

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 11353 & 11354 of 2010
and
M.P. Nos. 1 & 2 of 2010

W.P. No. 11353 of 2010

M/s.Sarathy Telelinks,
Represented by its Partner,
S.Sridhar,
No.1540-A, Vellore Main Road,
Vengikkal, Tiruvannamalai - 606 604. Petitioner

Vs

1. The Joint Commissioner,
Office of the Commissioner of Central Excise,
Goubert Avenue (Beach Road),
Puducherry - 605 001.
2. Bharat Sanchar Nigam Limited (BSNL),
Represented by its General Manager,
Vellore. Respondents

W.P. No. 11354 of 2010

R. Venkataramanan Petitioner

Vs

1. Office of the Assistant Commissioner
of Central Excise,
Represented by its Assistant Commissioner,
Central Excise Division,
No.1, Noolkadai Street,
Karaikal - 609 602.
2. The Commissioner of Central Excise,
No.1, Williams Road, Cantonment,
Tiruchirapalli - 620 001.
3. Bharat Sanchar Nigam Limited (BSNL),
Represented by its General Manager,
Thiruvidadaimarudhur Road,
Kumbakonam. Respondents

Prayer in W.P. No. 11353 of 2010: Petition filed under Article 226 of the Constitution of India to issue a Writ of Prohibition, Prohibiting the First Respondent from proceeding further with his communication dated 16.03.2010 in C.No.V/BAS/15/49/2009-S.Adjn., as it is without jurisdiction. Prayer in W.P. No. 11354 of 2010: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Second Respondent dated 16.04.2010 in C.No.V/ST/15/37/2009-CX.ADJ and quash the same.

For Petitioners : Mr. N. Murali Kumaran
(in both W.Ps) for M/s.MCGAN Law Firm

For R1 : Mr. T.R. Senthil Kumar
(in W.P. No.11353 of 2010) Senior Standing Counsel
For R1 & R2
(in W.P. No. 11354 of 2010)

For R2 : Mr. S. Udaya Kumar
(in W.P. No. 11353 of 2010)
For R3
(in W.P. No. 11354 of 2010)

COMMON ORDER

The Petitioners have filed the writ petitions, seeking for issuance of a Writ of Prohibition, to Prohibit the First Respondent from proceeding further with communication dated 16.03.2010 in C.No.V/BAS/15/49/2009-S.Adjn., as it is without jurisdiction, seeking for issuance of Writ of Certiorari, to call for the records of the Second Respondent dated 16.04.2010 in C.No.V/ST/15/37/2009-CX.ADJ and quash the same.

2. In these writ petitions the petitioners have challenged the Show Cause Notices issued by the First and Third Respondents under Finance Act, 1994 seeking to recover service Tax on service sim cards sold by the Petitioner for BSNL (Bharat Sanchar Nigam Limited).

3. It is the plea of the Petitioners that the BSNL being the ultimate service provider has collected the service tax from the customers and paid service tax and therefore there cannot be any demand of tax for the Petitioner.

4. The learned counsel for the Petitioners submits that the issue covered by the several decisions of the Tribunal, the appellate commissioners and original authority detailed below:-

1. Order in Original No.37/DRC/ST/ASN-I/05/06, dated 09.03.2006.

2. Order in Appeal No.9 of 2006 dated 13.06.2006.

3. Order in Original No.8280 dated 27.06.2006.

4. Order in Original No.8 of 2006-2007 dated 06.11.2006.

5. Final Order No.610 of 2007 dated 25.05.2007.
6. Order in Original No. 5 of 2008 dated 25.04.2008.
7. Order in M.P. No. 1 of 2008 in W.P(MD).No. 4014 of 2008 dated 29.04.2008.
7. Order in M.P. No.2 to 2 of 2008 in W.P. Nos. 12791 to 12796 of 2008 dated 27.05.2008.
8. Final Order No.977 of 2008 dated 10.09.2008.
9. Final Order No.1484 of 2008 dated 30.12.2008.
10. Order in Appeal No.5/205/2006 dated 01.05.2009.
11. Order in M.P. No.1 of 2009 in W.P. No. 9645 of 2009 dated 24.06.2009.
12. Order in M.P. No. 1 of 2010 in W.P. No. 61 and 62 of 2010 dated 06.01.2010.
13. Order in M.P. No. 1 to 1 in W.P. No. 4114 to 4117 of 2010 dated 26.02.2010.
14. Order in M.P. No.1 of 2010 in W.P. No. 10334 of 2010 dated 12.05.2010.
15. Order in M.P. No.1 and 2 of 2010 in W.P. No. 10312 to 10315 of 2010 dated 12.05.2010.

5. The learned counsel also relies certain other decisions. The learned counsel for the Respondents also submits that there are no other contra decisions of the Tribunal or High Court as of now.

6. Since the Petitioners have cases in their favour, I am of the view that the Petitioners should approach the First and Third Respondents for Adjudication of Show Cause Notice under the Finance Act by citing these decisions.

7. In view of the above decision, the First and Third Respondents are directed to pass appropriate order within a period of three months from the date of receipt of a copy of this order. While passing the order, the Respondents shall keep in mind the above cited orders. It is needless to state that before passing such order, the Petitioners shall be give an opportunity to file reply and also being heard.

8. With the above observation, the Writ Petitions stands disposed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

arb
To

1. The Joint Commissioner,
Office of the Commissioner of Central Excise,
Goubert Avenue (Beach Road),
Puducherry - 605 001.

2. The General Manager,
Bharat Sanchar Nigam Limited (BSNL),
Vellore.

3. The Assistant Commissioner,
Office of the Assistant Commissioner
of Central Excise,
Central Excise Division,
No.1, Noolkadai Street,
Karaikal - 609 602.

4. The Commissioner of Central Excise,
No.1, Williams Road, Cantonment,
Tiruchirapalli - 620 001.

5. The General Manager,
Bharat Sanchar Nigam Limited (BSNL),
Thiruvidadaimarudhur Road,
Kumbakonam.

+1cc to Mr.S.Udhaya kumar , Advocate SR.No.1754
+1cc to M/s.Hema Murali Krishnan , Advocate SR.No. 1662
+1cc to M/s.MCGAN Law Firm, Advocate SR.No. 1494

W.P. Nos. 11353 & 11354 of 2010

A.SK(20/02/2020)



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