IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 26322 & 26323 of 2010
and
M.P. Nos. 1, 1 of 2010

D.Sivanandam,
M/s. Nivedha Communications,
No.2, Keela Raja Veedhi,
Mannarkudi - 614 001. ... Petitioner in both W.Ps

Vs

1. The Additional Commissioner of Central Excise,
Office of the Commissioner of Central Excise
and Service Tax,
No.1, Williams Road, Cantonment,
Trichy - 614 001. ... First Respondent in W.P. No. 26322 of 2010

2. The Superintendent of Central Excise,
Tiruvarur Range,
Office of the Superintendent of Central Excise,
12-A, Kumara Koil Street,
Tiruvarur. ... First Respondent in W.P. No. 26323 of 2010

3. Bharat Sanchar Nigam Limited (BSNL),
Represented by its General Manager,
Thanjavur. ... Second Respondent in both W.Ps

Prayer in W.P. No. 26322 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 01.01.2010 in C.No.V/ST/15/60/2009-Cx.Adj., as it is without jurisdiction.

Prayer in W.P. No. 26323 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 29.09.2010 in O.C. No. 469/2010 as it is without jurisdiction.

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

For R1 (in W.P.Nos. 26322 & 26323 of 2010) : Mr. T.R. Senthil Kumar Senior Standing Counsel

For R2 (in both W.Ps) : Mr. K. Anbarasan

COMMON ORDER

The Petitioner has filed the writ petitions, seeking for issuance of a Writ of Prohibition, to Prohibit the First Respondent from proceeding further with communications dated 01.01.2010 & 29.09.2010 in C.No.V/ST/15/60/2009-Cx.Adj., & O.C. No. 469/2010 as it is without jurisdiction.

2. In these writ petitions the petitioner has challenged the Show Cause Notices issued by the 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 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.

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

17. Order in M.P. No. 1 to 1 of 2010 in W.P. No.14210 to 14212 of 2010 dated 05.07.2010.

18. Order in M.P. No. 2 of 2010 in W.P. No. 20268 of 2010 dated 03.09.2010.

19. Order in M.P. No. 1 and 1 of 2010 in W.P. Nos. 20269 and 20270 of 2010 dated 03.09.2010.

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 Respondent for Adjudication of Show Cause Notice under the Finance Act by citing these decisions.

7. In view of the above decision, the First Respondent is 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

// True Copy//

Sub Assistant Registrar

arb

To

1. The Additional Commissioner of Central Excise,
Office of the Commissioner of Central Excise
and Service Tax,
No.1, Williams Road, Cantonment,
Trichy - 614 001.

2. The Superintendent of Central Excise,
Tiruvarur Range,
Office of the Superintendent of Central Excise,
12-A, Kumara Koil Street,
Tiruvarur.

3. The General Manager,
Bharat Sanchar Nigam Limited (BSNL),
Thanjavur.

+1cc to M/s.MCGAN Law Firm, Advocate, SR.No.1492.

W.P. Nos. 26322 & 26323 of 2010
and
M.P. Nos. 1, 1 of 2010

PM(CO)
CSR: 28.02.2020