

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 10th May, 2018

**M.A. No. 186 of 2015
in
Telecommunication Petition No.474 of 2011**

Hughes Communications India Limited ...Petitioner

Versus

Union of India & Anr. ...Respondents

BEFORE:

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. B.B. SRIVASTAVA, MEMBER
HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioner : Mr. Ramji Srinivasan, Sr. Advocate
Mr. Manjul Bajpai, Advocate
Mr. Jagjeet Singh Sahani, Advocate

For Respondents : Mr. Dhruv Tamta, Advocate

ORDER

By S.K. Singh, Chairperson – The petitioner/applicant filed this Miscellaneous Application (MA No.186 of 2018) on 25.06.2015 seeking review of the judgment dated 23.04.2015 passed in Petition No.7 of 2003 (**Association of Unified Telecom Service Providers of India & Ors. Vs. Union of India & Anr. and other connected matters**) by this Tribunal, and has prayed to

remove the present petition (Telecommunication Petition No.474 of 2011) from the list/array of the parties/cases decided therein and direct listing of this petition afresh for final hearing.

2. In this M.A., notice was issued on 08.07.2015. After pleadings were completed, this application for modification/review was taken-up for hearing on merits and heard on various dates. Hearing was concluded and order was reserved on 25.04.2018.

3. The relevant facts in respect of the petitioner as pleaded in paragraphs 1, 2 and 3 of the M.A. are, in the reply admitted as matters of record. Those paragraphs read as follows:-

“1. It is submitted that the Petitioner holds a CUG Licence as also an Infrastructure Provider Category 1 – IP-1 Registration.

2. Under its IP-1 Registration the Petitioner is entitled to establish and maintain various assets for lease/rent/sale to other licenced Telecom Service Providers i.e. such persons who are Licensees of Telecom Service License under Section 4 of the Indian Telegraph Act, 1885. That pursuant to its said IP-1 Registration, the Petitioner has been establishing and maintaining Telecom infrastructure for its customers who are telecom licensees and thereby selling such assets i.e. VSAT equipment and / or part thereof to various telecom licensees, from time to time.

3. That no License Fee is applicable/levied under IP-1 Registration/Licence. In this context, it may be pertinent to note that the Government of India consciously took a decision and made the requirements for an Infrastructure Provider very easy and not burdensome at all in order to encourage such Entities to provide infrastructure to other licenced Telecom Service Providers, in the interest of faster development of telecom infrastructure in the country.”

4. The main submissions on behalf of petitioners are to the effect that the provisions of “no license fee” under IP-1 Registration/License has been wrongly violated by levying License Fee *qua* the revenues derived by the petitioner from its IP-1 activities, namely sale of the said VSAT equipment to other licensed Telecom Service Providers. For such disregard of the express provisions under IP-1 Registration/License and clear solemn promise/assurance of no license fee, the respondent have wrongly taken shelter of provisions for License Fee for CUG License. Levy of interest on such illegal demand of license fee and also levy of 150% of penalty has also been assailed on the ground that original demand itself is illegal and in any case, as per various judgments, unless the demand under challenge is upheld, there cannot be a case of delay attracting levy of interest and penalty. However, interest and penalty have already been held impermissible by the judgment under review.

5. It is the case of the petitioner that under IP-1 Registration, the petitioner is establishing and maintaining only telecom infrastructure. This permitted activity does not amount to providing any telecom service to any customer. On the other hand, under its CUG License, petitioner provides data connectivity services to its subscribers. The difference between these activities, as per submissions, have been wrongly ignored by the respondent which has clubbed the revenues from these vitally different activities to demand license fee even

qua revenue from activities under IP-1 Registration in complete disregard of terms of such grant.

6. For challenging the above mentioned demands and alleged illegal acts, the petitioner has preferred Petition No.474 of 2011. The same was clubbed with Petition No.7 of 2003 preferred by Association of Unified Telecom Service Providers of India & others against Union of India & another and several other Petitions and disposed of by judgment and order dated 23.04.2015 against which recall/review has been sought through this M.A.

7. Learned Senior Counsel for the petitioner/applicant took us through relevant paragraphs of the judgment dated 23.04.2015 (**Annexure A**), particularly to parts at pages 19 and 84 of the brief to submit that the primary and exclusive case of the petitioner that its revenue from sale of VSAT equipment under the IP-1 Registration could not be included in its revenue from activities under the CUG License and indirectly subjected to License Fee when directly there is no license fee for activities under the IP-1 Registration, has not been considered either under the general discussions relating to one of the main theories i.e., Gross Revenue (GR)/ Adjusted Gross Revenue (AGR) or the specific discussions concerning various individual heads.

8. Mainly on the aforesaid ground, the petitioner wants the main petition to be taken out from list of cases covered by the judgment dated 23.04.2015 and to

be heard separately on its merits so that the principal issue noted above may be decided after proper discussion.

9. On behalf of respondent, this prayer has been opposed by submitting that no new facts have been averred to attract review jurisdiction and even the ground of non-discussion of petitioner's case is not correct because like the case of petitioner, in the case of Bharti also, revenue from IP-1 was specifically involved. It was considered by this Tribunal under discussion on specific heads, in course of decision on Head No.16 at running pages 89 and 90 of the brief. The discussion under Head No.16 is as follows:

“16. Revenue from IP1(arising in the case of Bharti)

According to the licensees, revenue from passive infrastructure the provision of which does not require a licence should not be included in the revenue of the licensees. This cannot be accepted because this is revenue generated from normal operations of the business and booked in the profit and loss account as such under AS-9.”

10. On considering the rival submissions, the primary issue is whether the ground for deleting this petition from the array of cases decided by the judgment dated 23.04.2015 deserves acceptance or not and whether a case has been made out for modification/recall/review.

11. It is not the case of the petitioner that the learned counsel(s) for the petitioner whose names are mentioned in the cause-title of the judgment were not present or that they did not press the petition or were not heard. The only ground is that the contentions based on terms of IP-1 Registration have not been

considered. This does not appear to be correct. From materials in this regard disclosed in a Short Affidavit on behalf of Respondent No.1 dated 20.02.2018 and in the original records of Bharti's petition, it is found that Bharti too had licensed telecom activities under CUG (and also some other licenses) as well as activities permitted by IP-1 Registration. Obviously, in the light of general discussions in the judgment, particularly those based on AUSPI judgment of the Supreme Court in **Union of India & Anr. Vs. Association of Unified Telecom Service Providers of India & Ors. – (2011) 10 SCC 543**, leading to finding at pages 67-68 of the brief, this Tribunal considered the revenue from IP-1 activities, held the same as revenue generated from normal operations of the licensees' business and rejected the plea not to include it in the revenue of the licensees. No doubt new grounds and attractive arguments have been advanced for taking a different view but that is not possible under limited post-decisional jurisdiction. There is no error apparent on the face of record; no new facts have been discovered or placed nor violation of natural justice has been made out so as to deserve a modification, recall or re-appraisal of earlier findings by this Tribunal. New pleas of law that IP-1 Registration stands on same pedestal as any license under Section 4 of the Telegraph Act also does not help the petitioner in getting rid of the judgment under review. Such grounds ought to have been pressed in the earlier round in 2015.

12. In view of above discussion, we are unable to hold that this petition is not to be governed by the judgment and order dated 23.04.2015. Hence, the M.A. is dismissed for lack of merits. There shall be no order as to costs.

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(S.K. Singh, J)
Chairperson

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(B.B. Srivastava)
Member

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(A.K. Bhargava)
Member