CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20891 of 2017

(Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-42-2017 dated 07.03.2017 passed by the Commissioner of Central Excise and Service Tax (Appeals-I), Cochin,)

M/s. Vodafone Mobile Services Ltd.,
(Earlier known as M/s. Vodafone Cellular Ltd.)
4th Floor, South Kalamassery,
Cochin University, P.O.,
Cochin – 682 022.

Appellant(s)

VERSUS

The Commissioner of Central Excise and Customs
Cochin Commissionerate,
C.R. Building, I. S. Press Road,
Cochin – 682 018.

Respondent(s)

APPEARANCE:

None for the Appellant

Mr. Vikalp Jain, Superintendent (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21682 /2025

DATE OF HEARING: 15.10.2025
DATE OF DECISION: 15.10.2025

PER : DR. D.M. MISRA

This is an appeal filed against Order-in-Appeal No. COC-EXCUS-000-APP-42-2017 dated 07.03.2017 passed by the

Commissioner of Central Excise and Service Tax (Appeals-I), Cochin.

2. Briefly the facts of the case are that the appellant M/s. Vodafone Mobile Services Ltd. are engaged in providing telecommunication services which are provided in terms of telecom licenses granted by the Telecom Regulatory Authority. On verification of the records by the audit, it was noticed that the appellant had paid an amount of Rs.4,18,16,455/- to their foreign service providers on account of international outbound roaming facility under the category of 'Telecommunication Services' from April 2009 to June 2012. Accordingly, show-cause notice was issued to them demanding service tax of Rs.43,41,102/- on the amounts received with interest and proposed for penalty. On adjudication, the same was confirmed with the interest and various penalties. Aggrieved by this order, appellant filed an appeal before the learned Commissioner (Appeals) who partially allowed the appeal. Hence, the present appeal.

3. The learned advocate for the appellant has submitted that the appellant had entered into roaming agreements with the Foreign Cellular Service Providers for receiving international roaming services which are provided to the customers/subscribers of the appellant when they travel abroad to the respective foreign countries. It is submitted that for an activity to be taxable under the category of Telecommunication Service (April 2009 to June 2012) as per Section 65(105)(b) and Section 65(105)(zzzx) read with Section 65(109a) of the Finance Act, 1994 respectively, it is necessary that such service should be provided by a 'Telegraph Authority' and as per the provisions, the service provider must have licence under Section 4(1) of the Indian Telegraph Act, 1885. Since, the foreign service provider can never qualify as telegraph authority, no service tax levied on the international roaming services provided by the foreign

service provider under the category of Telecommunication Services.

4. It is also submitted that in the appellant's own case as reported at **2017 (9) TMI 359**, this Tribunal has held that the liability to service tax arises only if it is provided by the telegraph authority and since the foreign service providers do not qualify to be a telegraph authority, the question of service tax does not arise. Reliance is also placed on the decision in the case of M/s. Vodafone Idea Ltd. vs. Commissioner of GST and CE: 2023 (10) TMI 432 and Vodafone Cellular Ltd. vs. CCE, Pune [2017 (12) TMI 1205]. It is also submitted that the entire demand is barred by limitation, since no grounds have been made out for invoking the extended period of limitation. Reliance was also placed on the following decisions:

- M/s. Mega Trends Advertising Ltd. vs. CCE & ST: 2020 (38) GSTL 57 (Tri. – All.)
- M/s. Gannon Dunkerly and Co., vs. CST – 2020-VIL-518-CESTAT-DEL-ST.

5. The learned Authorized Representative (AR) for the Revenue has submitted that appellant is liable to pay service tax on international roaming services as held by the Commissioner (A) in the impugned order invoking the extended period of limitation.

6. Heard both sides and perused the records.

7. We find that for the earlier period, this Tribunal in the appellant's own case vide Final Order No. 21179/2025 dated 03.07.2025 held as follows:

> "6. Heard both sides. We find that the issue is squarely settled in favour of the appellant in view of the various decisions as relied upon by the appellant. The Board vide Instruction F.No. 137/21/2011-ST dated 15.07.2011 reproduced below has held that since the service provider is located abroad, he is not covered under the definition given in Section 65(109a); thus, the service provided by foreign vendors cannot be taxed under Telecommunication Service.

Board Instruction F. No. 137/21/2011-ST dated 15.07.2011

Instruction F.No. 137/21/2011-S.T., dated 15-7-2011

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : *Taxability in respect of International Private Leased Circuit (IPCL) charges and amendment in the definition of Telegraph Authority u/s 55(111) of the Finance Act, 1994 - Regarding.*

Representations have been received seeking clarification regarding taxability of IPCL charges incurred in foreign currency by BPO/MNCs against receipt of services from the service provider situated outside India/group companies under reverse charge mechanism [Section 66A of the Finance Act, 1994 read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994].

2. The matter has been examined. The activities are in the nature of Leased Circuit services presently covered under Telecommunication service. However, for getting classified under Telecommunication service, Section 65(105)(zzzx) of the Finance Act, 1994 provides that the service should be provided by a Telegraph authority. Telecommunication service as defined under Section 65(109a) covers services which are provided by a person who has been granted a licence under the first proviso to sub-section (I) of section 4 of the Indian Telegraph Act, 1885. In this situation in the instant case since the service provider is located abroad, he is not covered under the definition given in Section 65(109a). Thus the service provided by foreign vendors cannot be taxed under Telecommunication service.

3. Section 65(105)(zzzq) read with Section 65(104c) of the Finance Act, 1994, defines Business Support Service as services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation. - For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security.

4. It is clarified that the above activity of receiving IPCL service from abroad is chargeable to Service Tax under Business Support Service [Section 65(105)(zzzq) ibid] at the hands of recipients situated in India in terms of Section 66A of the Finance Act, 1994, read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 and provisions of Taxation of Services (Provided) From Outside India and Received in India Rules, 2006 apply.

All pending issues may be decided accordingly.

7. Further vide letter dated 19.12.2011 reproduced below, it was once again clarified that the foreign telecom service provider will remain outside the taxability clause of the Telecommunication Service.

Circular - Service Tax

Telecommunication service - Clarification on taxability in respect of International Private Leased Circuit (IPLC)

Letter [F. No. 137/21/2011 - Service Tax], Dated 19-12-2011

Please refer to the clarifications issued vide Board's letter of even number dated 15-7-2011 on the subject mentioned above.

2. The matter has been re-examined and it is seen that the IPLC is specifically covered by the definition of the telecommunication service given in clause 65(109a)(iv) of the Finance Act, 1994. As per the said section these services are taxable only when provided by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1985. It is only because the foreign telecom service provider cannot constitute a telegraph authority under an Indian law that they remain outside the taxability clause of the telecommunication service.

3. Therefore, the view taken in the said letter that what otherwise constitutes a "telecommunication service" would amount to "business support service" is erroneous.

4. The clarification issued vide the above mentioned letter stands corrected accordingly.

8. Considering the above-Board clarifications and various decisions on the issue, we do not, find merit in the impugned order, hence, the same is set aside."

8. Following the aforesaid precedent, the impugned order is also set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

Gb/Raja…