

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**Service Tax Appeal No. 50007 of 2016**

(Arising out of Order-in-Original No. 14/Commr/2015 dated 20.08.2015 passed by the Commissioner, Central Excise & Service Tax, Large Taxpayer Unit, New Delhi)

**Mahanagar Telephone Nigam  
Limited, Delhi**

**.....Appellant**

VERSUS

**The Commissioner, LTU, CE & ST,  
New Delhi**

**.....Respondent**

**APPEARANCE:**

Mr. Ketan Jain, Advocate for the Appellant

Mr. Rajeev Kapoor, Authorized Representative of the Department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**Date of Hearing/Decision: 30.06.2023**

**FINAL ORDER NO. 50853 /2023**

**JUSTICE DILIP GUPTA**

This appeal seeks to assail the order dated August 20, 2015 passed by the Commissioner of Central Excise and Service Tax, New Delhi<sup>1</sup>, confirming the demand of service tax after invoking the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act, 1994<sup>2</sup> with penalty and interest.

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**1. The Commissioner  
2. the Finance Act**

2. The two members of the division bench, while hearing this appeal, referred the following issues for opinion of a third member:

“1. As held by the Member Judicial that the appellant is not liable to pay service tax on their invoice raised on NIXI, as the NIXI is not the ISP and hence, neither the service provider nor the service receiver, hence not liable to pay service tax under the Finance Act, 1994.

**OR**

2. As held by the Member Technical that the appellant is liable to pay service tax on the services provided to the other ISPs through NIXI, and they have raised invoice for such services provided, on NIXI, and have also admitted to pay service tax.”

3. Mahanagar Telephone Nigam Limited, Delhi<sup>3</sup> is a public sector unit of the Government of India in the Ministry of Communications & Information Technology. It is engaged in the business of telecom and information technology related services, including ‘internet telecommunication service’.

4. Intelligence was gathered by the officers of the department that various ‘internet service providers’, including the appellant, had entered into bilateral domestic private ‘peering arrangements’ with each other for carrying internet traffic on each other’s backbone, but they were not discharging service tax on the value of the services provided to other internet service providers. The officers also believed that the services rendered by the appellant

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**3. the appellant**

to other internet service providers was covered under 'internet telecommunication service' as defined under section 65(57a) of the Finance Act, 1994<sup>4</sup> and made taxable under section 65(105)(zzzu) of the Finance Act from 16.05.2008. Accordingly, a show cause notice dated 12.10.2013 was issued to the appellant invoking the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act demanding service tax with penalty and interest.

5. The first issue that has been framed by the division bench is whether "the appellant is not liable to pay service tax on their invoice raised on NIXI, as the NIXI is not the ISP (internet service provider) and hence neither the service provider nor the service receiver, hence not liable to pay service tax". This question arose because of the views expressed by the learned Member (Judicial).

6. The second issue that arises for consideration is whether "the appellant is liable to pay service tax on the services provided to the other ISPs (internet service providers) through NIXI, and they have raised invoice for such services provided, on NIXI, and have also admitted to pay service tax". This question has arisen because of the views expressed by the learned Member (Technical).

7. The two issues that have been referred have been answered in the following manner:

- (i) There is no relationship of service provider and service recipient between the appellant and NIXI and, therefore, the appellant is not liable to pay service tax; and

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**4. the Finance Act**

(ii) Mere raising of an invoice by the appellant on NIXI during the course of investigation would be of no consequence as the appellant had not provided any service to NIXI and would, therefore, not be required to pay service tax.

8. The matter has now been placed before the Division Bench. Both learned counsel for the appellant and the learned authorized representative appearing for the Department have stated that the appeal may be decided in terms of the order dated 15.05.2023.

9. Thus, for the reasons stated in the aforesaid order dated May 15, 2023, the order dated August 20, 2015 passed by the Commissioner cannot be sustained and is set aside. The appeal is allowed accordingly.

(Order dictated and pronounced in the open Court)

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

**(HEMAMBIKA R. PRIYA)  
MEMBER (TECHNICAL)**