CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Misc. Application No. 85888 of 2025
(on behalf of appellant)

IN

Service Tax Appeal No. 86009 of 2017

(Arising out of Order-in-Original No. 01-02/STA-I/SN/16-17 dated 06.01.2017 passed by the Commissioner of Service Tax Audit-I, Mumbai.)

Commissioner of CGST & Central Excise **.... Appellant**
Mumbai South Commissionerate
13thFloor, Air India Building,
Marine Drive, Nariman Point
Mumbai – 400 021

Versus

Tata Communications Limited **.... Respondent**
VSB, Mahatma Gandhi Road
Fort, Mumbai – 400 001.

APPEARANCE:

Shri Priyesh Bheda, Authorized Representative for the Appellant

Shri Prasad Paranjape along with Shri Kevin Gogri, Miss. Sonakshi Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86025/2026

Date of Hearing: 28.04.2026
Date of Decision: 17.08.2026

PER: M.M. PARTHIBAN

Miscellaneous Application No.ST/Misc./85888/2025 has been filed by the department seeking for change and address of the appellant in the cause title to this appeal, consequent to change in jurisdiction of Commissionerate after re-organization, arising out of transition to Goods & Services Tax regime. The Central Government vide Notification No.13/2017-C.E. (N.T.) dated 09.06.2017 have vested the jurisdictional powers with the authorities specified therein. In terms of such notification, the respondent is presently functioning under the jurisdiction of Commissioner of CGST & Central Excise, Mumbai South Commissionerate at the address provided in such application.

Considering the above factual position, we allow the application and the changed name and address of the appellant has been incorporated in the appeal. Registry is directed to note the changed name and address of the appellant for official record.

2. This appeal has been filed by the Commissioner of CGST & Central Excise, Mumbai South Commissionerate (herein after, referred to as "the appellant", for short) in pursuance to Review Order No.10/Review/CCO/ S.TAX/2017 dated 01.05.2017 passed by Committee of Chief Commissioners assailing the Order-in-Original No. 01-02/STA-I/SN/16-17 dated 06.01.2017 passed by the Commissioner of Service Tax-I, Mumbai (herein after, referred to as "the impugned order") passed by the Commissioner of Service Tax Audit-I, Mumbai, in context with show cause proceedings initiated against respondent-assessee M/s Tata Communication Limited, Mumbai.

3.1 Brief facts of the case are that the respondent herein is *inter alia,* engaged in providing International Long Distance, Enterprise Data and Internet services. For the purposes of payment of service tax and for compliance with the Finance Act, 1994, the respondent is centrally registered with service tax authority by taking the Service Tax Registration No. AAACV2808CST008. While providing the connectivity services to its customers, the Respondent was using the capacity on the transponder on lease basis in the form of frequency bandwidth from Foreign Satellite Service Providers (FSSPs). In simple words, while the respondent provides services to its customers, the satellite phone transmits the call to the satellite which routes it to the Land Earth Station situated at the desired destination on the ground which in turn facilitates connectivity with terrestrial network with a view to reach the signals to the target audience. While the Respondent treated these services to be in the nature of 'Telecommunication Services' as defined under Section 65 (109a) of the Finance Act, 1994, the department had interpreted it as provision of Business Support Services (BSS), more specifically as infrastructural support services, as defined under Section 65(104c) of the Act of 1994. Since the respondent had not paid service tax on these activities, the department had initiated show cause proceedings for demand of service tax along with interest and for imposition of penalty on the respondent. The Show Cause Notice (SCN) dated 20.10.2011 covers the period 2006-07 to 2010-11 for service tax demand of Rs.21,68,41,780; and SCN dated 17.08.2012 covers the period 2011-2012 for service tax demand Rs.1,16,80,200/- along with interest and penalties.

3.2 The said SCNs dated 20.10.2011 & 17.08.2012 was adjudicated by the learned Commissioner vide common impugned order dated 06.01.2017 in dropping the proposals initiated by the department in the show cause proceedings. Feeling aggrieved with the impugned order, appellant department has preferred this appeal before the Tribunal.

4. Learned Authorized representative appearing for Revenue stated that the classification of services received by the respondent from the FSSPs and consequent tax demands is the central issue of dispute in this appeal. Since the service of providing transponder capacity is in the nature of infrastructural support, the disputed services are rightly categorized as BSS and in terms of Section 66A ibid, the respondent is liable to pay service tax on Reverse Charge Mechanism (RCM) basis. In support of their stand he relied upon the decision of the Tribunal in the case of *Ushodaya Enterprises Private Limited Vs. Commissioner of Customs, Central Excise & Service Tax, Hyderabad* - 2020 (42) G.S.T.L. 84 (Tri. - Hyd.). Therefore, he justified the appeal filed by Revenue for setting aside the impugned order.

5.1 On the other hand, Learned Counsel stated that the respondent had entered into agreements with FSSPs viz., M/s Inmarsat Global Limited, Intelsat, Thaicom Public Company Limited and others for providing Telecommunication services via 'Space Segment' i.e., satellite and all other centralised infrastructure owned, leased or operated by or on behalf of the said FSSPs. The above clause in the agreement proves beyond doubt that the services availed by the Respondent are Telecommunication services and the infrastructure for the said purpose is owned, leased or operated by the service provider of the Respondent. He further stated that the said infrastructure is not made available to the Respondent, but only Telecommunication service is provided to the Respondent by the service provider with the use of such infrastructure. Therefore, the nature of the service is 'Telecommunication services' and it has been rightly held by the learned Commissioner in the impugned order, while dropping the service tax demands.

5.2 Learned Counsel also submitted that the BSS is a generic service and perusal of the definitions provided under Section 65 (104c) of the Act would indicate that it typically includes the incidental or support services required by the businesses such as office, lounge, secretarial services. This understanding is also supported by para 3.13 of Circular No.334/4/2006-

TRU dated 28.02.2006 issued by Central Board of Excise & Customs (CBEC), while bringing BSS under the Service tax net. He further stated that in their case, the services provided are highly technical in nature such as providing dedicated bandwidth through transponder and this cannot be classified as BSS. Further, he stated that in terms of Section 65A of the Act, specific description needs to be preferred over a general description. Since telecommunication service is taxable only when it is provided by the "Telegraph Authority", as provided under Section 65(105)(zzzx) ibid and as per the definition of "Telegraph Authority" under Section 65(111) of the Act, this refers to a person who is granted license under the Indian Telegraph Act, 1885, the service provided by FSSPs does not come under the ambit of the definition of taxable service and thus no Service tax would be liable to be paid by them. In this regard, he relied upon the CBEC Circular dated 19.12.2011, to state that the Board had clarified that since the service provider will not have license under the Indian Telegraph Act, 1885, the services provided by overseas service provider would remain outside the taxability clause of Telecommunication service. Further, he also stated it was clarified therein that a view taken for such services to the effect that otherwise it would amount to BSS, is erroneous.

5.3 In support of their stand, learned Counsel had relied upon the following decisions of the Tribunal:

(i) *Commissioner of Central Excise & Central Goods & Service Tax Vs. Bharti Teleport Ltd.* – 2024 (10) TMI 825 - CESTAT Chandigarh;

(ii) *Dish TV India Ltd. Vs. Commissioner of Customs, C. Ex. & S.T., Noida* – 2020 (41) GSTL 633 (Tri All);

(iii) *Commissioner of Service Tax, New Delhi Vs.TV Today Network Private Limited* – 2019 (8) TMI 1688 (Tri Del);

(iv) *TCS E- Serve Ltd. Vs. Commissioner of Service Tax, Mumbai* – 2014 (33) STR 641;

(v) *Vedic Broadcasting Limited vs Commissioner of Customs, C. Ex. & S.T., Dehradun* – 2021 (45) GSTL 33 (Tri -Del.).

6. We have heard both learned Authorized Representative of the Department and the learned Counsel appearing for the respondent and perused the case records and the synopsis given in the form of written submissions.

7. The issues for consideration before the Tribunal are as under: -

(a) whether the services availed by the respondent in the nature of capacity of the transponder on a lease basis in the form of frequency bandwidth provided by the Foreign Satellite Service Providers ('FSSPs'), is liable to service tax in terms of the Finance Act, 1994 or otherwise?

(b) Whether the show cause proceedings dropped in the impugned order is sustainable or not?

8.1 Learned Commissioner had examined the issues in dispute and had come to a conclusion that the respondent-assessee as recipient of telecommunication service from FSSPs is not liable for payment of service tax. Relevant paragraphs of the impugned order providing such conclusion are extracted and given below:

"37.7 For the purpose of classification of services IPLC and FSSP provider, I do not find any material difference between them. In IPLC, a Leased Circuit is provided by a service provider, whereas in FSSP, foreign satellite transponders are used by provider for provision of a service.

37.8 The sample agreement clauses 2.1 and 2.2 between the Inmarsat Global Limited and Tata Telecommunication states "subject always to availability of space segment, company authorizes The DP (Distribution Partner) on a non-executive basis, to access telecommunication services provided by the Company via the space segment in order to provide services via DP's Land Earth Station identified in Clause 2.2".

Clause 2.2 states, "The authorization provided by the Company herein is limited to the DP's provision of telecommunication services via the Space Segment only through its Land Earth Stations existing as of the Commencement Date and known as Pune LES located at Pune, India and operating through the Indian Ocean Region, Atlantic Ocean Region-East, Atlantic Ocean Region-West, and Pacific Ocean Region. The company has allocated LES identification numbers (IDs) and/or access codes to the DP for use in each of the DP's LES(s) and shall allocate such IDs and/or access codes to the DP as necessary for any arrangement made pursuant to a shared LES Agreement duly authorised for operation through the DP's LES(s). The DP shall have the right to maintain any LES IDs allocated to it by the Company that are in effect as of the Commencement Date. The allocation and maintenance of LES IDs shall be in accordance with the criteria set forth in Annexure-B. Such LES shall include any replacement antenna or switching facility.

37.9 In view of the above, I hold the service received by the noticee is a telecommunication service as defined in Section 65 (109a). Since under Section 65(105)(zzzx), telecommunication service is taxable only if provided by 'telegraph authority' and as the foreign companies providing telecommunication services do not constitute the telegraph authority under Indian Telegraph Act, 1885, the recipient of service is not liable for service tax.

37.10 As discussed above, Telecommunication Service was introduced with effect from 01.06.2007. The next question before me is whether prior to 01.07.2007, the services received by the noticee is liable and classifiable under the BSS as defined under Section 65(104c).

37.13 Further, in TCS E-Serve Ltd. Case supra, the case before Tribunal was demand of service tax under the taxable service. "Lease Circuit" during the period 01.04.2003 to 01.03.2009. While relying on Board Circular dated 15.07.2021, Hon'ble Tribunal has set aside demand under the "Leased Circuit" service, holding that the impugned service was classifiable as a telecom service and since the service is not provided by a telegraph authority, the service itself is not taxable.

In view of the above, I pass the following order.

ORDER

I drop the proceedings initiated vide SCN No. F. No. V/ST/Dn.II/Gr.VIII/ TC/55/10/2605 dated 20.10.2011 and Show Cause Notice vide F. No. V/ST/Dn.II/Gr.VIII/ TC/55/10/5117 dated 17.08.2012."

8.2 On perusal of the facts of the case, it is seen that the respondent is providing long distance, enterprise data and internet services to their customers by using the band width of transponders. Such transponders are used for enabling communication through satellite relays, offering a way to reach distant locations and support multiple users simultaneously. Thus, as against a dedicated, private connection between two points through 'leased circuit services' for connecting to points on earth, in the present case 'transponders' have been used. Thus, essentially the service is in the nature of telecommunication services between two points on earth. Therefore, in such context, on careful reading of the CBEC Circular dated 15.07.2021, it transpires that the telecommunication service shall be taxable only if it is provided by a person who has been granted license under the first proviso to sub-section (I) of Section 4 of the Indian Telegraph Act, 1885, inasmuch as the taxable category of services under Section 65(105)(zzzx) does not cover service provided by foreign vendors/service providers. Further, it has also been clarified therein that if the services provided are in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing, then the same may be treated as 'Business Support Services' (BSS) for bringing into tax net under taxable category under Section 65(105)(zzzq) ibid. In the present case, the respondent had only received the specified band width of transponder service for providing long distance, enterprise data and internet services and did not receive BSS as elaborated above. Therefore, we do not find any force in the argument placed by the learned AR for treating the disputed service as BSS.

8.3 Further, we also find in the said CBEC Circular dated 15.07.2011, that receiving of International Private Leased Circuit (IPLC) service from abroad is chargeable to Service Tax under BSS at the hands of recipients situated in India in terms of Section 66A of the Finance Act, 1994, read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 and provisions of Taxation of Services (Provided) From Outside India and Received in India Rules, 2006, on the basis of which the SCNs have been issued in the present case. However, in further clarification issued by the CBEC vide F.No.137/21/2011-Service Tax dated 19.12.2011 that such instruction is erroneous and have corrected the same. The extract of the said instruction is given below:

> *"Please refer to the clarifications issued vide Board's letter of even number dated 15.07.2011 on the subject mentioned above.*
>
> *2. The matter has been re-examined and it is seen that the IPLC is specifically covered by the definition of the telecommunication service given in clause 65(109a)(iv) of the Finance Act, 1994. As per the said section these services are taxable only when provided by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1985. It is only because the foreign telecom service provider cannot constitute a telegraph authority under an Indian law that they remain outside the taxability clause of the telecommunication service.*
>
> *3. **Therefore, the view taken in the said letter that what otherwise constitutes a "telecommunication service" would amount to "business support service" is erroneous**.*
>
> *4. The clarification issued vide the above mentioned letter stands corrected accordingly."*

From the above discussions about the factual matrix of the present case in the context of legal provisions dealing with the levy of service tax in terms of the Finance Act, 1994, and in terms of the clarification issued by the CBEC, we are of the considered view that the services received by the respondent is not liable to service tax under the taxable category of BSS.

8.4 We find that the issue involved in the present dispute is squarely covered by the decision of this Tribunal in the case of *Vedic Broadcasting Limited* (supra), wherein it was held as under: -

"74. *This aspect has already been considered at length. It is clear that the intention of the appellant is to secure a dedicated bandwidth for its use for uplinking and downlinking the programme signals. A dedicated use of bandwidth of the transponder of the satellite ensures that the appellant is able to broadcast its programme signals and it is, therefore, incorrect to suggest that the transmission of signal is the predominant intention of the parties. A satellite operator leases the space segment capacities of the transponder of the satellite and though it is correct that the lease of the space segment capacity of the transponder is utilized for uplinking and downlinking the programme, but it cannot be said the Intelsat has contracted to broadcast/transmit the programme signals. In case the space segment capacity of a transponder is not leased, a broadcaster would not be in a position to uplink and downlink the programme signals. Intelsat has, it is clear, leased space segment capacity of the transponder and transmission of signals is ancillary to such leasing activity. It also needs to be appreciated that whether or not the appellant uses the space segment capacity of the transponder for uplinking and downlinking of signals, it has to pay the monthly charge of US$ 40,000 to Intelsat.*

75. *Learned Authorized Representative of the Department laid much emphasis on Section 65A of the Finance Act to contend that since the Agreement contains features relating to both allocations of bandwidth and transmission of signals, the activity which gives such a transaction its essential character, has to be determined in accordance with sub-section (2)(b).*

76. *It would, therefore, be necessary to reproduce Section 65A of the Finance Act. It is as follows :*

*"**65A. Classification of taxable service.** -*

(1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clauses of clause (105) of Section 65.

(2) When for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of Section 65, classification shall be effected as follows :-

(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;

(b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, insofar as this criterion is applicable;

(c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration."

77. *A bare perusal of Section 65A(1) shows that classification of 'taxable services' shall be determined according to the terms of the sub-clauses of Clause (105) of Section 105. Sub-section (2) of Section 65A stipulates that when for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of Section 65, then the classification shall be effected either under (a) or (b) or (c). Thus, for Section 65A(2)(b) to apply, there has to be a classification dispute between two or more taxable services. In the present case, the lease of space segment capacity of the transponder is not taxable as it is subjected to State VAT, being akin to "transfer of right to use goods". Even if the* *transmission of signals, as per the impugned order and as per the submissions of the Learned Authorized Representative of the Department, is covered under 'broadcasting service', then too the rule of classification contained in Section 65A of the Finance Act cannot be applied since it involves only one taxable service and one non-taxable service. Thus, the essential character test cannot be applied in the present case.*

78. *The inevitable conclusion, therefore, that follows is that the contention of the Department that the down linking of the signals from the satellite is transmission of signals covered by the definition of 'broadcasting' and, therefore, leviable to service tax on the appellant under a reverse charge mechanism cannot be accepted. The Commissioner, therefore, committed an error in holding that Intelsat has provided 'broadcasting' service to the appellant and so the appellant has to pay service tax on a reverse charge mechanism.*

79. *Thus, for all the reasons stated above, it is not possible to sustain the impugned order dated November 30, 2015 passed by the Commissioner. It is, accordingly, set aside and the appeal is allowed."*

8.5 We also find that the Co-ordinate Bench Tribunal in the case of *Bharti Teleport Limited* (supra), have held that transponder services provided by the M/s Intelsat, same FSSP as in the present case, as 'telecommunication service' and the allegation that the same is taxable under BSS is not sustainable. The relevant paragraphs of the said order is extracted as under:

"7. We have examined the agreements between the parties and we find that the transponder service means the supply of satellite capacity to be managed by the customer i.e. the respondent in the present case. M/s Intelsat on some satellite in the space having a certain capacity i.e. transponder capacity and out of the said transponder capacity available on the said satellite, they allocate some capacity to their customers for a consideration. The ld. Commissioner in the impugned order has also examined all the submissions made herein before us by the ld. Counsel for the respondent and after examining all the submissions, the ld. Commissioner has held that the services provided by M/s Intelsat are 'Telecommunication Services' which are not taxable during the relevant period.

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8. Further, after considering the definition of 'Telecommunication Services' as provided under the Act and the clarification made by the Board vide its Instruction dated 15.07.2011 which clarifies that telecommunication services are taxable only when it is provided by a person who has been granted a license under Section 4(1) of the Telegraph Act, we find that M/s Intelsat is not covered under the definition of telegraph authority as per Section 4(1) of the Telegraph Act and therefore, the services provided by M/s Intelsat are not taxable as M/s Intelsat is not a telegraph authority.

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*13. We also find that in the case of **Vedic Broadcasting Limited** (supra), the department has classified the transponder services received from M/s Intelsat under 'broadcasting services' which shows that on the one, in the present case, the department is attempting to classify the same services under 'business support services' and on the other hand, in another case, they have classified the same under 'broadcasting services'. Further, we note that there are decisions of the Tribunal i.e. **Dish TV India Ltd** (supra) and **Sahara India TV Network vs. CST, Mumbai-II – 2020 (3) TMI 84 CESTAT MUMBAI**, in which there have taken divergent views on this issue and therefore, with the presence of these divergent views, the assessee-respondent cannot be accused of any fraud or suppression. It has been held that when there is a divergent view of the department on the same issue, mala fide cannot be attributed to the assessee-respondent as held in the cases cited supra.*

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15. Further, we note that even if assuming that the respondent was liable to pay the service tax on transponder services under 'Business Support Services', they would still be eligible to take the credit of the same as theses services being 'input services' were utilized by respondent to provide output services i.e. teleport services. Hence, mala fide intention to evade the tax cannot be attributed to the respondent. Therefore, extended period of limitation cannot be invoked as the situation would have been revenue neutral as held in various cases cited supra.

16. In view of our discussion above, we are of the considered view that there is no infirmity in the impugned order, accordingly we uphold the same by dismissing the appeal of the Revenue."

8.6 We further find that the decision relied upon by the learned AR in the case of *Ushodaya Enterprises Limited* (supra), the Tribunal had decided the issue with respect to levy of service tax as BSS only on the basis of time bar and that whether it is deemed sale or not; and have not discussed the case in the context of the taxability of service under the telecommunication service. The relevant paragraph of the said order is as under: -

"13. In view of the entire above discussion, though we are not convinced with the argument of the appellant that the impugned transaction is the transaction as that of deemed sale, rather we are confirming the observation of the department for it to amount an activity as that of Business Support Services being received by the appellant who would have been liable to discharge the liability of service tax under reverse charge mechanism but for the show cause notice being barred by time, we are of the opinion that the demand is liable to be set aside. For these reasons, we set aside the impugned demand. As the result, both the appeals stand allowed."

Therefore, we find that the decision of the Tribunal in the aforesaid case of Ushodaya Enterprises Private Limited (supra), relied upon by the learned AR, is not applicable in the present case.

9. In view of the foregoing discussions and analysis of the statutory provisions vis-à-vis the factual matrix of the case, and our observations and findings on such issues, we are of the opinion that the alleged service tax liability under the taxable category of Business Support Services against the respondent-assessee is not sustainable. Further, in view of the orders passed by the Co-ordinate Benches of the Tribunal in favour of the assessees, we are also of the considered opinion that this Bench of the Tribunal cannot take a different stand for deciding the matter differently. Accordingly, we find that the impugned order, dropping the show cause notices issued by the department, does not require any interference.

10. In the result, the impugned order dated 06.01.2017 sustains and the appeal filed by Revenue is dismissed.

(Order pronounced in the Open court on 17.08.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha