IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

ST/Misc./40889/2013 and ST/19/2012

(Arising out of Order-in-Original No.16/2011 S. Tax dated 18.10.2011 passed by the Commissioner of Central Excise, Chennai – IV)

M/s. Bharat Sanchar Nigam Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai Respondent

Appearance

Ms. G. Vardhini Karthik, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **06.09.2018**

Final Order No. **42381 / 2018**

Per Bench

The facts of the case are that the appellants are engaged in providing Telecommunication Service. Pursuant to audit, it emerged that the appellants were providing Interconnectivity Usage Charges (IUC) service to various telecommunication service providers viz. Airtel, Vodafone, Reliance etc. operating in India. It further emerged that the appellants were receiving and providing IUC services from Sri Lanka Telecom, a service provider situated outside India. That in respect of such services received, they were paying IUC service charges in foreign currency and used such services to provide their output service. Department took the view that the appellants were required to pay service tax on the charges collected for the IUC services received from Sri Lanka Telecom. Accordingly, a show cause notice was issued inter alia proposing to demand service tax liability of Rs.2,03,90,782/- along with interest as also for imposition of penalty under various provisions of law. In adjudication, the Commissioner vide impugned order dated 18.10.2011, confirmed the proposed demand along with interest and also imposed equal penalty under section 78 of the Finance Act, 1994. Hence this appeal.

2. Today, when the matter came up for hearing, on behalf of the appellant, ld. counsel Ms. G. Vardhini Karthik made a number of submissions which can be summarized as under:-

2.1 The show cause notice while proposing the demand of service tax has not indicated as to the category of service provided or received by the appellant and which become liable to discharge service tax liability under section 65(105) of the Finance Act.

2.2 Vide the Finance Bill, 2007, new definition "Telecommunication Service" was incorporated under section 65(104) of the Act with effect from 1.6.2007 whereby IUC was specifically incorporated in the definition of "Telecommunication Service" to make it a taxable service. However, the Board had issued a Circular No. F.No. 137/21/2011 dated 19.12.2011, where it was clarified that there cannot be any taxability in respect of International Private Leased Circuits charges provided by a foreign telecom service provider since such provider cannot constitute a telegraph authority under Indian law and they remain outside the taxability clause of the telecommunication service. She submits that the very same clarification would be applicable even in respect of IUC charges.

2.3 Ld. counsel also draws our attention to yet another circular F.No. 137212011-Service Tax dated 15.7.2011 on the issue of taxability in respect of International Private Leased Circuits charges, where it has been reiterated that when the service provider is located abroad, he is not covered under the definition under Section 65(105). Hence, the service provided by foreign vendors cannot be taxed under Telecommunication Service.

3. On the other hand, ld. AR Shri S. Govindarajan supports the impugned order.

3.1 He also draws our attention to Circular 91/2/2007-ST dated 12.3.2007 wherein it has been indicated that ICU charges have been incorporated into the definition of telecommunication service vide the amendment proposed in the Finance Bill, 2007.

4. Heard both sides.

5. In the first place, we find that the ld. counsel is correct in her assertion that the show cause notice has not specified the category of service falling under any of the sub-clause to

Section 105 of the Finance Act, 1994 under which the demand of service tax has been proposed. It is well settled that lack of such clarity in the show cause notice and omission to indicate the specific category of service under which the tax is proposed to be demanded will vitiate the proceedings *ab initio*.

5.1 Be that as it may, we find that the circulars dated 15.7.2011 and 19.12.2011 are very much applicable pari materia to IUC charges paid by the appellant to Sri Lanka Telecom. It is also pertinent to note that Board's circular dated 12.3.2007 cited by the ld. AR was in the nature of an advisory to convey the amended definition of telecommunication service as proposed in the Finance Bill, 2007. Even otherwise, the subsequent circulars dated 15.7.2011 and 19.12.2011 will surely override the said earlier circular. In the event, we find in favour of the appellant. The impugned order cannot be sustained and requires to be set aside, which we hereby do. The appeal is allowed with consequential relief, if any, as per law.

6. The miscellaneous application filed by the appellant for submission of additional grounds is disposed of accordingly.

(Dictated and pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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