# Legal Case Summary: Bharat Sanchar Nigam Ltd. & Anr vs Union of India & Ors (2006)

Case Title: Bharat Sanchar Nigam Ltd. & Anr vs Union of India & Ors

Citation: (2006) 3 SCC 1, AIR 2006 SC 651

Court: Supreme Court of India

Date of Judgment: 2 March 2006

Bench: Justice Ruma Pal, Justice Dalveer Bhandari

## Facts of the Case:

- The issue was whether providing mobile phone connections constitutes a 'sale of goods' or 'rendering of service' or both.  
- States levied sales tax claiming it was a 'deemed sale' of SIM cards and telecom equipment under Article 366(29A)(d).  
- BSNL and others contended it was purely a service and only the Union Government could levy tax under Entry 97 List I.  
- The Union Government supported the service providers’ stand.

## Procedural History:

- High Courts gave differing decisions; Kerala HC allowed sales tax on activation charges.  
- Supreme Court overruled the State of U.P. v. Union of India (2003), forming a larger bench.  
- The matter reached the Supreme Court as multiple writ petitions and appeals.

## Issues before the Court:

1. Whether mobile telecom transactions are sales, services, or both.  
2. Whether electromagnetic waves or telecom infrastructure are 'goods' under Article 366(29A)(d).  
3. Whether providing a phone connection transfers any right to use 'goods'.  
4. Whether States can levy sales tax on telecom services.  
5. Applicability of the ‘aspect theory’ and res judicata.

## Judgment:

- The Court held that providing telephone connections is primarily a service, not a sale.  
- Electromagnetic waves are not ‘goods’ as they are not deliverable or possessable.  
- SIM cards may be taxed as goods only if sold separately.  
- Activation is a part of service; no transfer of right to use occurs.  
- States cannot impose sales tax on telecom services.

## Key Legal Findings:

1. Service vs Sale: Telecom services are predominantly service contracts; not divisible into sale and service.  
2. SIM Card Nature: SIM cards are not 'goods' when sold as part of service; if sold separately, they may be taxed.  
3. Goods Definition: Goods must be deliverable and capable of transfer.  
4. Overruling Earlier Decision: State of U.P. vs UOI (2003) was wrongly decided; electromagnetic waves are not goods.  
5. Res Judicata: Not applicable in tax cases for different assessment years.  
6. Aspect Theory: Not valid where service is dominant and indivisible.

## Final Decision:

✅ Telecom services are not subject to State Sales Tax  
✅ Activation and connection provision are part of service  
✅ SIM cards may be taxed only if sold independently  
✅ State sales tax laws struck down for taxing telecom services