

W.P. No.3505 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.3505 of 2012

and

M.P. No.1 of 2012

D.Sivanandam

M/s.Nivedha Communications

No.2, Keela Raja Veedhi, Mannarkudi-614 001.

... Petitioner

Vs.

1.The Assistant Commissioner,

Central Excise Division

Office of the Assistant Commissioner of

Central Excise, No.1,

Nool Kadai Street, Karaikal-609 602.

2.Bharat Sanchar Nigam Limited (BSNL),

Rep. By its General Manager,

Kumbakonam.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Prohibition prohibiting the 1st Respondent from proceeding further with his communication 11.10.2011 in C.No.IV/16/67/2009-S.Tax, as it is without jurisdiction.

For Petitioner

: Ms.Ramya.M

for M/s.Mcgan Law Firm

For Respondents

: Mr.K.Mohanamurali

Senior Panel Counse (for R1)

Not ready in notice reg.R2

ORDER



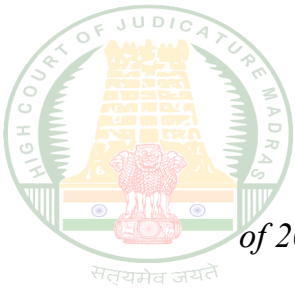
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The present writ petition is filed challenging the show cause notice proposing to levy service tax on distribution of pre-paid and post-paid cellular connections of BSNL, in other words, sim cards.

2. At the outset, it is submitted by both learned counsel for petitioner and learned counsel for Respondents that the issue stands covered by a series of orders of this Court viz., W.P.Nos.10312 to 10315 of 2010 dated 07.01.2010, W.P.No.20268 of 2010 dated 07.01.2010, wherein it was held as under:

“The learned counsel for the Petitioner submits that the issue covered by the several decisions of the Tribunal, the appellate commissioners and original authority detailed below:-

1. Order in Original No.37/DRC/ST/ASN-II/05/06, dated 09.03.2006.
2. Order in Appeal No.9 of 2006 dated 13.06.2006.
3. Order in Original No.8280 dated 27.06.2006.
4. Order in Original No.8 of 2006-2007 dated 06.11.2006.
5. Final Order No.610 of 2007 dated 25.05.2007.
6. Order in M.P. No.1 of 2008 in W.P(MD). No. 4014 of 2008 dated 29.04.2008.
7. Order in M.P. No.2 to 2 of 2008 in W.P. Nos. 12791 to 12796 of 2008 dated 27.05.2008.
8. Final Order No.977 of 2008 dated 04.09.2008.
9. Final Order No.1484 of 2008 dated 30.12.2008.
10. Order in Appeal No.5/205/2006 dated 01.05.2009.
11. Order in M.P. No.1 of 2009 in W.P. No. 9645 of 2009 dated 24.06.2009.
12. Order in M.P. No. 1 of 2010 in W.P. No. 61 and 62 of 2010 dated 06.01.2010.
13. Order in M.P. No. 1 to 1 in W.P. No. 4114 to 4117 of 2010 dated 26.02.2010.
14. Order in M.P. No.1 of 2010 in W.P. No. 10334 of 2010 dated 12.05.2010.
15. Order in M.P. No.1 and 2 of 2010 in W.P. No.10312 to 10315



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of 2010 dated 12.05.2010.

16. Order in M.P. No.1 and 2 of 2010 in W.P. No.11353 and 11354 of 2010 dated 02.06.2010.

17. Order in M.P. No.1 to 1 of 2010 in W.P. Nos. 14210 to 14212 of 2010 dated 05.07.2010.”

3. In this regard, it may also be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Bharat Sanchar Nigam Ltd., vs. The State of Andhra Pradesh Revenue Department* in S.L.P(C)Nos.16551-16555 of 2012, wherein it was held as under:

“Delay condoned.

Applications seeking amendment of cause title are allowed.

It is argued on behalf of the States of Andhra Pradesh and Telangana that the impugned judgment so far as it holds that Sales Tax is not leviable on Value Added Services and SIM Cards cannot be supported. Learned senior counsel has relied upon the judgment of this Court in “Tata Consultancy Services vs. State of A.P.” [(2005) 1 SCC 308] where it was held that the medium on which software is embedded (apart from the software) itself are goods and, therefore, subjected to levy of sales tax.

The impugned judgment of the Andhra Pradesh High Court has referred to the judgment of this Court in “Idea Mobile Communication Ltd. vs. CCE & Customs” [(2011) 9 SCR 789] which held that services provided by ‘Telecom Service Provider’ are subjected to levy under the Finance Act, 1994 [Section 65(105) (zzzx)].

In the present case, the High Court held that SIM Cards, Rechargeable Coupons, Fixed Monthly Charges and Value-Added Services (towards SMS, ring tones, download music etc.) are not “goods”. It relied upon not only the judgment in “Idea Mobile



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Communication” but also the judgments of this Court in “Bharat Sanchar Nigam Ltd. vs. Union of India” [2006(2) SCR 823], “Associated Cement Companies Ltd. vs. Commissioner of Customs” [2001 (1) SCR 608] and “Tata Consultancy Services vs. State of A.P.” (relied upon by the revenue).

The High Court, however, remitted the matter for consideration for ascertainment of facts relating to levy of sales tax on non-refundable deposits and refundable deposits. It also held that the transactions relating to telephone sets, modems and caller IDs instruments are subject to sales tax levy.

Having considered submissions of the learned counsel for the parties and also having gone through the impugned judgment, this Court is of the opinion that no interference is called for especially in view of the fact that the High Court has taken note of all the decisions on the point.

Furthermore, in the recent judgment in C.A. NOS.11400-11401/2018 “Commissioner of Customs, Central Excise & Service Tax Vs. M/S Suzlon Energy Ltd.” this Court has held in a slightly analogous context I.e. customized engineering drawings, are not “goods” but are essentially services and, therefore, subjected only to levy of service tax under the Finance Act, 1994.

The special leave petitions and C.A. No. 8774 of 2012 are, accordingly, dismissed. All pending applications are disposed of.”

4. In view thereof, the petitioner would submit his reply to show cause notice within four weeks from the date of receipt of a copy of this order.



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Respondents shall pass orders taking into account the objections filed and after affording the petitioner a reasonable opportunity of hearing, in accordance with law and bearing in mind the above judgments.

5. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

07.04.2025

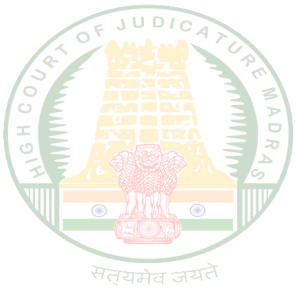
Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
mka

To:

- 1.The Assistant Commissioner,
Central Excise Division,
Office of the Assistant Commissioner of Central Excise,
No.1,Nool Kadai Street, Karaikal-609 602.
- 2.The General Manager,
Bharat Sanchar Nigam Limited (BSNL),
Kumbakonam.

MOHAMMED SHAFFIQ, J.

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