



W.P. No.30328 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2024

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THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.P. No.30328 of 2024

and

W.M.P. Nos.33020, 33022 and 33025 of 2024

Swiftmail Communications Ltd.,
4E, Century Plaza, 561-562,
Mount Road, Chennai-600 008,
Represented by its Director Mr.Ganesh Patwari

... Petitioner

Vs.

- 1.Union of India,
Represented by the Secretary to the Government,
Ministry of Communications and IT,
Sanchar Bhawan, No.20, Ashoka Road,
New Delhi-110 001.
- 2.Deputy Controller of Communication Accounts (LF),
Office of the Principal Controller of
Communication Accounts,
Tamil Nadu Circle, Department of Telecommunications,
RK Nagar Telephone Exchange Building,
No.238, 7th Floor, RK Mutt Road,
Chennai-600 028.
- 3.Telecom Regulatory Authority of India,
Represented by its Chairman,
Mahanagar Door Sanchar Bhawan,
Jawaharlal Nehru Marg (Old Minto Road),
New Delhi-110 002.



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4. The Branch Manager,
Yes Bank Ltd., Ground Floor,
No.108, LANCOR West Minister Building,
R.K.Salai, Mylapore, Chennai-600 004.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records culminating in order of 2nd Respondent dated 26.08.2024 bearing No.PCCA/TN/LF-I/ISP-IT/2009-10/SWIFTMAIL COMM.LTD/2065, read with the Revised Demands cum Show Cause Notices dated 27.09.2024, bearing No.TN/2005-06/LFA/000797 & No.TN/2006-07/LFA/000800 for the financial years 2005-06 and 2006-07 respectively both issued by the 2nd Respondent and quash the same as arbitrary, illegal and unconstitutional and consequently direct the 1st and 2nd Respondents to return to the petitioner, the sum of Rs.11,61,380/- illegally collected from the petitioner.

For Petitioner : Mr.M.Aravind Subramaniyam
Senior Advocate
for Mr.V.Haribabu

For Respondents : Mr.V.Chandrasekaran
Senior Panel Counsel

ORDER

The petitioner is an Internet Service Provider (ISP) founded in 1993. There were two non-exclusive license agreements dated 12.10.1999 and 03.10.2002 with the 1st Respondent. Pursuant to the agreement dated 03.10.2002 the petitioner has commenced the internet telephony service only from January 2008. The 1st Respondent had demanded the internet license fee for the period from 2005-06 and 2006-07 vide letter dated 19.12.2008. The petitioner had given his reply on 05.03.2007 by enclosing necessary documents.



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2. The contention of the learned counsel for the petitioner is that the petitioner has not even commenced the said services during the period as claimed by the Respondents herein. The letter dated 30.10.2014 was made by the 2nd Respondent after a lapse of 9 years. The petitioner has made the revised demand which was made on 31.03.2017 for a sum of Rs.30,554/- for the period 2005-06 and a sum of Rs.80,836/- for the period 2006-07 to avoid invoking bank guarantee.

3. This being the factual background of the case, the petitioner is challenging the present impugned order which is nothing but the revised demand cum show cause notice for the service of the financial year 2005-06. The learned Senior Counsel appearing for the petitioner relied on the following to substantiate his argument:

Service Area	
GR(A)	24083151
Applicable GR (B)	24083151
AGR (C)	1643546
LF Due (D)	30556
LF Paid (E)	1080554
Difference (D-E)	-1049998
Interest Calculated up to 31.10.2024	218047
Penalty and interest on penalty	139847
Total	-692104



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4. The present writ petition is filed challenging the order passed by the 2nd Respondent dated 26.08.2024. This order is made in the appeal pursuant to the representation made by the petitioner on 30.07.2024. Though it is related to the demand notice issued by the Respondents for the year 2005-06 and 2006-07 by the letter dated 05.07.2003. The Appellate Authority has dismissed the appeal.

5. Mr.V.Chandrasekaran, learned counsel appearing for the Respondents contend that the petitioner has to file an appeal before the Appellate Tribunal as per Section 14 of the Telecom Regulatory Authority of India Act, 1997.

6. In view of the same, the petitioner is at liberty to file an appeal before the Appellate Tribunal. The petitioner shall approach the Appellate Tribunal as contemplated under Section 14 of the Telecom Regulatory Authority of India Act, 1997, within a period of three weeks from the date of receipt of a copy of this order and the Respondents are directed not to initiate any coercive steps against the petitioner till then.



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7. With the above observations, the writ petition is disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To:

1. The Secretary to the Government,
Ministry of Communications and IT,
Sanchar Bhawan, No.20, Ashoka Road,
New Delhi-110 001.
2. Deputy Controller of Communication Accounts (LF),
Office of the Principal Controller of
Communication Accounts,
Tamil Nadu Circle, Department of Telecommunications,
RK Nagar Telephone Exchange Building,
No.238, 7th Floor, RK Mutt Road,
Chennai-600 028.
3. The Chairman,
Telecom Regulatory Authority of India,
Mahanagar Door, Sanchar Bhawan,
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N.SENTHILKUMAR, J.

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