

2012 (25) S.T.R. 473 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

[COURT NO. II]

S/Shri S.S. Kang, Vice-President and Mathew John, Member (T)

BSNL

Versus

COMMISSIONER OF CENTRAL EXCISE, ALLAHABAD

*Final Order No. ST/578/2011(PB), Stay Order No. ST/753/2011(PB) and Misc.
Order No. ST/186/2011(PB), dated 1-11-2011 in Application Nos.
ST/Stay/2245/2010 and ST/Misc/622/2010 in Appeal No. ST/1106/2010*

REPRESENTED BY : Shri Naveen Kumar, Advocate, for the Appellant.

Shri Aamrish Jain, DR, for the Respondent.

[Order per : Mathew John, Member (T)]. - The appellants provide telephone services through land lines and through mobile phones (GSM services) throughout India except Mumbai and Delhi. The appellants have organized their business to be conducted from different offices for specified areas. Commissioner of Central Excise Allahabad found that the ST-3 returns submitted by BSNL, Banda UP (East) did not include the value of GSM services rendered in Banda during the period Oct., 2003 to Sep., 2008 and was *prima facie* of the view that Service tax on such services was not paid. So a Show Cause Notice was issued to the Appellants demanding service tax amounting to Rs. 5,59,32,360/- along with appropriate interest. Further penalties under Sections 76, 77 and 78 also were proposed. The matter was adjudicated by the impugned order confirming duty demand of Rs. 5,59,32,360/- with interest and imposing penalty of Rs. 1000/- under Section 77 and Rs. 5,59,32,360/- under Section 78 of the Finance Act 1994. Aggrieved by the said order the Appellants have filed this appeal along with a stay petition for waiver of the dues arising from the order for admission of the Appeal.

2. The Appellants submit that for services rendered through land lines each Secondary Switching Area (SSA) of the company was registered for payment of service tax and they were paying service tax for each SSA in the Commissionerate where the SSA was located. However in the case of GSM services for the entire area of UP (East) Telecom Circle a centralized registration was taken by General Manager (Mobile Services) at Lucknow and service tax was being paid in Lucknow. The contention of the Appellants is that all service tax due for mobile services rendered in the area of Banda Secondary Switching Area was paid at Lucknow and the demand is without any basis and the demand is for service tax already paid by them. Since the demand is not maintainable they have requested for waiver of the dues arising from the impugned order for admission of the Appeal.

3. We have gone through the impugned order and also heard the Ld. SDR in the matter. It is not clear from the SCN or from the impugned order whether the gross value, for which impugned Service tax has been demanded, was billed from Banda Office and collections accounted by Banda Office. The basis for the argument that the service tax should have been paid at Banda is not clear. It is also not clear whether the department has verified the claim of the Appellants that the service tax on the impugned service has been paid by the Lucknow

office of the Appellants. It is not clear how a demand for second time can be sustained if service tax is already paid on such service.

4. The main ground stated is that the registration certificate dated 5-9-2006 does not have a list of premises covered by the registration. There is also an argument that centralized registration to include the premises of Banda office was taken only from 10-12-2008. There is also a mention in the impugned order that BSNL Banda vide their letter M-2/TDM-BNA/Service Tax/2008-09, dated 10-3-09 have themselves intimated that for the period April-05 to Sep-08 the service tax has been paid by BSNL Banda themselves. On the other hand the Appellant mentions about letter dated 30-8-2005 from the department requesting for reverting to the practice of payment of service tax on GSM service on centralized basis implying that earlier they were paying tax on centralized basis. They submit that they paid such tax for April-05 to Sep., 05 on their own registration and Oct., 05 to April, 08 on centralized basis (Ground C in Appeal Memo). For the period Oct., 2003 to March 2005 they submit that tax was paid on centralized basis (Ground C in Appeal Memo).

5. Section 69 of the Finance Act, 1994 and Rule 4(1) of Service Tax Rules, 1994 require a person providing service tax to take registration. The word "person" used in these provisions or other connected provisions cannot be interpreted to mean "premises". It cannot be interpreted to mean every person working for BSNL or every office of BSNL or every place where the equipment for providing such service is kept. If the officer in over-all charge of providing mobile service was based in Lucknow and the billing for services were made from Lucknow and collections were accounted in Lucknow it is only proper that the service tax payment is made at Lucknow so that revenue can easily audit the records.

6. In this case huge demands are confirmed without making it clear why BSNL should have registered in Banda for paying service tax on mobile services, how the relevant legal provisions have been violated and without ascertaining actual loss of revenue if any caused. It is not clear whether the issue being dealt with in the impugned order is one of procedural violations or a matter of revenue loss which is a substantive matter. So the impugned order cannot be sustained. So the impugned order is set aside.

7. However we want to safeguard the interest of revenue if there has been any actual non-payment of tax. So the matter is remitted to the adjudicating authority to quantify the amount of service tax not paid after considering the documents that appellants may produce to show that the tax on the impugned service is paid in Lucknow. The Counsel for the Appellant submits that they have all the documents to satisfy the department about proper discharge of service tax for the entire period if any officer is willing to have a detailed look into the documents.

8. Revenue is advised not to convert this matter into a tug of war between Lucknow Commissionerate and Allahabad Commissionerate of the Department for getting the revenue accounted in its formation. Further proceedings if any taken up should be directed to find whether there has been a real short payment of tax. The proceedings should not be concluded without examining the records of the offices from where the impugned services were billed and collections accounted. Preferably this examination should be conducted by the Commissionerate having jurisdiction over such offices.

9. Thus stay petition is allowed and appeal itself is allowed by way of

remand.

10. There is Misc. application No. 622/2010 which is also praying for stay of the demand. That also stands disposed of by this order.

(Pronounced in open Court)
