

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 261/2013

BHARTI TELEMEDIA LTD. AND ANR.

APPELLANT(S)

VERSUS

UNION OF INDIA AND ANR.

RESPONDENT(S)

CIVIL APPEAL NOS.1581-1583/2020

O R D E R

C.A. No. 261/2013:

This Civil Appeal arises out of order dated 20.07.2012 passed by the Division Bench of the High Court of Delhi in W.P.(C) No.4302/2012. The said order notes in paragraph '2' as under:

"Admittedly, a Division Bench of this Court in judgment dated 5th September, 2011 in W.P.(C) No.2194/2010 titled as *Bharti Telemedia Ltd. vs. Government of NCT of Delhi* and other connected matters has categorically held that the service tax is also leviable on the DTH broadcasting services."

In the circumstances, the Writ Petition was dismissed.

We have heard learned counsel for the appellants and learned senior counsel for the respondent-Union of India and perused the material on record.

The prayers in the said Writ Petition read as under:

"It is therefore, most respectfully submitted that this Hon'ble Court may graciously be pleased to:-

a) Issue a writ, order or directions in the nature of mandamus and/or certiorari or any other writ, order or direction of like nature declaring the levy of

service tax under Section 65(105) (zk) or any other provision of the Finance Act, 1994 or under any other law enacted under List I of the 7th Schedule to the Constitution on Direct To Home signals/services as unconstitutional and ultra vires the Constitution;

b) issue a writ/order or direction in the nature of mandamus commanding the Respondents not to levy/collect any service tax under the Finance Act, 1994 or under any other law enacted under List I of the 7th Schedule to the Constitution on the Direct To Home signals/services provided by the petitioner;

c) issue a writ/order or direction in the nature of mandamus directing the Respondents not to proceed with the assessment of the tax under the Act and not to take any coercive action;

d) award costs of the writ petition; and/or

e) pass any other or further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

On considering the aforesaid prayers, the High Court found that the writ petition ought to be dismissed on the ground that in the earlier Writ Petition No.2194/2010 [*Bharti Telemedia Ltd. vs. Govt. of NCT of Delhi*] disposed of on 05.09.2011, a categorical stand was taken by the writ petitioner/appellant(s) therein that the appellant(s) was liable to pay service tax under Section 65(105) (zk) of the Finance Act, 1994 towards DTH service which is a broadcasting service. For immediate reference, paragraph '2' of the order dated 05.09.2011 passed in W.P.

(C) No.2194/2010 is extracted as under:

"2. Mr. Ganesh, senior advocate, appearing for Bharti Telemedia Ltd. and Mr. Aman Lekhi, senior advocate, appearing for Tata Sky Ltd and Bharat Business Channel Ltd, contended on behalf of the

petitioners that the DTH service is a broadcasting service falling within the meaning of taxable service under section 65(105) (zk) of the Finance Act, 1994 and is amenable to service tax @ 10.33% on the gross amount paid by a subscriber for providing the DTH broadcasting service. The service tax is imposed by the Finance, Act, 1994 in exercise of Parliament's exclusive power to levy a tax on services under article 246(1) read with Entry 92C of List I of the VIIth Schedule to the Constitution of India. It was also contended on behalf of the petitioners that Parliament alone has the exclusive power to tax DTH services and that the States do not have any power to tax the said service by any name called. It is argued that the State legislature cannot, in the guise of imposing a tax on Entertainments, in exercise of its powers under Entry 62 of List II of the VIIth Schedule to the Constitution, impose a tax on the DTH service. Consequently, it was submitted that the said Act, to the extent it attempts at encompassing DTH services within the ambit of entertainment tax, is unconstitutional. It is further argued on behalf of the petitioners that the taxable event for the levy of service tax is exactly the same as the taxable event for the levy of entertainment tax, which is, the provision of DTH service by transmitting DTH signals. And, therefore, there is a clear trespass into Parliament's exclusive domain. Mr. Varun Sarin, appearing for Dish TV India Ltd. adopted the arguments of Mr. Ganesh and Mr. Lekhi."

In view of the said stand taken by the appellant(s) with regard to the liability for payment of service tax and considering the fact that the writ petition No.2194/2010 was with reference to the liability to pay tax under Delhi Entertainment and Betting Tax Act, 1996 i.e. tax on entertainment through Direct To Home (DTH) service, the High Court dismissed the W.P (C) No.4302/2012. We find that as against the order dated 05.09.2012 passed in W.P.(C)No.2194/2010, C.A. No.2147/2020 has been filed. In view of the aforesaid

facts and the categorical stand taken by the appellant(s) herein we find that the High Court was justified in dismissing W.P.(C) No. 4302/2012 in the aforesaid terms.

In the circumstances, the appeal stands dismissed.

Pending application(s), if any, shall stand disposed of.

C.A. Nos.1581-1583/2020:

C.A. No. 1581/2020 is detagged from C.A. Nos.1582-1583/2020.

Since C.A. No.1581/2020 is relatable to W.P.(C) No.25927/2011 disposed of by the Madras High Court by the common order dated 19.10.2012 which relates to Tamil Nadu Entertainments Tax Act, 1939 as amended by the Tamil Nadu Entertainments Tax (Second Amendment) Act, 2011, the said C.A. No.1581/2020 is being considered in the aforesaid context. It is needless to observe that C.A. No.1581/2020 shall be considered along with other Civil appeals.

However, C.A. Nos.1582-1583/2020 arise out of W.P.(C) No. 25928/2011 and C.A. No.25929/2011 are filed by the very same appellant(s) before the Madras High Court seeking a declaration that Section 65(105) (ZZZX) of the Finance Act, Madras 1994 being *ultra vires* Entry 62 List 2 of the Seventh Schedule of the Constitution of India. The aforesaid writ petitions were dismissed by the Madras High Court having regard to the stand taken by the appellant(s) herein and in view of our order passed in C.A. No.261/2013

as above, Civil Appeal Nos.1582-1583/2020 thus stand dismissed.

....., J.
(B.V. NAGARATHNA)

....., J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
SEPTEMBER 11, 2024

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSCIVIL APPEAL NO(S). 9301/2013

THE STATE OF KERALA & ANR.

Appellant(s)

VERSUS

ASIANET SATELLITE COMMUNICATIONS LTD. & ORS.

Respondent(s)

WITH

C.A. No. 1629/2020 (X)

C.A. No. 1765-1766/2020 (XV)

(IA No. 1/2014 - PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS)

C.A. No. 1531/2020 (III)

C.A. No. 1533/2020 (III)

C.A. No. 1534/2020 (III)

C.A. No. 1752/2020 (XVII)

C.A. No. 1753/2020 (XVII)

C.A. No. 1755/2020 (XVII)

W.P.(C) No. 699/2014 (X)

(IA No. 3/2014 - AMENDMENT IN CAUSE TITLE

IA No. 2/2014 - APP FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS

IA No. 82864/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 1/2014 - STAY APPLICATION)

C.A. No. 1532/2020 (III)

C.A. No. 1687/2020 (III-A)

C.A. No. 1688/2020 (III-A)

(IA No. 77012/2018 - EXEMPTION FROM FILING O.T.)

C.A. No. 1689/2020 (III-A)

(IA No. 77623/2018 - INTERVENTION/IMPLEADMENT

IA No. 77621/2018 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 1690/2020 (III-A)

(IA No. 103945/2018 - EXEMPTION FROM FILING O.T.)

C.A. No. 1548-1549/2020 (III-A)
(IA No. 58600/2022 - EXEMPTION FROM FILING O.T.
IA No. 37780/2020 - EXEMPTION FROM FILING O.T.
IA No. 90912/2019 - EXEMPTION FROM FILING O.T.
IA No. 133874/2022 - EXEMPTION FROM FILING O.T.
IA No. 133869/2022 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 58598/2022 - STAY APPLICATION)

SLP(C) No. 9025/2023 (XI)
(I.R. and IA No.74813/2023-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT and IA No.74806/2023-EXEMPTION FROM FILING O.T.
and)

C.A. No. 1630/2020 (X)
(IA No. 47296/2020 - AMENDMENT IN CAUSE TITLE)

C.A. No. 1726/2020 (IV)

C.A. No. 1725/2020 (IV)

C.A. No. 10114/2011 (XIV-A)
(IA No. 101546/2023 - AMENDMENT IN CAUSE TITLE)

C.A. No. 2147/2012 (XIV-A)

C.A. No. 1543/2020 (XIV-A)
(IA No. 101554/2023 - AMENDMENT IN CAUSE TITLE)

C.A. No. 1547/2020 (XIV-A)

C.A. No. 1680/2020 (III-A)
(IA No. 3/2017 - EXEMPTION FROM FILING O.T.
IA No. 2/2012 - PERMISSION TO FILE LENGTHY LIST OF DATES)

C.A. No. 1754/2020 (XVII)

C.A. No. 1756/2020 (XVII)

C.A. No. 1530/2020 (III)

W.P.(C) No. 748/2015 (X)
(IA No. 2/2015 - PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS
IA No. 161452/2019 - STAY APPLICATION
IA No. 1/2015 - STAY APPLICATION)

C.A. No. 1507/2018 (III-A)

C.A. No. 1628/2020 (X)

C.A. No. 5867/2012 (XIV-A)

C.A. No. 5228/2012 (XIV-A)

C.A. No. 1535/2020 (XI-A)

C.A. No. 1679/2020 (III-A)

(IA No. 7/2016 - EXEMPTION FROM FILING O.T.

IA No. 12316/2018 - EXEMPTION FROM FILING O.T.

IA No. 9/2016 - EXEMPTION FROM FILING O.T.

IA No. 8/2016 - PERMISSION TO FILE ANNEXURES

IA No. 6/2016 - PERMISSION TO FILE ANNEXURES

IA No. 11/2016 - PERMISSION TO FILE ANNEXURES

IA No. 2/2012 - PERMISSION TO FILE LENGTHY LIST OF DATES

IA No. 5/2016 - STAY APPLICATION

IA No. 12314/2018 - STAY APPLICATION

IA No. 10/2016 - STAY APPLICATION)

C.A. No. 1681-1682/2020 (III-A)

(IA No. 1/2012 - PERMISSION TO FILE SYNOPSIS AND LIST OF DATES)

C.A. No. 1683/2020 (III-A)

(IA No. 242423/2023 - APPROPRIATE ORDERS/DIRECTIONS)

C.A. No. 1684/2020 (III-A)

C.A. No. 1685/2020 (III-A)

C.A. No. 1686/2020 (III-A)

C.A. No. 1580/2020 (XII)

(IA No. 104043/2023 - AMENDMENT IN CAUSE TITLE

IA No. 2/2013 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 1581-1583/2020 (XII)

**(IA No. 1/2013 - APPLICATION FOR CONDONATION OF DELAY IN FILING
SL)**

C.A. No. 1536/2020 (XI-A)

C.A. No. 261/2013 (XIV-A)

Date : 11-09-2024 These appeals were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

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Mr. Rajiv Kumar Choudhry, AOR

Mr. Divyanshu Kumar Srivastava, AOR

UPON hearing the counsel the Court made the following
O R D E R

List on 12.09.2024 as Item No.101.

C.A. NO.261/2013:

The Civil Appeal stands dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

C.A. NOS. 1581-1583/2020:

C.A.No.1581/2020 stands detagged from C.A.Nos.1582-1583/2020 and will be taken along with Civil Appeal No. 9301/2013 and connected matters.

C.A. Nos.1582-1583 of 2020 stand dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)

ASTT. REGISTRAR-cum-PS

(Signed order in C.A. NO.261/2013 and C.A. Nos.1582-1583/2020 is placed on the file)

(DIVYA BABBAR)

COURT MASTER (NSH)