

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.NOS.4114 TO 4117 OF 2010

AND

MP.NOS.1,1,1 & 1 OF 2010

P.Baskar, Proprietor,
M/s.Jayalakshmi Infocom,
No.41, 7th East Main Road,
Gandhi Nagar, Vellore - 632 004.

... Petitioner in
WP.Nos.4114 and 4115 of 2010

Sri Sarathi Telelinks,
New Door No.144, Old No.97,
Kadpadi Road, Vellore - 632 004
rep by its Managing Partner
S.Sridhar

... Petitioner in
WP.Nos.4116 and 4117 of 2010

Vs.

1. The Assistant Commissioner of Central Excise,
Vellore Division,
Office of the Assistant Commissioner of Central Excise,
Central Revenue Buildings,
Barracks Maidan Road,
Vellore - 632 001.
2. Bharat Sanchar Nigam Limited (BSNL)
Rep.by its General Manager,
Cellular Service, Trichy.

... Respondents in all WPs

Prayer in W.P.No.4114 of 2010:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first respondent dated 12.10.2009 in C.No.IV/16/291/2006-STC [P.F] and quash the same.

Prayer in W.P.No.4115 of 2010:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first respondent dated 15.1.2010 in C.No.IV/16/291/2005-STC in Order in Original No.02/2010 STC (R) and quash the same.

Prayer in W.P.No.4116 of 2010:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first respondent dated 14.10.2009 in C.No.IV/16/290/2005-STC and quash the same.

Prayer in W.P.No.4117 of 2010:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first respondent dated 15.1.2010 in C.No.IV/16/290/2005-STC in Order in Original No.01/2010 STC (R) and quash the same.

For Petitioners : Mr.Murali Kumaran
(in All) for M/s McGan Law Firm

For R-1 : Mr.Rajasekar,
Junior Standing Counsel

For R-2 : Mr.M.Vaidyanathan
(in All)

COMMON ORDER

According to the petitioners, they are the dealers in SIM card and recharge coupon of BSNL, 2nd respondent herein and their business is limited to the extent of purchasing and selling the SIM Cards and Recharge Coupons in the hands of subscribers of BSNL and hence, the BSNL is liable to discharge the service tax as prescribed under law. While so, the first respondent issued show cause notices on 11.03.2009 for the period from April 2008 to December 2008 proposing to levy tax. Again, they issued show cause notices dated 12.10.2009 and 14.10.2009 for the period from January 2009 to September 2009, proposing to levy tax, as if the petitioners are franchise/distributor of BSNL and therefore, they need to pay service tax. In the meanwhile, the first respondent, without conducting any enquiry, passed the orders-in-original dated 15.01.2010 with respect to the notices dated 11.03.2009, to which the petitioners filed their

objections on 16.02.2010. However, the first respondent rejected the same on 17.02.2010. Hence, the petitioners have constrained to file the present writ petitions to quash the notices dated 12.10.2009 and 14.10.2009 and the orders-in-original dated 15.01.2010 passed by the first respondent.

2.The main contention of the learned counsel for the petitioners is that without conducting proper enquiry and without providing an opportunity of personal hearing to the petitioners, the first respondent has passed the impugned orders-in-original, which are arbitrary, illegal and in violation of the principles of natural justice and hence, the same are liable to be quashed.

3.Heard the learned Standing Counsel for the first respondent, who submitted that the petitioner has not availed the opportunity given to the petitioners for submitting their objections and hence, the first respondent has no other option except to pass the impugned orders-in-original.

4.Heard both sides and perused the documents available on record.

5.It is seen from the facts on record and the findings of the first respondent that before passing the orders-in-original dated 15.01.2010 relating to the period from April 2008 to December 2008, the petitioners have not provided reasonable opportunity to put forth their stand, which, in the opinion of this Court, is in complete disregard to the principles of natural justice and fair play. It is well settled that quasi-judicial authority should be fair and honest while exercising his power and should adhere to the principle of fair play as well as the principles of natural justice and in case, it is found to have not adhered to, then the action is arbitrary and can be struck down. In the light of the same, the impugned orders-in-original passed by the first respondent are liable to be quashed.

6.Accordingly, the impugned orders-in-original dated 15.01.2010 passed by the first respondent are set aside and the matters are remitted back to the first respondent for passing fresh orders. The petitioners are directed to file necessary objections with respect to the notices issued relating to the periods from April 2008 to December 2008 and January 2009 to September 2009, to the first respondent within a period of three weeks from the date of receipt of a copy of this order. On such filing, the first respondent shall consider the same and pass orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioners within a period of six weeks thereafter.

7.All the writ petitions stand disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner of Central Excise,
Vellore Division,
Office of the Assistant Commissioner of Central Excise,
Central Revenue Buildings,
Barracks Maidan Road,
Vellore - 632 001.
2. Bharat Sanchar Nigam Limited (BSNL)
Rep.by its General Manager,
Cellular Service, Trichy.

+1cc to M/s McGan Law Firm, Advocate, S.R.No.21939

+1cc to Mr.Rajasekar, Advocate, S.R.No.21976

+4cc to Mr.M.Vaidyanathan, Advocate, S.R.No.22484

W.P.Nos.4114 to 4117 of 2010

EV(CO)
CS/17/07/2020

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