



**ALL INDIA
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AIBSNLEA/CHQ/CMD/2010

Dated 01.09.2010

To
Sh. Gopal Das
CMD,BSNL,
New- Delhi.

Sub:- Urgent Need for effective handling of court cases related to illogical claims of Commercial Tax departments on various units of BSNL –case of levy of sale tax in Karnataka

Respected Sir,

We would like to bring to your kind notice that Commercial Tax departments of various state governments are raising unnecessary claims of **sale tax** on various services provided by BSNL by merely misinterpreting the telecom services provided as sale of goods. They are trying to establish that BSNL is doing business rather than rendering service.

Previously there had been an incident of claiming a huge amount (**Rs.701 Crores**) as sale tax on sale of SIM cards, Re-charge coupons, Telephone instrument/ service etc., on BSNL Kerala, by the commercial tax department of Kerala State. Kerala Circle legal wing challenged this claim at appropriate forums including High Court of Kerala by engaging competent tax practitioners. The judgment of Hon. Supreme Court dated 2-3-2006 in BSNL and another Vs Union of India and others, reported in 2006 SC Vol-145, Page-91 held that, "**imposition of sales tax on any facilities of telecommunication services is untenable in law**". This was brought to the notice of the hon'ble High Court of Kerala. It was also established that communication services involve transfer of signals generated by the users. The hon'ble Court held that this cannot be treated as transfer of goods and hence not taxable. The final verdict was in favour of BSNL and hence the Kerala Circle could save the entire amount of Rs.701 crores and could defeat illogical demands from the tax department. This might have contributed to the profit earned by the Circle to some extent.

Now it is learnt that a similar claim of a huge amount of about **Rs.6600 Crores** has been raised on BSNL Karnataka by the commercial tax department of Karnataka State. Here the claim is known to have been made for providing Broadband services through

Optical Fibre Cable alleging transmission of voice and data as sale of goods. It is also learnt **that the High Court of Karnataka, by an interim order, directed to deposit Rs 560 Crores** with the tax department for allowing stay.(Ref-WP No.21836 to 21887/ 2010 of HC of Karnataka). This interim order is beyond its powers in the light of the unchallenged Supreme Court Division Bench Judgment cited above which fully protects BSNL from any sort of sales tax on any facilities of telecom services provided to its subscribers. It appears that the very detailed ruling of the apex court cited above was not properly utilized for defense in the Karnataka Court. In our opinion every effort is to be made to defeat this illogical demand which will have far reaching consequences affecting the viability of the company. The interim order itself needs to be challenged immediately either by filing review petition in the same court itself by producing the supreme court orders or by filing appeal before the appellate authority. Still there is scope to win the case based on proper citation of Supreme court and Kerala High Court Verdicts.

The guidance and assistance of Tax practitioners and officers of legal wing of Kerala Circle who dealt with similar cases can be utilized in handling the above case more effectively in the right direction. Mere engagement of a very senior/ famous lawyer alone need not save the situation. We therefore request an immediate intervention in order to save the case in favour of BSNL.

With kind regard,

Yours sincerely

-sd-

(Prahlad Rai)

General Secretary

Copy to:

- (i) Sh. Rajesh Wadhwa, Direcotr(CFA), BSNL New Delhi
- (ii) Sh. R.K. Agarwal, Direcotr(CM), BSNL New Delhi
- (iii) Sh. S. R.Kapoor, ED (F), BSNL New Delhi
- (iv) Sh. Hem Chandra Pant , GM (Legal), BSNL, New Delhi