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* **IN THE HIGH COURT OF DELHI AT NEWDELHI**

Date of decision: 28th February, 2025

+ **W.P.(C) 1142/2025, CM APPL. 5617/2025&CM APPL. 5618/2025**
TATA TELESERVICES LIMITEDPetitioner

Through: Mr. Tarun Gulati Sr. Adv., with Mr.
Kumar Visalaksh, Mr. Arihant Tater,
Mr. Ajitesh Dayal Singh and Mr.
Pramod Kandpal Advocates (M-
9811419024)

versus

THE COMMISSIONER CGST
DELHI EAST & ANR.

...Respondents

Through: Mr. Arun Khatri, Sr. Standing
Counsel (CGST) with Ms. Poonam
Rani, and Mr. Anoshuka Bhalla,
Advocates, Ms. Shelly Dixit, Tracy
Sebastian (M-9811821180).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - Tata Teleservices Limited under Article 226 of the Constitution of India seeking quashing of the impugned Order in Original dated 16th October, 2024 (hereinafter 'OIO') on the ground of double taxation. It is the Petitioner's case that the same service provided by the Petitioner is sought to be doubly taxed.
3. The Petitioner is a service provider, which provides cellular mobile services, short message service ("SMS"), data/internet services and Value-Added Services ("VAS"). The Show Cause Notice proceedings revolve



around prepaid vouchers/packages that the Petitioner provides for availing the above said services.

4. The case of the Petitioner is that whenever consumers avail its services via a pre-paid voucher/package, they pay a lump sum amount, on which the service charges are deposited by the Petitioner. So long as the consumer has a credit balance on the phone through the prepaid package, which has been purchased, the consumer can avail of the said balance for the purpose of availing VAS including caller tunes, calling packs, ISD packs, combo packs *etc.*,

5. The Petitioner, as mentioned above, pays service tax on the first occasion when the pre-paid package itself is purchased. However, on the basis of available credit balance, if the consumer purchases any VAS service, since the credit balance has already been taxed no service tax is paid by the Petitioner on the second occasion.

6. However, the Department's case is that since the consumer is availing of the service, even on the second occasion service tax would be liable to be paid on the said transaction.

7. In this background, the show cause notice was issued to the Petitioner on 14th December, 2020 and the response was filed by the Petitioner on 27th January, 2021. Subsequently, submissions were made and after hearing the Petitioner, the impugned Order in Original has been passed on 16th October, 2024 confirming the demand of service tax to the tune of approx. Rs. 31 crores and imposing equal amount of penalty. The operative portion of the order reads as under:

“ (i) I, hereby confirm the demand of Service Tax (including applicable cesses) amounting to Rs.



31,08,87,031 /- (Rupees Thirty-One Crore Eight Lakh Eighty-Seven Thousand and Thirty-One Only) for the period 01.04.2015 to 30.06.2017 under proviso to Section 73(1) read with clause 3 to Section 73A of the Finance Act 1994 by invoking the extended period of limitation.

(ii) I, hereby confirm the demand of interest on the amount of Service Tax confirmed (serial no. (i) above), for the period from the date on which the Noticee was required to pay Service Tax till actual date of payment, at the applicable rates in terms of Section 75 of the Finance Act, 1994.

(iii) I, hereby, refrain to impose any penalty upon the Noticee under Section 76 of the Finance Act, 1994.

(iv) I hereby, impose penalty of Rs. 10,000/- on the noticee under section 77(1)(C) of the Finance Act, 1994.

*(v) I, hereby impose a penalty of **Rs. 31,08,87,031/- (Rupees Thirty-One Crore Eight Lakh Eighty-Seven Thousand and Thirty-One Only)** on the noticee under Section 78 of the Finance Act, 1994 for the reasons as mentioned above. However, the Noticee can avail the benefit of reduced penalty of 25% of the penalty so imposed by making payment of service Tax along with interest as well as 25% of penalty as imposed within a period of thirty days of the date of receipt of this Order.”*

8. It is this order, which is under challenge in this petition. Mr. Gulati, Id. Sr. Counsel appearing for the Petitioner raises four grounds of challenge.

- i) That there is no pre-consultation prior to the issuance of the show cause notice in terms of circular dated 10th March, 2017
- ii) The show cause notice has been adjudicated with substantial delay and reliance is placed on judgment of *M/S Vos Technologies India Pvt. Ltd. vs The Principal Additional*



Director & Anr. [2024 SCC OnLine Del 8756].

- iii) Even on merits, once the Petitioner deposits taxes at the stage of purchase of pre-paid package/voucher, no service tax will be liable to be paid on the second occasion when the consumer avails VAS using the said package as such imposition of tax on the second occasion would amount to double taxation.
- iv) The show cause notice is itself time barred and the same is sought to be justified on the ground of fraud which, according to the Petitioner, does not exist in this case.

9. Mr. Khatri, Id. Counsel appearing on behalf of the Department, however, submits that the statement of the Petitioner's official who was heard by the Department shows that he admits that only on the first occasion service taxes were paid and not on the second occasion.

10. He further submits that the impugned order is appealable and relies two judgments in this regard *i.e., Union Of India Vs. T.R. Varma, 1957 AIR 882 and Varimadugu Obi Reddy Vs. B. Sreenivasulu And Ors. [2022] 16 S.C.R. 1108.*

11. The Court has considered the matter. Clearly, the question as to whether service tax would be liable to be paid on the second occasion when the consumers avail the Value Added Services or similar services on the basis the credit balance, would be a factual issue which have to be considered after examining the manner in which services are provided and charged by the Petitioner.

12. Considering the factual nature of the issue and the fact that the impugned OIO is an appealable order, this Court is of the opinion that the same ought to be relegated to CESTAT for the purpose of adjudication after



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proper appreciation of facts.

13. However, at this stage the Petitioner submits that it is a loss making company and the mandatory pre-deposit amount of 7.5 % of the disputed demand, would be a substantial amount in the present case.

14. Considering the facts and circumstances of the present case, the Petitioner is permitted to present its appeal before CESTAT within four weeks subject to the Petitioner depositing a sum of Rs. 1 crore within four weeks. Subject to the said deposit being made the appeal would not be dismissed on the ground of limitation and shall be heard by CESTAT on merits.

15. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

FEBRUARY 28, 2025/dk/Ar