

(1995) 08 KAR CK 0042
In the Karnataka High Court
Case No : Writ Petition No. 5461 of 1996

N. Krishna Devaraya and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 16-08-1995

Acts Referred:

Telegraph Act, 1885 — Section 3 (1), 3 (6), 4 (1)
Telegraph Rules, 1951 — Rule 2PP

Citation : AIR 1996 Kar 189 : (1995) ILR (Kar) 2845 : (1996) 5 KarLJ 597

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Ajit Kumar Raheja, Pulikeshi Upanal and K. Vijayakumar, for the Appellant; Shylendra Kumar, Sr. Central Govt. Standing Counsel for Sri Pape Gowda, for the Respondent

Judgement

1. The question that precisely falls for consideration in this batch of writ petitions is as to whether the petitioners being pay-phone licensees are required to collect service tax and pay the same to the credit of the Central Government under and in accordance with the provisions of Chapter-V of the Finance Act, 1894 (1994) (hereinafter "the Act"); and if they are so required, whether the service tax so collected has to be deposited with the respondent-telephone authorities or to be deposited under and in accordance with the provisions of the Act and the Service Tax Rules, 1994 (in short, the Rules).

2. Admittedly the writ petitioners are licensees of pay-phone i.e. STD/PCO. Such licences are granted u/s 4 of the Indian Telephones Act, 1985 (hereinafter referred to as "the Telephones Act") to instal, maintain and operate telephones within the agreed locations. Under the terms of the licence the licensor has been authorised to collect from the callers the charges at the rate prescribed from time to time by the Government. Out of these charges, for the services rendered by him, he (licensee) is entitled to commission at the rate prescribed under the terms of licence.

3. The concept of "service tax" is comparably a new one to this country, since it is for the first time that such tax has been levied by the Parliament pursuant to its powers under the residuary entry No. 97 of List-I of the Seventh Schedule to the Constitution of India. Provisions levying service tax have been brought into force with effect from 1-7-1994 pursuant to a Notification No. 1/94 dated 20th June, 1994 issued by the Central Government in accordance with Section 64(2) of the Act.

4. The provisions of the Act which are relevant for the present purposes are being reproduced hereunder :

"65(2) "assesses" means a person responsible for collecting the service tax payable under the provisions of this Chapter and includes his agent;

65(7) "person responsible for collecting the service tax" means a person who is required to collect service tax under this Chapter or is required to pay any other sum of money under this Chapter and includes every person in respect of whom any proceedings under this Chapter have been taken;

65(15) "Subscriber" means a person to whom a telephone connection has been provided by the telegraph authority;

65(16) "taxable service" means any service provided,-- (a); (b) to a subscriber, by the telegraph authority, in relation to a telephone connection;

65(17) "telegraph authority" has the meaning assigned to it in clause (6) of Section 3 of the Indian Telegraph Act, 1885 (13 of 1885), and includes a person who has been granted a licence under the first proviso to sub-section (1) of Section 4 of that Act;

"66 Charge of service tax.-- On and from the commencement of this Chapter, there shall be charged a tax (hereinafter referred to as service tax) at the rate of five percent of the value of the taxable services provided to any person by the person responsible for collecting the service tax;

"67 Valuation of taxable services for charging service tax.-- For the purpose of this Chapter, the value of taxable services,--

(a)

(b) in relation to telephone connections provided to the subscribers, shall be the gross total amount (including adjustments made by the telegraph authority from any deposits made by the subscribers at the time of applications for telephone connections) received by the telegraph authority from the subscribers.

Explanation. -- For the removal of doubts, it is hereby declared that the value of taxable service in this clause shall not include the initial deposits made by the subscribers at the time of applications for telephone connections;

68 Collection and recovery of service tax.-- (1) Every stock-broker, the telegraph authority or the insurer who is providing taxable services to any person shall

collect the service tax at the rate specified in Sec. 66.

(2) The service tax collected during any calendar month in accordance with the provisions of sub-section (1) shall be paid to the credit of the Central Government by the 15th of the month immediately following the said calendar month.

(3) Any person, responsible for collecting the service tax, who fails to collect the tax in accordance with the provisions of sub-section (1), shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (2)."

5. On reading of Section 68 as noticed above, it is quite clear that every telegraph authority who is providing taxable service to any person is required to collect the service tax at the rate provided u/s 66 and has to deposit the same to the credit of the Central Government under and in accordance with sub-section (2) thereof. The expression "telegraph authority" as defined under Sec. 65(17) has been given an extended meaning so as to include also such person who has been granted licence under the first proviso to Section 4(1) of the Telegraph Act. Therefore, for the purpose of present Act, "telegraph authority" as understood under clause (6) of Section 3 of the Telegraph Act as also the expression "licensee" under that Act stand at par for the purpose of statutory compliance envisaged under the Act irrespective of their inter se relationship under the Telegraph Act.

6. Under the Telegraphs Act, the telegraph authority has been defined to mean the Director General of Posts and Telegraphs and includes any officer empowered by him to perform any of the functions of the telegraph authority under the said Act. Section 4 of the Telegraphs Act provides that within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working of telegraphs. The first proviso to this section provides that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India. The word "telegraph" has been defined u/s 3(1) of the telegraph Act inter alia to mean any instrument or apparatus used or capable of use for transmission or reception of sounds of any nature by wire. Section 4(2) of this Act further empowers the Central Government to delegate to the telegraph authority any of its powers under the first proviso to sub-section (1) thereof.

7. Accordingly, the General Manager, Telephones pursuant to delegation in his favour has granted licences to these petitioners for installing, maintaining and operating pay-phones. Therefore, for the purpose of Section 68 of the Act, which provides for collection and recovery of service tax, both licensees and the licensor, namely the petitioners and the respondent-telephone authorities are "telegraph authority", and, are as such statutorily required to collect service tax on "taxable service" at the prescribed rates.

8. The "taxable service" has been defined under clause (16) of Section 65 of the Act to mean any service provided to a subscriber by the telegraph authority in relation to telephone connection. The word "subscriber" as defined under clause (15) of the said Section means a person to whom telephone connection has been provided by the telegraph authority. On a reading of these two definitions, it can unhesitant be held that the telephone authorities are not providing any taxable service to the petitioners who are their licensees and have been authorised to discharge the same or similar functions as that of telephone authorities, namely providing telephone connections to the ultimate users of these services.

9. Therefore, neither the telephone authorities are entitled in law to collect service tax from their licensees like the petitioners nor the licensees can deposit the same with those authorities, because Section 68(2) requires that such collections have to be paid to the credit of the Central Government within the specified period.

10. The next question that falls for consideration, on which contentions were addressed strenuously by the learned counsel appearing for the petitioners, is whether the petitioners as licensees operating pay-phones can be said to be providing any "taxable service" within the meaning under clause (16) of Section 65 of the Act, thereby making them liable to collect and deposit service tax.

11. The contention is that service tax is required to Be collected only when service is provided by a telephone authority to a subscriber in relation to a telephone connection; and that the word "subscriber" as defined under clause (15) means a person to whom telephone connection has been provided. According to the petitioners, by providing service through pay-phones to the public at large they do not provide any telephone connection, and, therefore they are not rendering taxable service within the statutory sense. Therefore, as submitted, law does not cast any obligation on them to collect service tax under the provisions contained in the Act. Therefore, the core of the argument rests on interpretation of the expression "telephone connection".

12. According to the New Webster's Dictionary, the word "telephone" means an apparatus, system or process for the transmission of sound or speech to a distant point; and the word "connection" means "the act of connecting or the state of being connected". Therefore, the expressions "telephone connection" would mean in common parlance "connecting two telephone apparatus so as to enable the caller to avail the speech transmission facility with a desired person".

13. In the New Encyclopaedia Britannica, 15th Edition, Volume 28, page 511, telephone networks has been inter alia described thus :--

"A telephone subscriber is usually connected by Way of a loop (two or four wire line) to a local telephone exchange or end (central) office. End offices are in turn interconnected via a hierarchy of switching centres. The connection medium between centres is called a trunk, which consists physically of cable, coaxial cable, or microwave radio links."

14. Therefore, the telegraph authorities can provide taxable services in relation to a telephone connection by providing such connection either by installing telephone apparatus at the user's place or by rendering such service by providing the telephone connection for a desired call through a telephone apparatus held by the telegraph authority in its own premises as is done at PCO's and Pay-Phone Licensees. The word "Subscriber" as defined under Rule 2(pp) of the Indian Telegraph Rules, 1951 meaning a person to whom a telephone service has been provided by means of an installation, covers only the former category and has no bearing on the wider connotation of the word "subscriber" as defined under the Act for the purpose of levy of service tax.

15. Sri Shailendra Kumar, learned Standing Counsel for the Central Government, who had appeared for the Telephone Department and has rendered valuable assistance in these cases at my request, has tried to justify the stand of the Telephone Department that the petitioners who as licensees are the agents of the telephone authorities. As such, according to him they are obliged to collect service tax and pay the same to the Department. For the present purposes, it is not necessary for me to enter into the question as to whether the licensees under Sec. 4(1) of the Telegraph Act can be said to be agents of the Department or not, since in my opinion, even if it be so, such licensees, because of the specific statutory provisions contained under the Act, have been treated as independent legal entities for the purpose of collection and deposit of service tax. Their rights and obligations arising under the Act have not been made interdependent. As such for their acts and omissions as fundamental assesses they have to face the consequences for their own.

For the reasons and discussions as above, it has to be held that the petitioners as being telegraph authorities under the provisions of the Act, are liable to collect and deposit the service tax in accordance with Sections 66 and 68 thereof. It is further declared that the respondent telephone authorities as Licensors are not authorised to collect any service tax from their licensees like the petitioners.

16. Writ petitions are accordingly partly allowed in one sense that the telephone authorities cannot demand service tax from these petitioners though the petitioners may otherwise be liable for compliance with the provisions of the Act as independent assesseees as explained above.

No costs.

17. Petitions partly allowed.