Division,
Central Revenue Building,
Vellore - 632 001.
- 2.The General Manager,
Bharat Sanchar Nigam Limited (BSNL)
Cellular Service,
Trichy.
- 3.The Commissioner of Central Excise (appeals),
26/1 Mahatma Gandhi Road,
Chennai-600 034.

+2 ccs to M/s MC Gan Law Firm, Advocates, S.R.Nos.20007, 20006
+6 ccs to Mr.M.Vaidyanathan, Advocate, S.R.No. 20095

W.P.Nos.12791 to
12796 of 2008

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srg 21/07/2020