CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 2455 of 2012

(Arising out of Order-in-Appeal No.260/2012 dated 25.05.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

M/s. Bharat Sanchar Nigam Limited
BSNL Bhawan,
B.M. Road,
Hassan – 573 201.

Appellant(s)

VERSUS

The Commissioner of Central Excise
S1 & S2 Vinaya Marga,
Siddharthanagar,
Mysore – 570 011.

Respondent(s)

APPEARANCE:

Shri Anil Kumar. B, Advocate for the Appellant.

Shri Akshay Kumar, Superintendent (Authorised Representative) for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20795 / 2025

DATE OF HEARING: 30.05.2025
DATE OF DECISION: 30.05.2025

PER : R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Bharath Sanchar Nigam Ltd. (BSNL) against Order-in-Appeal No. 260/2012 dated 25.05.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.

2. Briefly the facts of the case are that the appellant who provides taxable services under the category of

'Telecommunication Services' prior to 01.01.2008 paid service tax on the gross amount and from 01.01.2008, the service tax was discharged on the net amount after deducting the credit calls discounts. The Commissioner (Appeals) in terms of the definition provided under Section 67 of the Finance Act, 1994 w.e.f. 19.04.2006 read with Rule 3(a) Service Tax (Determination of Value) Rules, 2006 held that the service tax has to be discharged on the gross amount and accordingly, confirmed the demand of service tax of Rs.16,13,815/- along with interest for the period January 2009 to September 2009. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel at the outset submits that the issue is no longer *res integra* as the issue is settled in their own case vide Final Order No. 26862-26881/2013 dated 28.10.2013 wherein this Tribunal allowed all the 19 appeals observing that the telecom operators are liable to pay service tax on the actual amount received by them. He also relied on the decision in the case of **Bharati Infotel Ltd. Vs. CCE, Bhopal: 2006 (1) STR 107 (Tri.-Del.)**.

4. The Authorized Representative (AR) for the Revenue reiterated the findings in the impugned orders passed by the original authority and the Commissioner (Appeals).

5. Heard both sides. The only issue to be decided is whether the discounts/credit calls given by the appellants to the PCO operators were liable to be added to the value of the taxable services provided by the appellants. We find that the issue is no longer *res integra* as the issue stand settled in the appellant's own case. We find that the Principal Bench, New Delhi in the case of **Bharti Infotel Limited vs. Commissioner of Central Excise, Bhopal 2006 (1) S.T.R. 107 (Tri. - Del.) dated 19-7-2005** observed as follows:

> **"5.** The agreement between the appellant and the PCO operator is as follows in regard to the relationship :

Annex 1 -Terms and conditions for Touchtel STD/ISD - PCO connections in urban areas [Annex to the Touchtel STD/ISD - PCO Customer Agreement Form]

The terms and conditions for subscribers of Touchtel STD/ISD-PCO connection(s) are as follows –

1. Initial security deposit of Rs. 2000 per STD/ISD-PCO connection is to be made with Touchtel at the time of signing the "Customer Agreement Form", balance security deposit of Rs. 3000/- payable in equal installments in the first three bills. The deposit amount can be paid by cash/demand draft/pay order in favor of Bharti Telenet Ltd. The security deposit will carry simple interest @ State bank of India FD rate for a duration of one year and the same will be credited to the Touchtel STD/ISD-PCO subscriber's account at the end of the financial year.

2. The billing of the subscriber will be monitored after the end of the first quarter. If the average monthly billing for the monitoring period is higher than Rs. 5000/-, the deposit amount will be revised to this higher amount and collected from the subscriber. Thereafter subsequent reviews of security deposit will be done after every year. Increases in security deposit will be informed in the next billing cycle. The subscriber will have to make a deposit for the increased amount as mentioned above.

3. The subscriber will be charged call charges @ Rs. 0.984 per call unit and a service tax @ 5% will be payable on the total bill amount.

4. All charges are to be paid by cash/demand draft/pay order in favor of Bharti Telenet Ltd.

5. The Touchtel STD/ISD-PCO subscriber may charge their customer at a maximum rate of Rs. 1.25 per call unit (all-inclusive). A service charge @ Rs. 2.00 per call may also be charged.

6. A fortnightly invoicing schedule will be followed:

Billing period	Invoice date	Last date for making the payment
1st to 15th day of the month	16th day of the month	22nd day of the month
16th to last day of the month	1st day the next month	7th day of the next month

6. In regard to a public telephone, there are three entities - (i) telegraphic service provider (ii) subscriber and (iii) customer/user. It is clear from the definitions in the Act that customers/users of phone are

> not recognized in the scheme of the levy. The tax is in regard to a telegraphic service provided to the subscriber. Valuation is also based on the "gross total amount" received by the provider from the subscriber (the receiver of the service). The amendment in 2001 referred to by the ld. SDR did not make any difference to this scheme. It only recognizes services like facsimile as telephone service. Thus, the amount charged by the PCO operator from the customer has no relevance for valuation. Valuation of service provided by the appellant to the subscriber cannot be based on amount charged by the PCO operator from the customer. In the present proceeding, the additional service tax is demanded on this basis. It is clearly contrary to the scheme of valuation provided in the Act. The impugned order is therefore, set aside and the appeals are allowed with consequential relief, if any, to the appellant".

6. Following the above decision, this Tribunal vide **Final Order No. 26862-26881/2013 dated 28.10.2013** observed as follows:

> "Since issue involved in all these appeals is common, all these appeals are taken up together for disposal. The dispute is whether the services rendered by the appellant to PCO operators should be treated as taxable service or not. Lower authorities has taken a view that the value of the service rendered by the appellant would be the price charged by PCO operators from PCO users and actual amount charged by the service provided to the PCO operators which provides some margin to the PCO operators is not the value of the service.
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> 2. Learned counsel relied upon the decision in the case of Bharti Infotel Ltd. vs. CCE, Bhopal [2006 (1) S.T.R. 107 (Tri.-Del.)] to submit that the commission/discount may not be included in the value for levy of service tax. This decision has also been accepted by the Board as per letter F. No. 383/92/2005 dated 17.10.2005. Even though in the impugned order, efforts had been made to distinguish the decision, the fact remains that telecom operators are paying service tax on the actual amount received by them and there is no dispute on this aspect. In these circumstances, we consider that the appellant has made out a case in their favour. Accordingly, appeals are allowed with consequential relief to the appellant".

Hence, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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