

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 14210 to 14212 of 2010
and
M.P. Nos.1,1, 1 of 2010

M/s. Kavee Marketing,
Represented by its Proprietor,
A.K. Elangovan,
No.313/118, Public Office Road,
Velipalayam, Nagapattinam. ... Petitioner in all W.Ps

Vs

1. Office of the Assistant Commissioner
of Central Excise,
Central Excise Division No.1
Represented by its Assistant Commissioner,
No.1, Noolkadai Street,
Karaikal. ...1st Respondent in
W.P. Nos. 14210 of 2010 &
14212 of 2010
2. Office of the Assistant Commissioner
of Central Excise and Service Tax,
No.1, Williams Road,
Cantonment, Tiruchirapalli - 621 001. ... 1st Respondent in
W.P. No. 14211 of 2010
3. Bharat Sanchar Nigam Limited (BSNL),
Represented by its General Manager,
Kumbakonam. ... 2nd Respondent in all W.Ps

Prayer in W.P. No. 14210 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 23.11.2009 in C.No.IV/16/66/2009-S.Tax as it is without jurisdiction.

Prayer in W.P. No. 14211 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 31.08.2009 in C.No.V/ST/15/38/2009-C.Ex.Adj as it is without jurisdiction.

Prayer in W.P. No. 14212 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 13.05.2010 in C.No.IV/16/49/2009-S.Tax as it is without jurisdiction.

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

For R1 : Mr. T.R. Senthil Kumar
(in all W.Ps) Senior Standing Counsel
: Mr. K. Anbarasan for R2 in all Wps

COMMON ORDER

The Petitioner has filed these writ petitions, seeking for issuance of a Writ of Prohibition, to Prohibit the First Respondent from proceeding further with his communications dated 23.11.2009, 31.08.2009 & 13.05.2010 in in C.Nos.IV/16/66/2009-S.Tax, V/ST/15/38/2009-C.Ex.Adj, C.No.IV/16/49/2009-S.Tax as it is without jurisdiction.

2. In these writ petitions the petitioner has challenged the Show Cause Notices issued by the First and Second 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 Petitioner 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 Petitioner 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 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 Appeal No.134 of 2009 dated 10.09.2009.

13. Order in M.P. No. 1 of 2010 in W.P. No. 61 and 62 of 2010 dated 06.01.2010.

14. Order in M.P. No. 1 to 1 in W.P. No. 4114 to 4117 of 2010 dated 26.02.2010.

15. Order in M.P. No.1 of 2010 in W.P. No. 10334 of 2010 dated 12.05.2010.

16. Order in M.P. No.1 and 2 of 2010 in W.P. No.10312 to 10315 of 2010 dated 12.05.2010.

17. Order in M.P. No.1 and 2 of 2010 in W.P. No.11353 and 11354 of 2010 dated 02.06.2010.

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 Petitioner has cases in their favour, I am of the view that the Petitioner should approach the First and Second 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 Second 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 Petitioner 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 III)

//True Copy//

Sub Assistant Registrar

To

1. Office of the Assistant Commissioner
of Central Excise,
Central Excise Division No.1
Represented by its Assistant Commissioner,
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Karaikal.
2. Office of the Assistant Commissioner
of Central Excise and Service Tax,
No.1, Williams Road,
Cantonment, Tiruchirapalli - 621 001.
3. Bharat Sanchar Nigam Limited (BSNL),
Represented by its General Manager,
Kumbakonam.

+lcc to M/s.MCGAN Law Firm, Advocate sr.1496

W.P. Nos. 14210 to 14212 of 2010
and
M.P. Nos.1,1, 1 of 2010

pm(co)
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