CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No.55227 Of 2014

[Arising out of Order-in-Original No.CHD-CEX-001-COM-59-14 dated 14.07.2014 passed by the Commissioner of Central Excise and Service Tax, Chandigarh-I]

M/s Bridgeview Broadband Network Private Limited ..... **Appellant**
The Mall, Shimla,
Himachal Pradesh-171001

VERSUS

The Commissioner of Central Excise & Service Tax, Shimla ..... **Respondent**
Ground & First Floor, Commercial parking Complex, Chotta Shimla, Himachal Pradesh-171002

APPEARANCE:
Ms. Krati Singh and Ms. Samiksha Uniyal, Advocates for the Appellant

Ms. Amita Gupta Authorized Representative for the Respondent

CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.60846/2025

DATE OF HEARING: 26.06.2025
DATE OF DECISION: 11.07.2025

P.ANJANI KUMAR:

M/s Bridgeview Broadband Network Pvt Ltd, the Appellants were engaged in providing the internet facilities to the customers through the cable network taken on lease; the Appellants extended the domain of its operations and laid down a Dark Optical Fibre which was leased to various telecom companies on lease rent basis, from 2006; On conduct of an audit, in November 2011, the department, found that there was a difference in the income recorded in the balance sheets and taxable value reported in ST-3 returns; after completion of enquiry, a Show Cause

Notice dated 27.08.2012, was issued to the appellants, invoking extended period and demanding service tax amounting to Rs. 1,05,64,177, covering the period 2007-2008 to 2011-2012 (up to September 2011), along with interest and penalty, on the income earned under the heads (i). Lease pay holder (ii). Infrastructure provider receipts (iii). Channel placement charges and carriage receipts and Installation charges and repair and maintenance charges; the Show cause Notice also demanded Cenvat credit of Rs. 39,13,281, along with interest and penalty, on the ground that the Appellant did not submit invoices based on which the credit is availed. Commissioner issued the Impugned Order, dated 14.07.2014, confirmed the demand of service tax amounting to Rs. 76,06,742 along with interest and penalty and dropped demand of service tax of Rs. 29,57,435, on the infrastructure provider receipts on the ground that the extended period of limitation cannot be invoked for proposing this demand as the department was aware about this transaction while raising the demand for the period 2003-2008 in the earlier proceedings. Hence, this appeal No. ST/55227/2014

2. Ms. Krati Singh, Learned counsel for the appellants, submits that Service tax cannot be charged on lease pay holder receipts under Cable Operator services; as per Section 65(22) of the Finance Act, cable services have the meaning as assigned to it in Section 2(b) of the Cable Television Networks (Regulation) Act, 1995 (‘CTN Act’); as per Section 2(b) of the CTN Act, cable service means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals; further, Section 65(21) of the Act refers to CTN Act for

the definition of cable operator; as per Section 2(aiii) of the CTN Act, cable operator means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network and fulfils the prescribed eligibility criteria and conditions; Section 65(105)(zs) provides that the services provided by a cable operator including multisystem operator to any person in relation to cable services shall be taxable; therefore, any service provided by the cable operator in relation to transmission by cables shall be taxable under the head 'cable operator services'; it is clear that lease pay holder receipts are not taxable under cable operator services.

2.1. Learned Counsel submits that the appellant receives lease pay holder receipts from small operators in exchange of the act of not expanding its business in the area where such small operators are operating; further, the Appellant provides signals to small operators which are then relayed by them to their subscribers; the appellant receives lease pay holder charges and charges for providing signals from small operators for not expanding its business and providing the signals, respectively from small operators; income from the small operators is booked under single head 'Cable Subscription' in the balance sheet; the impugned order has confirmed the demand only on lease pay holder charges.; however, the service tax demand has been wrongly calculated on the entire amount booked under 'Cable Subscription'; moreover, the amount pertaining to the provision of signals has been already subjected to taxation; this submission was made before the Adjudicating Authority, as recorded at para 9(v) in the impugned order; however, the same was not considered while passing the Impugned Order.

3. Learned Counsel submits that any service provided by the cable operator in relation to transmission by cables shall be taxable under the head 'cable operator services'; Adjudicating Authority did not consider the submission that the Service tax cannot be charged on channel placement and carriage receipts under Cable Operator services; Channel placement and carriage receipts are pertaining to agreement with the channels for telecasting their channels at the frequencies desired by them which will ensure maximum viewership and reach to the channels by avoiding the terrestrial frequencies; income is not pertaining to telecasting of channels but is in relation to give the maximum reach to these channels; channel placement and carriage receipts are correctly classifiable under Business Auxiliary Services under Section 65(19) read with Section 65(105)(zzb) of the Act as the placement of channels at the desired frequency to ensure the better quality of the channel enhances the channel's viewership; tribunal decision M/S Indusind Media & Communications Ltd 2013 (12) TMI 860 - CESTAT New Delhi, supports this view.

4. Learned Counsel submits also that Service tax cannot be charged on infrastructure provider receipts under telecommunication services as per Section 65(109a) read with Section 65(105)(zzzx) of the Act; telecommunication service means services in relation to transmission, emission, reception of signals, signs etc. by wire, radio, optical or other systems by the telegraph authority; the Appellant receives the infrastructure provider receipts for leasing the optical fibres to telecom

and other companies. In this transaction, there is no transmission of signals, video, sound or any other data from the end of the Appellant; the companies are free to transmit their own data on the leased cables. Therefore, the demand of service tax on infrastructure receipt services cannot be demanded under telecommunication services; though, the Adjudicating Authority dropped the demand in respect of infrastructure provider receipts, did not exclude the amount of service tax pertaining to these receipts from the total demand confirmed.

5. Learned Counsel submits further that Installation and repairs and maintenance charges are not includable in the value of taxable services as they represent the cost of the wire used at the time of installation and towards the cost of replacing the wires and other hardware; Learned Counsel submits in addition that the impugned order has denied the Cenvat credit to the Appellant on the sole basis that the Appellant failed to produce the invoices; if the demand of service tax is confirmed, the Appellant is also entitled to avail the Cenvat credit on the inputs and input services utilised for providing the output services; the Appellant is in the possession of the invoices based on which the credit is availed.

6. Learned Counsel submits on limitation that the demand for the period between 2007-2008 to 2010-2011 is barred by limitation as being issued beyond a period of one year as applicable during the relevant period; extended period was invoked on the ground that the Appellant suppressed the fact of provision of services with the intention to evade tax as the Appellant is not reporting these services in their ST-3 returns and that these violations would not have come to its knowledge without

conducting the audit. Counsel submits that the Appellant was under the bona fide belief that service tax is not payable on lease pay holder receipts, infrastructure provider receipts, channel placement and carriage receipts and installation and repair and maintenance charges; earlier, AG (Audit) conducted the audit of the Appellant which culminated in the issuance of show cause notice dated 13.04.2009, demanding the tax on internet/bandwidth charges and leasing charges for the period 2003-2004 to 2007-2008; department did not raise any dispute regarding non-payment of service tax on transactions other than the transaction of providing the fibre on lease even though the said show cause notice covers the period of 2007-2008 which is also involved in the present SCN; therefore, the Appellant had reasons to believe that the service tax is not payable on other transactions' moreover, the extended period of limitation cannot be invoked in the present SCN as the department failed to take cognisance of other issues in the earlier audit and show cause notice as held in International Merchandising Company 2025 (4) TMI 1600 - CESTAT Chandigarh.

6.1. Learned Counsel submits also that the department again conducted the audit of the Appellant in November 2011 pursuant to which the present proceedings are initiated; it is the settled principle that fraud, suppression etc. cannot be alleged on part of the taxpayer for the facts unearthed during the audit conducted in such time frame due to which the income escapes assessment within the normal period of limitation as held in M/s Socomec India Private Limited 2025 (4) TMI 3 - CESTAT Chandigarh and M/s GD Goenka Private Limited 2023-TIOL-782-CESTAT-DEL.

6.2. Learned Counsel submits that the demand raised in the SCN is based on the figures of balance sheet provided by the Appellant itself; the Appellant also supplied the copies of agreements, write-up on the description of the transactions etc. based on which the demand is raised; therefore, suppression, fraud etc. cannot be alleged against the Appellant; moreover, the present case involves interpretation of complex provisions regarding taxability of various services; department has also not adduced any positive evidence based on which it is alleged that the Appellant has ill intent to evade the tax; the Appellant was filing the ST-3 returns regularly; the Appellant did not disclose the transactions in the returns as it had the bona-fide belief that these transactions are not taxable; hence, the extended period of limitation cannot be invoked for the fault of the department in not scrutinising the returns timely as held in Mahanagar Telephone Nigam Ltd 2023-TIOL-407-HC-DEL-ST and Delhi Airport Metro Express Pvt. Ltd final Order No. 50031/2024 dated 11.01.2024 (Tri.-Del.). Counsel submits that when duty demand can not be sustained on merits and limitation, penalties imposed do not survive.

7. Ms. Amita Gupta, learned Authorized Representative for the Department reiterates the findings of the impugned order. On the demand related to Lease Pay Holder Receipts, she relies on the decision of this Bench in the case of Reetika Cable – 2021 (53) GSTL 261 (Tri. Chan.) and submits that the appellants are liable to pay service tax on the gross value of services provided by them with regards to Channel Placement Charges and Carriage receipt and Installation Charges and Repair & Maintenance, she relies in the case of UCN Cable Network Pvt.

Ltd. – 2016 (45) STR 565 (Tri. Mumbai) and submits that tax liability on amount charged for set-top boxes provided to customers and the impugned amount shown in books of accounts as lease/ rental are liable to be taxed. As regards the alleged inadmissible credit availed by the appellants, learned Authorized Representative submits that invoices prescribed under Rule 9(1) of CENVAT Credit Rules were not available with the appellants and therefore, learned Commissioner has correctly denied the CENVAT credit.

8. Heard both sides and perused the records of the case. Firstly, we would like to address the issue of limitation. In the instant case, show cause notice dated 27.08.2012, covering the period 2007-08 to 2011-12 was issued invoking extended period. Learned Counsel for the appellants submits that the demand is substantially barred by limitation. The appellant submits that they were under a bona fide belief that service tax is not payable on Lease Pay Holder Receipts, Infrastructure Provider Receipts, Channel Placement & Carriage Receipts and Installation, Repair & Maintenance Charges. It is on record that the issue came to light only on the conduct of audit. However, it is on record that A.G (Audit) have conducted an audit on the appellant’s records and consequently a show cause notice dated 13.04.2009 demanding service tax on Internet/ Bandwidth Charges and Leasing Charges was issued covering the period 2003-04 to 2007-08. The year 2007-08 is common to both the show cause notices and in the earlier show cause notice, the present issues were not disputed. We find that Department cannot invoke extended period in the subsequent show cause notices when it failed to take cognizance of some issues in the earlier audit as held in International

Merchandising Co. – 2025 (4) TMI 1600 (CESTAT Chandigarh). Other than mere invoking the extended period, Revenue has not brought out any mis-declaration etc. on the part of the appellants and therefore, we are of the considered opinion that extended period cannot be invoked only for the reason that audit has detected certain issues. We place our reliance on the decision of the Principal Bench in the case of M/s G.D Goenka Pvt. Ltd. – 2023-TIOL-782-CESTAT-DEL. As there are conflicting judgments on the taxability of the issues involved, we are of the opinion that the appellants are in their right to entertain an opinion that the impugned charges received by them are not exigible to service tax. Therefore, we find that major portion of the appeal succeeds on limitation.

9. Coming to the demand issued for the normal period, we find that in respect of all the charges involved, learned Adjudicating Authority has not given his findings on the submissions made by the appellants, although, he has recorded their submissions. Also, learned Commissioner did not have the benefit of the jurisprudence that evolved in this regard and the ratio of the cases submitted by the appellant. Under the circumstances, we find that the interest of justice will be met if the issue goes back to the original authority for considering the various submissions of the appellants and the law as it evolved in respect of Lease Pay Holder Receipts, Infrastructure Provider Receipts, Channel Placement & Carriage Receipts and Installation, Repair & Maintenance Charges. Also, in respect of the CENVAT credit that is proposed to be denied to the appellants, we find that the appellant claim that they are in possession of the requisite invoices and documents which prove their

eligibility to the CENVAT credit. Learned Commissioner has given a categorical finding that the appellants could not produce the relevant invoices so as to prove their eligibility to avail CENVAT Credit before him. For this reason, the issue of CENVAT credit also requires to travel to the Original Authority for allowing the CENVAT credit after due verification of the invoices.

10. In the result, the appeal is partially allowed in the following terms:

(i) Invocation of extended period set aside.

(ii) Demand pertaining to the normal period is remanded to the Original Authority with a direction to decide the taxability of the various receipts by the appellants considering the submissions of the appellants and the jurisprudence evolved in this regard.

(iii) The Original Authority shall also decide the eligibility of the appellants to the CENVAT credit in dispute after duly verifying the invoices or other documentary proof that may be submitted by the appellants.

(iv) Penalties are, however, set aside.

(Order pronounced in the open court on 11/07/2025)

S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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