



W.P.No.9645 of 2009

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.06.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

**W.P.No.9645 of 2009**

**&**

**M.P.Nos. 1&2 of 2009**

M/s P.R.Mani Air Fridge & Electronics

154, Car Street

Tiruvannamalai – 606 601

Rep by its Managing Partner

P.Rajamani

...Petitioner

Vs.

1. Office of the Commissioner of Central Excise

Rep by its Joint Commissioner

Goubert Avenue

Beach Road

Puducherry – 605 001.

2. Bharat Sanchar Nigam Limited (BSNL)

Rep by its General Manager

Vellore.

...Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Prohibition, prohibiting the first respondent from proceeding further with his communication dated 21/4/2009 in C.No.V/BAS/15/48/2009-ST.Adj as it is without jurisdiction.



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For Petitioner : Mr.N.Muralikumaran

For Respondents : Mr.V.Sundareswaran  
Senior Panel Counsel for R1  
No Appearance for R2

### **ORDER**

Heard Mr.N.Muralikumaran, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Panel Counsel for R1. There is no appearance for R2.

2. Both learned counsel will concur on the position that identically placed petitioners have approached this Court seeking similar relief to what is sought for by the petitioner now and the ratio of orders passed in their cases will be fully applicable in the case of the present petitioner as well.

3. The petitioner is a dealer in Sim Cards and Recharge coupons of Bharat Sanchar Nigam Limited (BSNL). It challenges a show cause notice dated 21.04.2009 which calls upon it to show cause why service tax not be levied for the activity of marketing and distribution of Cellular Mobile Telephone Service as a franchise of BSNL under the category 'Business Auxiliary Services'.

3. The petitioner would submit that BSNL has, in fact, collected the entirety of the service tax from the customers and has remitted the amount to the department and hence no further liability should be mulcted upon it.



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According to the learned counsel for the petitioner the issue has been decided by the respondent authorities in various appeals and the petitioner is fully entitled to the benefit of the same. In such circumstances he would request that he may be permitted to present the orders as aforesaid as well as the relevant facts and legal position before the authority.

5. I accede to the request of the petitioner, particularly for the reason that the impugned document is only a show cause notice and hence it would be appropriate that the petitioner appear before the authorities, in response to the same.

6. The petitioner is permitted to file its objections to the show cause notice, placing reliance on such materials including orders as it deems fit, within a period four weeks (4) from today. Upon receipt of the objections and annexures, if any, the authority will consider the same, hear the petitioner and pass orders in accordance with law within a period of four (4) weeks from date of conclusion of personal hearing. With this, this writ petition stands disposed of. Connected miscellaneous petitions are closed. No Costs.

09.06.2022

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Index : Yes / No

Speaking Order / Non Speaking Order



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**Dr.ANITA SUMANTH,J.**

*nst*

To

- 1.Office of the Commissioner of Central Excise  
Rep by its Joint Commissioner  
Goubert Avenue  
Beach Road  
Puducherry – 605 001.
- 2.Bharat Sanchar Nigam Limited (BSNL)  
Rep by tis General Manager  
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