BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.9240 of 2016

and

WMP(MD)Nos.7360 & 7361 of 2016

M/s.Sri Venkateswara Agencies,
Rep.by its Proprietor
M.K.Rajamani ... Petitioner

Vs.

1.The Joint Commissioner,
Central Excise Division,
O/o.the Commissioner of Central
Excise & Service Tax,
No.1, Williams Road, Cantonment,
Trichy - 620 001.

2.Bharat Sanchar Nigam Limited (BSNL),
Rep.by its General Manager,
Kumbakonam.

3.The Assistant Commissioner,
O/o.the Assistant Commissioner of
Central Excise & Service Tax,
Central Excise & Service Tax Division,
Poonga Nagar, Medical College Road,
Thanjavur - 613 007.

4.The Superintendent of Central Excise & Service Tax,
O/o.the Superintendent of Central
Excise & Service Tax,
Kumbakonam Range,
Kumbakonam - 612 001. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the first respondent dated 29.05.2015 in C.No.V.ST/15/101/2010-ST.Adj, Order-in-Original No.19/2015-ST and quash the same.,

For Petitioner : Mr.N.Muralikumaran

For Respondents : Mr.S.Ragaventhre for R1, R3 & R4
Mr.B.Kasirajan for R2

O R D E R

The petitioner herein is a dealer in SIM Cards and Recharge Coupons of Bharat Sanchar Nigam Limited (BSNL). The petitioner is aggrieved by the demand of Service Tax by the first respondent herein. According to the petitioner, the price of the SIM Card as well as the Recharge Coupon is fixed by BSNL, which includes Service Tax and there is a liability on BSNL to discharge the Service Tax. Hence, the demand of Service Tax for the period from March 2008 to June 2012 cannot be substantiated.

2.As rightly pointed out by the learned counsel for the petitioner, the petitioner is authorised to sell the BSNL-s prepaid products like SIM Cards and Recharge Coupons and the maximum retail price for these products is fixed by BSNL, which also includes Service Tax, payable to the Service Tax Authorities. While that being the case, the demand of Service Tax by the second respondent from the retailer once again, would amount to double taxation and therefore would be illegal.

3.The learned Standing Counsel appearing on behalf of the first respondent~BSNL also reiterated the stand taken by the petitioner and admitted that the maximum retail price fixed by BSNL for SIM Card and Recharge Coupon includes Service Tax and that the entire Service Tax on the gross value of the products has been fully paid by BSNL to the Service Tax department.

4.The learned counsel appearing for the Central Excise Department submitted that the Order~in~Original has an appeal remedy and that the writ petition does not deserve consideration, since the statutory appeal has not been availed. I am not in agreement with such a submission made.

5.The Hon-be Supreme Court in the case of Union of India vs Tantia Construction Private Limited reported in (2011) 5 SCC 697, has held that the presence of an alternative remedy is not an absolute bar in entertaining a writ petition. Likewise, in the case of Whirlpool Corporation vs Registrar of Trade Marks reported in (1998) 8 SCC 1, it was held that the rule of exclusion of writ jurisdiction by availability of an alternative remedy, is a rule of discretion and not one of compulsion and there could be contingencies in which the jurisdiction under Article 226 of the Constitution of India could be exercised in spite of availability of an alternative remedy. When the demand of Service Tax in the present case is prima facie illegal, no purpose would be served, if the petitioner is directed to exhaust the appeal remedy.

6.For all the foregoing reasons, the levy of Service Tax on the petitioner for the assessment year in question on the sale of BSNL SIM Card and Recharge Coupon amounts to double taxation and therefore, the demand made in this regard in the order dated 29.05.2015 in C.No.V.ST/15/101/2010-ST.Adj, Order-in-Original No.19/2015-ST passed by the first respondent is declared to be null and void.

7.The Writ Petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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