

CORPORATE OFFICE, TAXATION SECTION
1ST FLOOR, BHARAT SANCHAR BHAWAN,
JANPATH, NEW DELHI-110001



BHARAT SANCHAR NIGAM LIMITED
[A Government of India Enterprise]

No.1002-05/2011-12/Taxation/BSNL/209

Dated: 16/05/2012

To

CGMs of Telecom Circles/ Metro Districts/Maintenance Regions/ Project Circles/ Task Force/ Data Network/ NCES/ ALTTC/BRBRAITT/ NATFM/Q&A/ T&D/ Telecom Stores/ Telecom Factories/ CPAO (ITI Bills)/ IT Circle Pune/ AGM (R&P) Corporate Office.

Sub.: Non applicability of Service tax on claims received from DOT on account of USO subsidy- reg.

Kindly find enclosed herewith copy of Order in Original (O.I.O) No. 20/ST/DC/SNG/2012 dated 30.03.2012, passed by Dy. Commissioner of Central Excise, Sangrur.

In the said O.I.O, the Dy. Commissioner, O/o Commissioner, Central Excise, Sangrur, has held that "the amounts received by the party as subsidy under USO fund are not includible in gross amount charged by them for providing taxable services".

In view of the above, the amounts received by BSNL as subsidy under USO Fund from DOT shall not be included in gross amount charged for providing taxable services. Hence, **Service tax is not applicable on the claim received from the DOT on account of USO subsidy.**

It is therefore requested to kindly bring this to the notice of all concerned for information and to produce the same before Service tax authorities/ adjudicating authorities and appellate authorities, as and when required.

Status/ outcome of the similar cases in favour of BSNL may be updated to this office for further course of action.

This issues with the approval of competent authority.

Encl.: As above


(K. Jothi)
DGM (Taxation)

Copy for information and necessary action to:-

1. IFAs of All circles of BSNL
2. ED (F) and all PGM (F)/ Sr. GM (F)/ GM (F) of BSNL Corporate Office.
3. GM (Civil) - USO Project, C-6/1, Bangla Sahib Road, Near VSNL Bhawan, N. Delhi.

(6)

General Manager Telecom

Dist. Bathinda.

393 18 APR 2012

संगरूर

कार्यालय उप आयुक्त,
केन्द्रीय उत्पाद शुल्क मंडल,
जबर्मी बिल्डिंग, धुरी-पटियाला आई पास,

मि. सं. ST-V/STC/SNG/BSNL/96/2011 / 1755
अ/31/12

दिनांक:

मूल आदेश संख्या - 20/ST/DC/SNG/2012

श्री यशपाल शर्मा, उप आयुक्त, केन्द्रीय उत्पाद शुल्क मंडल, संगरूर द्वारा पारित

- 1। यह प्रति जिस व्यक्ति को जारी की जा रही है, उसे निजी उपयोग के लिए निःशुल्क दी जा रही है।
- 2। जो भी व्यक्ति इस आदेश से अपने को व्यथित / असंतुष्ट समझे, वह आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क आयुक्तालय, चण्डीगढ़ को इस आदेश के विरुद्ध फार्म एन टी - 5 में अपील दायर कर सकता है। यह अपील इस आदेश के संशोधित किए जाने के तीन माह के अन्दर दायर की जा सकती है। यह अपील 1/- रुपये की कोर्ट फीस के साथ निम्नलिखित दस्तावेजों के साथ दायर की जानी चाहिए -

- 1 अपील की एक प्रति, फार्म एन टी 4 और सभी तथ्यों एवं अपील के दावों, के साथ।
- 2 इस आदेश की एक प्रति 50 पैसे की कोर्ट फीस के साथ।

आवश्यक :-

जो व्यक्ति इस आदेश के विरुद्ध अपील करने का इच्छुक हो, वह अपील का निर्णय होने तक मांगे गए कर / सेवाकर और उपर उद्गृहीत जुर्माने को जमा करेगा और अपील के साथ ऐसी अदायगी का साक्ष्य प्रस्तुत करेगा। ऐसा न करने पर वित्त अधिनियम, 1994 की धारा 85 के प्रावधानों के तहत अपील को निबन्त किया जा सकता है।

REGD AD

M/s. Bharat Sanchar Nigam Limited,
Telephone Bhawan, Bharat Nagar,
Bathinda

IFA
19/04
Put up draft DO.

BRIEF FACTS OF THE CASE: -

M/s Bharat Sanchar Nigam Limited, Telephone Bhawan, Bharat Nagar, Bathinda (hereinafter referred to as the "Party") are registered with the department under Registration No. AABC5576GST190, as per provisions of Section 69 of the Finance Act, 1994 (hereinafter referred to as "the Act") read with Rule 4 of the Service Tax Rules, 1994 as amended (hereinafter referred to as "the Rules") and are engaged in providing "Telecommunication Service".

2. During the course of audit of the records of the Party, it was observed that Party had received subsidy from Central Govt. under Village Panchayat Scheme amounting to Rs. 26,25,348/- for the last five years involving service tax of Rs. 3,01,699/-. The Party had not paid service tax due on the above said amount of subsidy of Rs. 26,25,348/-.

3. As per sub Section 3 of Section 67 of the Act: -

"The gross amount charged by a service provider shall include any amount received towards the taxable service before, during or after provisions of such service."

As per Explanation (c) given in Section 67 of the Act

"Gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise."

4. From the above, an amount of Rs. 26,25,348/- received by the Party as subsidy during the period 2005-06 to 2009-10 appeared to be part of the gross value in view of provisions of Section 67 of the Act and was to be included in taxable value and service tax amounting to Rs. 3,01,699/- (Service Tax Rs. 2,93,923/- + Edu. Cess Rs. 5,878/- + S&HE Cess Rs. 1,898/-) was payable by the Party alongwith interest.

5. From the foregoing, it appeared that the Party had contravened the provisions of Section 67 and 68 of the Act inasmuch as:-

(a) They failed to credit to the account of the Govt. of India, the Service Tax (including Education Cess and Secondary & Higher Education Cess) leviable thereon within five

(5) days of the close of the month / Quarter in which services were rendered as required under Section 68 of the Act.

(b) They also failed to furnish the correct value of the services to the Central Excise Office, as per Section 67 of the Act

From the above provisions of law, it appeared that the service tax amounting to Rs.3,01,699/- (Service Tax Rs. 2,93,923/- + Edu. Cess Rs. 5,878/- + S&HE Cess Rs. 1,898/-) was recoverable from the Party under Section 73 of the Act alongwith interest under Section 75 of the Act. It also appeared that the Party had deliberately avoided paying service tax on the gross value despite clear cut legal provisions and had wilfully suppressed the said facts from the knowledge of the department with intention to evade payment of Service Tax on the subsidy received which was very well part of the gross value and the said facts came to the knowledge of the department only during the audit of the records of the Party, otherwise this could have remain undetected, therefore, the said amount of service tax not paid was recoverable by invoking extended period of limitation under proviso to Section 73 of the Act; and the Party were liable to penal action under Section 76 and 78 of the Act.

6. Therefore M/s Bharat Sanchar Nigam Limited, Telephone Bhawan, Bharat Nagar, Bathinda were called upon vide ST-V/STC/SNG/BSNL/96/2011/838-39 dated 19.4.11 to show cause to the Deputy Commissioner, Central Excise Division, Zakhmi Building, Patiala Dhuri Bye Pass, Sangrur within 30 days of the receipt of the notice as to why: -

- (i) Service Tax amounting to Rs.3,01,699/- (Service Tax Rs. 2,93,923/- + Edu. Cess Rs. 5,878/- + S&HE Cess Rs. 1,898/-) should not be recovered from them under Section 73 of the Finance Act, 1994 by invoking the extended period of limitation.
- (ii) Interest at the appropriate rate on the above mentioned amount of service tax should not be recovered from them under Section 75 of the Finance Act, 1994.
- (iii) Penalty under Section 76, the Finance Act, 1994 should not be imposed upon them for failure to pay service tax in contravention of the provisions of Section 68 of the Finance Act, 1994 read with rule 6 of the Service Tax Rules, 1994.
- (iv) Penalty under Section 78 of the Act should not be imposed for suppressing the correct taxable value with intent to evade service tax.

REPLY TO SHOW CAUSE NOTICE: -

7. The Party filed reply to Show Cause Notice dated 18.4.11 vide their letter No. BT/TR/SCN-838/2 dated 02.5.2011 wherein they interalia stated that subsidy figures were

being conveyed by the Bathinda SSA to Circle Office Chandigarh which was receiving the subsidy from Central Government and no amount was transferred to Bathinda SSA; that as per letter No. 700-04/2005/Taxation/BSNL/Vol-II/Part/552 dated 16.05.2007 of BSNL corporate office, New Delhi vide which service tax was not applicable on USO claim (subsidy received from Central Government under Village Panchayat Scheme); that they are enclosing photocopy of letter dated 16.5.2007 with request to drop the demand.

RECORDS OF PERSONAL HEARING: -

8. The personal hearing in the case was attended by Sh. Baldev Krishan, CAO (Legal) O/o GMTD, Bathinda on 24.01.2012 and he re-iterated their written submissions.

DISCUSSION & FINDINGS: -

9. I have carefully gone through the facts of the case, reply filed by the Party and records of personal hearing.

I find that the questions before me are to decide whether the subsidy amount received by the Party from Central Government under Village Panchayat Scheme are part of gross amount charged by the Party for providing taxable services or not? And if yes, whether extended period of limitation is invocable in the instant case or not?

10. I find that the party in their reply have submitted copy of letter No. 700-04/2005/Taxation/BSNL/VOL-II/Part/552 dated 09.05.2007 issued by DDG (Taxation), BSNL. I would like to reproduce the contents of letter dated 09.05.2007 as under: -

BHARAT SANCHAR NIGAM LIMITED
(A GOVT OF INDIA ENTERPRISE)
TAXATION SECTION
11th Floor, B-148, STATESMAN HOUSE,
BARAKHAMBA ROAD, NEW DELHI

No: 700-04/2005/TaxatJan/BSNL/VOL-II/Part/552
To

Dated 09-05-2007

All Heads of Telecom Circles/ Metro Districts/ Maintenance Regions/ Project Circles/ Task Force / Data Network/ NCES/ ALTT/ BRBRATTT/ MATFM/ Q&A/ T&D/ Telecom stores/ Telecom Factories/ CPAO(m Bills)/ TCO Kolkata/ IT Circle Pune/ ADG(R&P) Corporate Office

Sub: Non applicability of Service Tax on USO claim amount of BSNL.

It has come to the notice that Service Tax authorities are claiming service tax on USO subsidy received from DOT on the pretext that assesses provide taxable services, Telephone services and Telegraph services in rural areas at subsidized rates. In that process, they may incur losses. To offset these losses DOT is paying from USO Fund and this payment is nothing but income earned by BSNL on taxable services rendered in rural areas. Such opinion of a few Service Tax authorities in this regard is wrong as substantiated by the following facts.

As per National Telecom Policy 1999, the Govt. of India has to provide Village Panchayat Telephone (VPT) to each and every village of the country. As a part of this programme, BSNL has provided a number of VPTs in various part of the country. **Expenditure on maintenance and installation of these VPTs is high compared to telephone connections in urban and semi urban areas. As such to compensate BSNL, towards high maintenance cost incurred by BSNL for maintenance of its own VPTs and initial high capital expenditure Department of Telecom grants subsidy from USO Fund.**

This reimbursement from the USO fund is of the nature of compensation being received by BSNL for additional expenditure which the BSNL has to incur for maintenance and installation of VPTs services in rural areas. **This payment from USO fund is not being received on account of any taxable services provided by BSNL and so it is not taxable under any provision of the Service Tax rules.** The service provided through these VPTs are telephone services for which call charges are recovered along with service tax in case of STD VPTs (VPTs having only local call facility are exempt from service tax under notification No.3/94-ST dated. 30-06-1994). Further there is no concession in the call charges made from the VPTs.

It is to reiterate that the amount received from USO fund is a subsidy received from Govt. of India by BSNL. There is no service provided by BSNL to Govt. of India in this regard. Therefore, question of payment of Service Tax on subsidy receipts does not arise. The Service Tax is leviable only on a taxable service and not merely on an income / receipt of some payment by a service provider.

The above position in respect of the receipt of USO subsidy may be brought to the notice of Service Tax authorities claiming service tax on the same."

I also find that in the case of the COMMR. OF C. EX., CHANDIGARH Versus NAHAR INDUSTRIAL ENTERPRISES LTD. reported as 2010 (19) S.T.R. 166 (P&H), the Hon'ble Punjab & Haryana High Court has held as under: -

"9. From the perusal of above quoted Sections, it is apparent that service tax can be levied only if service of 'Storage and Warehousing' is provided. Nobody can provide service to himself. In the present case, it is undisputed that the Respondent-Assessee stored the goods owned by himself. After the expiry of storage period, the Respondent-Assessee was free to sell to the buyers of its own choice. The Dealer-Assessee has stored goods in compliance to directions of government of India issued under Sugar Development Fund Act, 1982. **The Respondent-Assessee has received subsidy not on account of services rendered to Government of India but has received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. The act of Respondent-Assessee can not be called as rendering of services.** The Tribunal has rightly held that just because the storage period of free sale sugar had to be extended at the behest of Government of India, neither the Appellant-Revenue sugar mills becomes 'Storage and Warehouse keeper' nor the Government of India become their client in this regard. The storage of specific quantity

of free sale sugar cannot be treated as providing 'Storage and Warehousing' services to the Government of India.

10. *In view of the above, the appeal is bereft of merits and deserves to be dismissed. The appeal is accordingly dismissed and questions of law are answered in favour of Respondent-Assessee and against the Appellant-Revenue."*

11. Applying the ratio of judgement held by the Hon'ble High Court, it is evident that the amounts received by the Party as subsidy are in nature of compensation for expenditure which the Party have to incur for maintenance and installation of VPTs services in rural areas and not for providing any taxable services to their ultimate customers. Accordingly, I hold that the amounts received by the Party as subsidy under USO fund are not includible in gross amount charged by them for providing taxable services. The second question has been answered accordingly. I pass the following order: -

ORDER

I drop the proceedings initiated against BSNL, Telephone Bhawan, Bharat Nagar, Bathinda vide Show Cause Notice issued vide C.No. ST-V/STC/SNG/BSNL/96/2011/838-39 dated 19.4.11.

Deputy Commissioner
30/03/2012

Regd. AD

M/s. Bharat Sanchar Nigam Limited,
Telephone Bhawan, Bharat Nagar,
Bathinda