

No.C1.41136/05/CT

Office of the Commissioner
Commercial

Taxes,Thiruvananthapuram

Dated. 03-08-06

Circular No.27/06/CT

Sub:- Tax on Transfer of Right to use the goods- assessment on Telephone Rent collected by BSNL and other Telephone Service Providers- Modification of Circular No.2/2006 in the light of the decision of the Hon'ble Supreme Court in WP(C) 183/03-issued.

- Ref:- 1. Circular No.2/2006 dtd. 11.01..06 of Commissioner, Commercial Taxes- Thiruvananthapuram.
2. Judgment of the Hon'ble Supreme Court in WP(C) no. 183/03 and connected Civil Appeal Nos. 1403,1404,1405,1408,1419,1420,1421 etc in SLP No. 5447/2003 and connected cases.

As per the Circular referred to as 1st above detailed directions were issued to the Officers to complete the assessment of BSNL and other Telephone Service Providers and Cable TV Operators by including the rent collected by them from the subscribers. The judgment of the Hon'ble Supreme Court referred as 2nd above has necessitated substantial modifications of the Circular No.2/2006 dated 11.01.2006. Hence the following modifications are made in the Circular.

The Hon'ble Supreme Court has laid down the following ratio with regard to liability of Sales Tax on Telephone Service Providers.

1. Goods do not include Electro Magnetic Waves or Radio Frequencies for the purpose of Article 366 (29A)(d) of the Constitution of India. The Goods in Telecommunication are limited to the handset supplied by the Service Providers.
2. The assessing authority will have to decide whether SIM Card is goods or not after examining the factual aspects. In determining the issue the assessing authority will have to keep in mind the following principles. If the SIM Card is not sold by the assessee to the subscribers but is merely supplied as a part of the service rendered by the service providers to facilitate the identification of the subscribers their credit and other details etc., then a SIM card cannot be charged separately to Sales Tax. But if the parties intended that the SIM Card would be a separate object of sale, it would be open to Sales Tax authorities to levy sales tax thereon.
3. The nature of transaction involved in providing Telephone connection may be a composite contract of service and sales. Nevertheless it is possible for the sales tax authorities to tax the sale element provided there is discernable sale and only to the extent relatable to the such sales.

The above principles may be borne in mind while making assessments of Telephone providers. The receipt of the Circular shall be acknowledged by all officers.

Sd/
Commissioner