IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 1280 of 2010

[Arising out of Order-In-Appeal No. 232 (DKV)/ST/JPR-I/2010 dated 16.6.2010 passed by Commissioner (Appeals) Central Excise, Jaipur]

M/s. BSNL PGMTD Jaipur **Appellants**

Vs.

Commissioner of Central Excise, Jaipur **Respondent**

Appearance:

Shri Sanjiv Pandey, Advocate for the Appellants
Shri Amresh Jain, DR for the Respondent

CORAM:

Hon'ble Mr S K Mohanty, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing : 12.05.2017
Date of Decision : 23.05.2017

FINAL ORDER NO . 53398 /2017

Per V Padmanabhan:

The appellant is engaged in providing telecommunication services as defined under section 65 (105)(b) of the Finance Act, 1994. It was noticed during the course of internal audit that the appellant was providing interconnection link facility to various basic telephone service providers, infrastructure and space and was charging infrastructure charges, port charges, rent for space etc. Revenue was of the view that the appellant was liable to pay Service Tax on these charges with effect from 1.5.06 under the category of a new service “Business Support Service under section 65(104c) . Accordingly, Show cause notice proceedings got initiated for demand of Service tax amounting to Rs. 11,00,076/- for the period February, 2007 to May, 2007 under the category of Business Support service. The original authority confirmed the demand of such Service tax which was also upheld by the Commissioner (Appeals). Aggrieved by the decision, the present appeal has been filed.

2. With the above background, we have heard Shri Sanjiv Pandey, learned advocate appearing for the appellant as well as Shri Amresh Jain, learned DR appearing for the Revenue.

3. We note from the record that the appeal in the present case was originally disposed of by this Tribunal vide Final Order No. ST/636/2011 dated 1.8.2011 . However, the appellant challenged the decision of the Tribunal before the Hon’ble High Court of Rajasthan at Jaipur. The Hon’ble High Court vide their decision dated 27.2.2017 directed this Tribunal to consider the matter afresh and expressed no opinion on the merits of this case.

4. Learned Counsel for the appellant, in his arguments, submitted that the amounts collected by the appellant from various basic telephone providers were in the nature of inter connection link facility charges. He further submitted that such charges, which are known as "Inter Connection Usage" charges (IUC) was the subject matter of debate and discussions between the Ministry of Finance and Ministry of Communication through various basic telephone providers. The chargeability of Service Tax on such IUC was also the subject matter of different clarifications by the CBEC. Finally the CBEC, vide Circular dated 12.3.07 has clarified that IUC will not be liable for Service Tax under the category of Telephone service inasmuch as such charges are not recovered for provision of telephone services to a subscriber by the Telegraph Authority. The IUC has been brought within a new definition of "telecommunication service" brought under the service tax net by under Finance Act, Bill 2007 and was not levied to service tax during the disputed period.

Learned Counsel further argued that such IUC charges are not covered by the definition of Business Support Services in which Revenue has sought to levy the service tax.

5. Learned DR on the other hand, supported the impugned order. He submitted that the amounts recovered by the appellant were for

providing services under the head "space and infrastructure" and these activities will be covered under the Explanation in the definition of Business Support Services, in which the expression "infrastructural support service" has been explained. He further argued that the CBEC circular has only clarified that IUC are not covered within the definition of telephone services and hence there is no bar in demanding the service tax under 'Business Support Services'.

6. We note that amounts have been recovered by the appellant from various basic telephone service providers towards space and infrastructure, port charges, rent for space etc. It has been submitted on behalf of the appellant that such charges have been recovered to facilitate such basic telephone service provider to have interconnection with the BSNL network so that there is a bigger network for free flow of telecommunication traffic from either side. From the records of the case, we note that such interconnected facility is not provided on its own by the appellant but is a mandatory direction to all the telecommunication companies so as to facilitate interconnection of various service providers. It is also to be noted that such charges have been recovered by the appellant from other basic telephone service providers and not telephone subscribers.

7. There has been a lot of debate and discussion about the nature of IUC and whether service tax will be required to be paid on such

IUC recovered. The matter stand finally clarified by CBEC vide their Circular dated 12.3.2007 to the effect that IUC will not be liable to pay service tax under the category of telephone services since it is not a charge recovered by the telegraph authorities for providing of telecommunication services to the subscriber. This clearly takes the IUC outside the service tax levy as far as telephone service is concerned.

8. The department has sought to levy the service tax on such IUC in the category of Business Support Services. This category of service has been included in the statutory books from 1.5.2006. The definition of Business Support Service under section 65 (105 c) of the Finance Act, 1994 is reproduced below:

> *"Support service of business or commerce means service provided in relation to business or commerce and includes evaluation of prospective customer's telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulations of customer service and pricing policies, infrastructural support service and other transaction processing*
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> *Explanation:- for purpose of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent*

personal to handle messages, secretarial services, internet and telecom facilities, pantry and security: "

9. Business Support Service includes service activities such as providing office along with office utilities such as lounge, reception etc. From the nature of IUC recovered by the appellant, we are convinced that the appellant has not provided any such services falling within the category of Business Support Services. The IUC stand recovered from other basic telephone service providers only for providing interconnection link and infrastructural support, and space for keeping equipments belonging to other service providers. Consequently, we find no reason to sustain the demand of service tax under the category of Business support services.

10. In view of the above discussions, the impugned order is set aside and appeal allowed.

(pronounced in the open court on 23.05.2017)

(S K Mohanty)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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