

## JUDGMENT

**MOHSIN AKHTAR KAYANI, J.---**(1) Through this Tax Appeal under section 36(c) of Central Excise Act, 1944, the appellant has assailed the order dated 20.03.2004 passed by the Customs, Central Excise and Sale Tax Appellate Tribunal, Islamabad Bench-II.

2. Brief fact of the instant appeal are that the appellant is a multinational company engaged in the business of cellular phone services. Show Cause Notice dated 25.10.1992 was issued to the appellant and the respondent alleged that appellant has evaded Central Excise duty to the tune of Rs. 11,292,500/- in contravention of Section 3 of the Central Excise Act, 1944 read with Rules 10 and 96 ZZJ of the Central Excise Rules, 1944 for the period w.e.f. 07.09.1991 to 13.12.1991.

3. The Collector decided the matter against the appellant and order-in-original has been passed, the same was challenged before the Customs, Sales Excise and Appellate Tribunal, Islamabad vide Appeal No. 99/B/98 which was decided on 17.03.1999, the said judgment was assailed before the Hon'ble High Court, whereby the matter was remanded to Appellate Tribunal on 10.11.2003 in order to decide the expression telephone given in the first schedule of Central Excise Act, 1944 includes cellular telephone or not along with other ancillary questions in accordance with the law.

4. The Appellate Tribunal has decided the subject matter vide judgment dated 20.03.2004, the appellant feeling aggrieved filed the instant appeal before the High Court.

5. When the appeal was filed by the Appellant, the name of the Company was Messrs Paktel Limited, however, during the pendency of appeal the company was acquired by the present management and the name was changed to CM Pak Limited, SECP has also issued necessary certificate in this regard, the said fact has been brought in the notice of this Court through C.M. No. 335/2013 which was allowed.

6. In the previous round of litigation, the Hon'ble High Court vide order dated 10.11.2003 remanded the matter to the Appellate Tribunal in the following words:--

"whether the expression telephone given in first schedule of Central Excise Act, 1944 includes the cellular telephone or not. The other ancillary legal questions arises there-from and raised by the parties shall also be decided in accordance with law".

7. In view of remand order, the Appellate Tribunal while passing the impugned order has given its findings in the following words:--

In regards to the issue concerning the "Access Charges" we find that like the Air time Charges these are nothing but charges that are made by the Cellular Company on the persons making use of their network for making a long distance connection. This involves two different types of "Access Charges" associated with such a call. The cellular company pays one charge to the caller's local telephone company (in this case the PTCL) for connecting (Originating) the call to the long distance network and the other to the local telephone company for the person being called which termed as the "terminating access charge"

In response to the specific observation of their Lordships we would, therefore, hold that the expression "telephone" would also include "cellular telephone" and would for the purpose of taxation be treated as a part and parcel of telephone services. We have also considered the fact that Air time is a charge that is made by Cellular Telephone Company for providing the connectivity between the telecommunication network of PTCL and the Cellular Telephone company and as such an integral part of telephone services.

8. From the above, it is made clear that word "telephone", includes the cellular telephone, however, in order to understand the entire terminology the word tele is a Greek word which means

"far off; or "at to a distance", according to the Concise Oxford Dictionary. Similarly, telecommunications, used as a singular means communication over a distance by cable, telegraph telephone, or broadcasting. The Chambers Dictionary, edition 1993, has given more comprehensive meanings of the word communication as communication of information, in verbal written, coded or pictorial form, by telephone, telegraph, cable, radio, television; whereas the telecommunications is the science of technology of such communication. Therefore, telecommunication is process of sending or exchanging information or knowledge, verbal or non-verbal, over a distance by different electronic means like cables, telegraphs, telephones, wireless, broadcasting or telecasting. Telecommunications is a process transmitting information over a distance by an electrical or electromagnetic system of pulses or digital means. This information or knowledge may take the form of voice, data, image or message or in verbal or non-verbal form. Electromagnetic transmission systems include telephone lines, cables, optic fibres, microwaves, signals, satellites and light beams or even more sophisticated means of communication of information or knowledge from one place to another like teleconferencing.

Teleconferencing is one of the modern mean of telecommuni-cating and it may include two-way video and graphics along with audio forms of information. Twentieth century developments in the telecommunications and mass media have played an important role in changing social, political, economic, education and scientific environment and institutions.

The dawn of era of telecommunication was on the 10th March, 1876, in Boston, Massachusetts, United States of America, when Alexander Graham bell had invented the telephone.

9. The telecommunication laws in Pakistan are regulated through Telecommunication (Re-organization) Act, 1996 wherein Section 2(b) defines basic telephone service which is reproduced as under:--

"Basic telephone service" means the provision of any telecommunication service which consists of--

- (i) Two-way live voice telephone service in digital form or otherwise, over any public fixed switched network or between base stations or switches or modes of any public mobile switched network;
- (ii) Real-time transmission or reception of facsimile images over a public fixed switched network;
- (iii) International telephony service; and
- (iv) The lease of circuits for the provision of the service specified in sub-clauses (i), (n) and (iii),

And the said law also defines the term "telecommunication service" under section 2(v) reproduced as under:-

"telecommunication service" means a service consisting in the emission, conveyance, switching or reception of any intelligence within, or into or from, Pakistan by any electrical, electro-magnetic, electronic, optical or optio-electronic system, whether or not the intelligence is subjected to re-arrangement computation or any other process in the course of the services."

10. From the above provisions of Pakistan Telecommunication (Re-organization) Act, 1996 and the discussion regarding telecommunication, telephone and its historical background, it is admitted fact that mobile phones are covered in the definition of telephone, hence the question whether the expression telephone given in the first schedule of Central Excise Act, 1944 includes the cellular telephone or not? Answer is yes, hence all kinds of fixed line telephones, V phone,

Cellular phones and satellite phones are different kinds of telephones and covered under the definition of telephone.

11. It is also proved that the appellant company is receiving the Access Charges at the tariff rates which falls under Central Excise duty as there is no exemption on the said charges which are part of telephone/telecommunication services, therefore, the access charges are part of telephone charges liable to Excise duty under the law.

12. In view of above, the instant appeal is devoid of merit and as no question of law has been raised and the forums below have rightly decided all questions in accordance with the law, hence the appeal is dismissed.

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