CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Service Tax Appeal No. 1957/2010

(Arising out of Order-in-Original No. 13/2010-S.Tax dt.30.04.2010 passed by CCCE & ST, Guntur)

M/s Bharat Sanchar Nigam Ltd,
Office of the General Manager, BSNL Bhavan, Eluru, W.G. Dist, AP – 534 002 **......Appellant**

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Guntur **......Respondent**
P.B.No.331, C.R. Building, Kannavari Thota, Guntur, Andhra Pradesh – 522 004

with

Service Tax Appeal No. 216/2011

(Arising out of Order-in-Original No. 23/2010-S.Tax dt.25.10.2010 passed by CCCE & ST, Guntur)

M/s Bharat Sanchar Nigam Ltd,
Office of the General Manager, BSNL Bhavan, Eluru, W.G. Dist, AP – 534 002 **......Appellant**

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Guntur **......Respondent**
P.B.No.331, C.R. Building, Kannavari Thota, Guntur, Andhra Pradesh – 522 004

and

Service Tax Appeal No. 240/2012

(Arising out of Order-in-Original No. 15/2011-S.Tax dt.31.10.2011 passed by CCCE & ST, Guntur)

M/s Bharat Sanchar Nigam Ltd,
Office of the General Manager, BSNL Bhavan, Eluru, W.G. Dist, AP – 534 002 **......Appellant**

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Guntur **......Respondent**
P.B.No.331, C.R. Building, Kannavari Thota, Guntur, Andhra Pradesh – 522 004

Appearance

Shri K. Nagaraja Rao, Advocate for the Appellant.
Shri P. Sudhakar Reddy, AR for the Respondent.

Coram:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/31064-31066/2019

Date of Hearing: 08.08.2019
Date of Decision: 14.11.2019

[Order per: P. VENKATA SUBBA RAO]

1. All these three appeals pertain to the same issue and hence are being disposed of together. The appellant herein is a public sector undertaking engaged in providing telephone services and telegram services etc., and is registered with Service Tax department for payment of service tax. Since there were three different divisions, separate service tax registrations had been obtained in respect of each. During the relevant period, some specified taxable services were exempted from the whole of payment of service tax by notification 03/1994 (ST) dt.30.06.1994 including the following two services which are relevant to the present case. This notification reads as follows.

Service Tax — Exemption to specified Insurance Schemes and Telephone calls made from Public Booths, Free Telephones at Airports and Hospitals

In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services, as are specified in column (2) of the Table hereto annexed, from the whole of service tax leviable thereon under section 66 of the said Act.

TABLE

S. No.	*Specified Taxable Services*
(1)	*(2)*
1.	*Personal Accident Social Security and Hut Insurance Scheme.*
2.	*Comprehensive Crop Insurance Scheme.*
3.	*Cattle Insurance under Integrated Rural Development Programme.*
4.	*Scheme for Insurance of Tribals.*
5.	*Janata Personal Accident Policy and Gramin Accident Policy.*
6.	*Group Personal Accident Policy for Self-Employed Women.*
7.	*Agricultural Pumpset and Failed Well Insurance.*
8.	*Premia collected on insurance of export of goods from India and export credit insurance.*
9.	*Premium received from Re-Insurance both domestic and overseas.*
10.	*All business for which premium is booked outside India.*
11.	*Small transactions involving premium of less than rupees fifty except motor insurance.*
12.	***Departmentally run Public Telephones for local calls.***
13.	***Guaranteed public telephone operating only for***

	local calls.
14.	*Free telephone at Airports and Hospitals where no bills are being issued.*

2. This notification shall come into force on the 1st day of July, 1994.
[Service Tax Notification No. 3/94 (S.T.), dated 30-6-1994]

2. Sl.No.12 of the aforesaid notification exempted departmentally run public telephones for local calls and Sl.No.13 exempted guaranteed public telephone operating only for local calls. Learned counsel for the appellant explains that departmentally run public telephones are those which are run directly by the department. Guaranteed public telephones are those which are given by the department to individual vendors, shop-keepers etc., to be used as public telephones subject to the condition that the vendor guarantees a minimum payment of certain amount to the department regardless of how many calls were made from the telephone. In respect of both, the exemption was meant only for "local calls". The term "local call" has not been defined either in the exemption notification or in the Finance Act, 1994. The Indian Telephone Rules, 1951 define local call as follows.

"Local call" means a call from the subscriber's line to any other line on any exchange with the same exchange system.

3. During the relevant period the appellant had allowed, as per their Circular No. 3-4/2004 R & C dt.22.03.2005 effective from 01.04.2005, these telephones to be used not just for local calls as above but also to make calls to other mobile service operators as well as mobile services provided by BSNL. Further, they also allowed calls to any telephone throughout the undivided state of Andhra Pradesh. It is the case of the revenue that since the exemption notification is meant for only local calls and the definition of the local calls as per the Indian Telephone Rules of assessee themselves do not include long distance calls within the state or calls to mobile services, the public telephones which had facility of making such calls are not entitled to the benefit of the exemption notification as above – whether they are departmentally run or guaranteed public telephones run by vendors. It was, therefore, alleged in the show cause notices that the appellants have not discharged their service tax liability as required under Section 66 of the Finance Act, 1994 and had suppressed the fact that these services were being used to enable customers to make calls to mobile phones and to lines throughout the state of Andhra Pradesh. Accordingly, the demands were

raised invoking extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75. It was also proposed to impose penalties under Section 76, 77 & 78 of the Finance Act, 1994. Accordingly, the present appeals have been filed.

4. On a specific query from the bench, learned counsel for the appellant submits that for the subsequent period they have been paying service tax on these services and the dispute is only for the relevant period.

5. The appeal of the appellant is on the following grounds:

1) The National Telecom Policy, 1994 formulated by the Government of India intended to extend the facility of telephones to every nook and corner of the country. Accordingly, many public telephones were provided and new schemes were introduced and accordingly, in the disputed telephone connections, the facility of calling long distances within the state as well as calling mobile phones has been provided. Therefore, the benefit of the exemption notification must be available to them.

2) The demand has been invoked with extended period of limitation but there was no fraud or collusion or wilful misstatement or suppression of facts with intent to evade payment of duty because there was no positive conscious act to suppress any information.

3) Since they are entitled to the benefit of exemption notification, the interest demanded under Section 75 and the penalties under Section 76, 77 & 78 are also not sustainable. Therefore, the impugned order may be set aside and the appeals may be allowed.

6. Learned departmental representative reiterates the findings of the lower authority and asserts that the exemption notification was specifically available to local calls only and nobody knows the meaning of local calls better than the appellant themselves. Therefore, there is no case for the appellants to claim the benefit of exemption notification. He would also assert that in the entire proceedings before the lower authority and in the present appeal, the appellant has not come up with any evidence to substantiate that another meaning for the definition of local call is available anywhere. Therefore, the Indian Telephone Rules which are the rules of the

appellant themselves, if applied to the present case, make it very clear that no exemption is available. He would assert that merely because the policy of the Government was to enlarge the availability of telephones, it does not mean the exemption notification also automatically gets enlarged to cover such extended facilities. An exemption notification must be strictly construed as it has been written without any intendment or modifications. The exemption notification in this case is very clear that it is available only for local calls and the appellants were clearly not eligible for the benefit of this exemption notification. Regarding the invocation of extended period of limitation, he would assert that the assessee has not intimated to the department that they are availing the exemption notification 03/94 (ST) and still allowing the calls to be made to mobile phones to private operators as well as to long distance calls. By suppressing these facts the appellant had evaded payment of service tax and therefore, extended period of limitation was correctly invoked. In fact, the appellant themselves have started paying service tax with effect from 01.06.2006 on the basis of a circular issued by their own department on exactly the same services. Therefore, the appeals filed by the appellant are liable to be rejected.

7. We have considered the arguments on both sides and perused the records. The issues which fall for consideration are as follows.

1) Whether the appellant is entitled to the benefit of exemption notification 03/94 (ST) dt.30.06.1994 (Sl.No.12 & 13) which is available to only telephones used for local calls, in respect of those telephones which were used for long distance calls as well as calls to mobile phones.

2) Whether the demand invoking extended period of limitation is sustainable.

3) Whether penalties can be imposed upon the appellant.

8. As far as first issue is concerned, exemption notification makes it clear that it is available only for departmentally run telephones meant for local calls as well as guaranteed public telephones operating only for local calls. Evidently, if a telephone is used for other than local calls, the above benefit will NOT be available. The term local call is not defined in the notification. The Indian Telephone Rules, 1951, which are the rules under which the

appellant operates itself, defines 'local call' as a call from the subscriber's line to any other line on any exchange within the same exchange system. The 'exchange system' has been defined as any department telephone exchange or exchanges and any line connected therewith declared by the telegraph authority to be an exchange system. There is an individual telephone exchange and a number of exchanges are grouped together as an exchange system. Calls can be made from within the exchange or to other exchanges within the exchange system or to lines connected to other exchange systems. It is not the case of the appellant that the entire Andhra Pradesh is a single exchange system. There were several exchange systems in the state and through the public telephones in question, a call can be made to any line in any of the exchange systems throughout the states. Clearly, in terms of the Indian Telephone Rules, 1951, this cannot be called a local call and a phone used for such calls cannot be called as telephone meant for local calls only. Further, mobile networks also do not form part of the exchange system in the aforesaid definition. Therefore, calls made to mobile networks also cannot be called as local calls. In the absence of any contrary definition of local calls anywhere, we have no choice but to hold that the appellant is not entitled to the benefit of exemption notification which was available for public telephones to be used for local calls. Accordingly, on merits the demand is sustainable. We, further note that for the subsequent period the appellant themselves have started paying service tax on the same services.

9. With regard to the question of limitation, as per Section 73(1) of Finance Act, 1994, extended period of limitation can be invoked if there was fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of the Act or rules made there under with intent to evade payment of service tax. The allegation in the show cause notices is that there the assessee had suppressed the facts mentioned above with intent to evade payment of service tax. However, from the SCN, the intention to evade payment of service tax is not very evident. No doubt the appellant has wrongly availed exemption notification 03/94 (ST) in respect of these services and as the department dealing with the telephones, the appellant should have known better than anybody else what local calls are. They should also have known that they have enlarged the scope of the public telephones to make calls to mobiles and to the entire

state of Andhra Pradesh. They should have paid duty on these services and they have failed to do so. However, the intention to positively suppress this information and evade service tax is not evident from the SCNs or from the impugned order. Therefore, we find that the revenue has not established the case to invoke extended period of limitation. We have no doubt, the appellant were extremely careless in not paying service tax on the disputed services but we are unable to accept that there is a positive effort to suppress the facts or an intention to evade payment of service tax. For the same reasons, we find that the penalty under Section 78 imposed upon the appellant is also not sustainable. In view of the above, we find that the demands, if any, within the normal period of limitation need to be upheld along with interest as applicable. The demand for extended period of limitation needs to be set aside and we do so. The penalty imposed under Section 78 also needs to be set aside. Penalties under Section 76 & 77 are upheld and need to be recomputed as necessary.

10. In view of the above, all appeals are disposed of as below:

1) The demands are upheld on merits for the normal period of limitation along with interest.
2) The demands for extended period of limitation are set aside.
3) The penalties under Section 78 are set aside and the penalties under Section 76 & 77 are upheld and may be recomputed as necessary, consequent upon the re-computation of the demand.

11. All appeals are remanded to the original authority for the limited purpose of computation as above.

(Order pronounced in the open court on 14.11.2019)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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