CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 20222 of 2015

(Arising out of Order-in-Original No. TVM-EXCUS-000-COM-08-14-15 (ST) dated 27.10.2014 passed by the Commissioner of Central Excise, Customs and Service Tax, Thiruvananthapuram.)

The General Manager
M/s. Bharat Sanchar Nigam Limited,
Kollam SSA, BSNL Bhavan, Vellyittambalam,
Kollam,
Kerala – 691 012. **........Appellant**

VERSUS

Commissioner of Central Excise,
Customs and Service Tax,
ICE Bhavan, Press Club Road,
Thiruvananthapuram – 695 001. **............Respondent**

AND

Service Tax Appeal No. 21284 of 2017

(Arising out of Order-in-Appeal No. TVM-EXCUS-000-APP-163-2017 dated 13.06.2017 passed by the Commissioner of Central Excise & Service Tax (Appeals – III), Cochin.)

The General Manager,
M/s. Bharat Sanchar Nigam Limited,
Kollam SSA, BSNL Bhavan, Vellyittambalam,
Kollam, Kerala – 691 012. **........Appellant**

VERSUS

Commissioner of Central Excise,
Customs and Service Tax,
ICE Bhavan, Press Club Road,
Thiruvananthapuram – 695 001. **............Respondent**

Appearance:

Mr. Raghavendra B. Hanjer, Advocate for the Appellant
Mr. M.A. Jithendra, Assistant Commissioner (AR) and Mr. Rajashekar B.N.N., Superintendent (AR) for the Respondent

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final Order Nos. 20569-20570 /2026</u>

Date of Hearing: 03.03.2026
Date of Decision: 03.03.2026

Per: Pullela Nageswara Rao

These 2(two) appeals are filed against the Order-in-Original No. TVM-EXCUS-000-COM-08-14-15 (ST) dated 27.10.2014 passed by the Commissioner of Central Excise, Customs and Service Tax, Thiruvananthapuram and Order-in-Appeal No. TVM-EXCUS-000-APP-163-2017 dated 13.06.2017 passed by the Commissioner of Central Excise & Service Tax (Appeals –III), Cochin.

2. The brief facts are the Appellant is a Public Sector Undertaking *inter-alia* engaged in rendering of Telecommunication Service, Consulting Engineer Service, Commercial Training and Coaching Service & Goods Transport Agency Service and is registered with the jurisdictional Service Tax Department. The issue involved in both the appeals is demand of service tax based on difference in value between Trial Balance (TB) and ST-3 returns for the periods April 2011 to March 2012 and April 2010 to March 2011, respectively. Alleging that the appellant has not paid the appropriate service tax on comparison of Trial Balance (TB) and the amounts declared in ST-3 returns 2(two) show cause notices were issued on 12.07.2013 and 10.12.2012 involving a service tax demand of Rs. 63,53,769/- and Rs. 12,88,071/-, respectively. In Appeal No. ST/20222/2015, on adjudication Commissioner has confirmed the service tax along with interest and no penalty was imposed. In Appeal No. ST/ 21284/2017, Adjudicating Authority confirmed the service tax demand along with interest and imposed penalty of Rs 6,44,035/- and on appeal Commissioner (Appeals) upheld the order. Aggrieved by the impugned orders the appellant filed the above 2(two) appeals before the Tribunal.

3. The learned counsel for the appellant during the hearing in respect of Appeal No. ST/20222/2015 submits that; the computation of taxable value is solely based on the figures in Trial balance for the year 2011-12 by adding opening debtors to the figures available in the column "progressive credit" under various heads of accounts from 131

to 141 without considering the closing balance as on 31.03.2012. The progressive credit balances for income available under various heads of accounts from 131 to 141 were taken for computation of taxable value and the same is not the actual revenue /taxable value as per Section 67(1) of the Act read with Service Tax (Determination of Value) Rules, 2006. The actual value represented by the credit balances is the difference between progressive credits and progressive debits and hence, the demand of short payment of service tax arrived at by adding progressive credits is untenable; the value of sundry debtors as on 31.03.2011 taken for quantification of service tax is contrary to the Point of Taxation Rules, 2011 as it enjoins the tax payers to pay service tax even for the services billed but not collected up to 31.03.2011. The Appellant adopted the Point of Taxation Rules, 2011, with effect from 01.07.2011 in terms of Rule 9, ibid. Therefore, the value of taxable services in their case will be collection of telecommunication revenue for the period up to 30.06.2011 and telecom services billed for the period of services provided from 01.07.2011 to 31.03.2012; the Trial balance is a statement of balance under different heads of income, expenditure, assets and liabilities and hence, the balance in each head either debit or credit is relevant and the same is used for preparation of final statement of accounts like Profit and Loss (P&L) account and Balance Sheet (BS). The progressive credits of income heads do not convey any meaning other than the record of all entries in the particular head of account for the period from April 2011 to March 2012 which includes misclassified items, provisional booking etc; Department has proceeded to demand service tax on the entire outstanding debtors as on 31.03.2011 without taking into account the closing balance which resulted in demand of service tax.

4. The learned counsel for the appellant during the hearing in respect of Appeal No. ST/21284/2017 submits that; the Appellant being a Public Sector Undertaking maintained specific application software for billing and collection for all their services provided during the relevant period of dispute. The Appellant was generating sub-ledger accounts from the application software which contains the details of taxable and

non-taxable services, age-wise debtors, bills raised in advance for the services yet to be provided and bills yet to be raised for the services that were already provided, etc. Based on the sub-ledger, the corresponding journal entries were passed which were then reflected in the head-of-account-wise ledgers; the closing balances in each ledger are tabulated to prepare the Trial Balance (TB) which serves as the final financial record at the SSA level; the profit and loss account and balance sheet are prepared only at the Circle level; since the Trial Balance contains only the closing balances of each ledger account, no detailed breakup can be derived from the same. Therefore, demand of service tax without ascertaining the service-wise or transactions-wise details, verification of Sub-ledger Records (SLR) and by solely placing reliance on Trial Balance is unsustainable in law; the Respondent-Service Tax Department has considered the entire figures appearing in the Trial Balance as the gross taxable value for the purpose of payment of service tax though Sub-ledger accounts and ST-3 returns were produced by the Appellant during the course of Audit and the taxable value declared in ST-3 returns and sub-ledger accounts was perfectly matching. The Respondent conveniently ignored the sub-ledger account which was the basis for payment of service tax. Therefore, the demand of service tax solely placing reliance on Trial Balance by ignoring the sub-ledger account is unsustainable in law.

5. The Learned counsel further submits that; the inherent flaw is further substantiated by the fact that though the SCN proposed to demand the service tax amount of Rs. 49,23,620/- based on difference between Trial Balance and ST-3 returns, only an amount of Rs. 12,88,071/- alone is confirmed and the remaining demand has been dropped which clearly proves the inaccuracy on the part of the Department in demand of service tax on the basis of Trial Balance which contains the value of taxable and non-taxable value and hence, confirmation of demand solely on the basis of Trial Balance is fundamentally erroneous and untenable in law; the Appellant has maintained sub-ledger Accounts for the disputed period which contained detailed service-wise and period-wise breakup of revenue and

collections, further the service tax has been paid and ST-3 returns were filed on the basis of the said sub-ledger Accounts, which were verified and audited by multiple authorities including the Department of Audit without raising any objections. Therefore, demand of service tax without considering the sub-ledger Accounts is untenable and completely erroneous; the basis of placing reliance on Trial Balance has resulted in inflated and arbitrary demand of service tax which is negated by the Commissioner (Appeals) by dropping almost 75% of the original demand.

6. The Learned counsel further made common submissions for both the appeals and submits that; the service tax in the present case, has been demanded solely on the basis of difference between Trial Balance and the ST-3 returns without seeking any clarification from the Appellant; service tax can be levied only when there is identification of service provider and recipient and consideration for the same is paid. In the absence of such evidence, demand of service tax is unsustainable in law; further it is well settled law that demand of service tax solely based on difference in value between Trial Balance / Balance Sheet and ST-3 returns is legally unsustainable in the absence of corroborative evidence. Further the burden is on the Revenue to prove the same with corroborative evidence. However, no such attempts have been made by the Department, nor any clarification has been sought before issuance of show cause notice.

7. The Learned counsel placed reliance in support of the above averments on the following decisions:

a. **BSNL Vs. CST - 2010 (20) STR 55 (Tri.-Bang.)**
b. **BSNL Vs. CGST & CEX. Final Order No. 41213/2025 dated 30.10.2025**
c. **Go Bindas Entertainment Pvt. Ltd. Vs. CST., Noida 2019 (27) GSTL 397 (Tri.-All.)**
d. **South Eastern Coalfields Ltd. Vs. CCE & ST (2024) 17 Centax 245 (Tri.-Del.)**

8. The Learned counsel further submits that; the Appellant being a Public Sector Undertaking, there cannot be any suppression of facts with intent to evade payment of service tax; merely because there is difference in value between Trial Balance and ST-3 returns that by itself will not lead to suppression of facts with intent to evade payment of service tax; the Department has not conducted systematic investigation before issuance of show cause notice instead relied on Trial Balance though the said document is consisting of taxable and non-taxable value which cannot be the basis to demand of service tax; further the sub-ledger account maintained by the Appellant and adopted for payment of service tax clearly matches with the value declared in ST-3 returns. Therefore, the demand of service tax for the period 2010-11 and 2011-12 through the impugned show cause notices respectively dated 10.12.2012 and 12.07.2013 are completely barred by limitation.

9. The Learned counsel placed reliance in support of the above averments on the following decisions:

a. **General Manager, GMTD, BSNL vs. CGST, Cus. & CE., Dehradun (2025) 27 Centax 260 (Tri.-Del.)**
b. **BSNL vs. CCE., Ahmedabad - 2009 (14) S.T.R. 359 (Tri. - Ahmd.)**
c. **BSNL vs. CCE., Shillong Final Order No. 75256/2020 dated 06.02.2020**
d. **BSNL vs. CGST., Ex. & Cus., Bhopal Final Order No.509606/2025 dated 14.05.2025**

10. The learned Authorized Representative (AR) for the Revenue reiterated the findings of the Commissioner/ Commissioner (Appeals) in the respective impugned adjudication/appellate orders.

11. Heard both sides and perused the records.

12. We find that both the appeals are with regard to confirmation of service tax demand based on the amounts reflected in the Trial Balance as compared with the amounts mentioned in the ST-3 returns. The appellant contends that for the computation of the differential taxable

value, progressive credits have been added to the debtors and that this method of computation is irregular, since the progressive credits do not reflect the actuals and it is only used for the purpose of preparation of Trial balance based on which the Proft & Loss (P&L) Account and Balance Sheet are prepared.

13. We find that in Appeal No. ST/ 20222/ 2015 the computation of taxable value was solely based on the figures in the Trial balance for the year 2011-12 by adding the opening debtors figure to the progressive credits under various heads of accounts without considering the balance as on 31.03.2012. The progressive credit balances for income available under various heads taken for computation of taxable value is not the actual revenue / taxable value as per section 67(1) of the Act read with Service Tax (Determination of Value) Rules, 2006. The actual value is represented by the credit balances is the difference between progressive credits and progressive debits and therefore the demand of short payment of service tax arrived at by adding progressive credit is untenable. Further we find that the value of sundry debtors has on 31.03.2011 for quantification of service tax is contrary to the Point of Taxation Rules, 2011 as it enjoins the taxpayers to pay service tax even for the services billed but not collected up to 01.03.2011. We find that the appellant has contended that they have adopted the Point of Taxation Rules, 2011 with effect from 01.07.2011 in terms of Rule 9 ibid, therefore the taxable service in their case will be collection of telecommunication revenue for the period up to 30.06.2011 and telecom services billed for the services provided from 01.07.2011 to 31.03.2012. The department has proceeded to demand service tax on the entire outstanding debtors as on 31.03.2011 without taking into consideration the closing balance, which resulted in short payment of service tax which is unsustainable. We find that the demand of differential service tax in view of the above discussion is not tenable and hence liable to be set aside.

14. In respect Appeal No. ST/21284/ 2017 the appellant was generating sub-Ledger accounts from the application software which contains the details of taxable and non-taxable services, age wise data,

bills raised in advance for the services yet to be provided and bills to be raised for the services that are already provided, etc., based on the sub-Ledger and corresponding journal entries which are reflected in the head of account wise ledgers the trial balance is tabulated by using the closing balances in each Ledger which is a financial record at the SSA level, the profit and loss account and balance sheet are prepared only at the circle level since the trial balance contains only the closing balance of such each Ledger account no detailed breakup can be derived from the same therefore the demand of service tax without ascertaining the service wise or transaction wise details, verification of sub-Ledger records and solely placing reliance on Trial Balance is unsustainable in law. Further, we find that the show cause notice proposed demand of service tax amount of Rs. 49,23,620 on the basis of difference between Trial Balance and ST-3 return, however an amount of Rs. 12,88,071/- only was confirmed and the remaining demand has been dropped which clearly proves the inaccuracy on the part of the department in demand of service tax on the basis of Trial Balance which contains the value of taxable and non-taxable value and hence confirmation of demands solely on the basis of Trial Balance are untenable.

15. In view of the above discussion the impugned orders are unsustainable and liable to be set aside. Accordingly, the impugned orders are set aside, and the appeals are 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)

(Pullela Nageswara Rao)
Member (Technical)

Hr/Sasi