



WEB COPY



W.P.No.5201 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.06.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.5201 of 2011

M/s P.R.Mani Air Fridge & Electronics
154, Car Street, Tiruvannamalai – 606 601
Rep by its Proprietrix
R.Durga

...Petitioner

Vs.

1.The Assistant Commissioner
Office of the Assistant Commissioner of Central Excise,
Villupuram Division, No.9, Solai Nagar (Sudhakar Nagar),
Villupuram – 607 605.

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

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Prohibition, prohibiting the first respondent from proceeding further with his communication dated 04.02.2011 in C.No.V/15/ST/06/2011-Adj as it is without jurisdiction.

For Petitioner : Mr.N.Muralikumaran
for M/s.MCGAN Law Firm

For Respondents : Mr.V.Sundareswaran
Senior Panel Counsel – R1
No Appearance – R2



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ORDER

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Heard Mr.N.Muralikumaran, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Panel Counsel for R1. There is no appearance for R2.

2. Both learned counsel concur on the position that identically placed petitioners have approached this Court seeking similar relief to what is sought for by the petitioner now, and their prayers have been duly considered and accepted. The ratio of the orders passed in their cases will be fully applicable in the case of the present petitioner as well.

3. The petitioner is a dealer in Sim Cards and Recharge coupons of Bharat Sanchar Nigam Limited (BSNL). It challenges a show cause notice dated 04.02.2011 which calls upon it to show cause why service tax not be levied for the activity of marketing and distribution of Cellular Mobile Telephone Service as a franchise of BSNL under the category 'Business Auxiliary Services'.

4. The learned counsel for the petitioner would submit that BSNL has, in fact, collected the entirety of the service tax from the customers and has remitted the amount to the department and hence no further liability should be mulcted upon it. According to the learned counsel for the petitioner, the issue has been decided by the respondent authorities in various appeals and the



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petitioner is fully entitled to the benefit of the said orders. In such circumstances, he would request that he may be permitted to present the orders as aforesaid as well as the relevant facts and legal position, before the statutory authority.

5. I accede to the request of the petitioner, particularly for the reason that the impugned communication is only a show cause notice and hence it would be appropriate that the petitioner appear before the authorities, in response to the same.

6. The petitioner is permitted to file its objections to the show cause notice, placing reliance on such materials including orders as it deems fit, within a period four weeks (4) from today. Upon receipt of the objections and annexures, if any, the authority will consider the same, hear the petitioner and pass orders in accordance with law within a period of four (4) weeks from date of conclusion of personal hearing. With this, this writ petition stands disposed. No Costs.

kbs

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Index : Yes
Speaking Order



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Dr.ANITA SUMANTH, J.

kbs

To

- 1.The Assistant Commissioner
Office of the Assistant Commissioner of Central Excise,
Villupuram Division, No.9,
Solai Nagar (Sudhakar Nagar), Villupuram – 607 605.
2. General Manager,
Bharat Sanchar Nigam Limited (BSNL),
Vellore.

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