

**CIRCULAR No.2/06**

Sub:- Tax on transfer of right to use goods- Assessment on Telephone rent collected by BSNL and scope of Assessment on Cable T.V. Operators- Reg:

As per the 46<sup>th</sup> Amendment to the Constitution of India, a clause viz 29A was inserted in Article 366 by which the States were permitted to enact legislation for levy and collection of tax on a series of transactions under Entry 54 of List II to 7<sup>th</sup> schedule to the Constitution of India. As per Clause (d) to Article 366 (29A), States are empowered to levy tax on the transfer of right to use any goods for any purpose (whether or not for a specified period) for cash or deferred payment or other valuable consideration.

As per the amended section 5(1)(iii) of the KGST Act, the transfer of right to use any goods for any purpose (whether or not for a specified period) has been made taxable at the rate of 8 % at all points of such transfer in the State. The definition of 'sale' in section 2(21) was extended further by inserting explanation 3B, as per which a transfer of right to use any goods for any purpose (whether or not for a specified period) for cash or deferred payment or other valuable consideration is deemed to be a sale.

The maiden attempt of the Commercial Taxes Department was the assessment of telephone rental collected by the BSNL as per Hon'ble Supreme Court decision in State of UP Vs Union of India reported in (2003) 130 STC ISC or (2003) 11 KTR 79 SC.

Bharat Sanchar Nigam Limited provides telephone service to their subscribers in Kerala. The erstwhile DOT and the BSNL permitted their subscribers to use the exchange equipments, the pair of cable leading to the subscribers premises, overhead alignment and all other related equipments including telephone instruments. By allowing to use the telephone instrument, cable and exchange equipment and get connected to the required number the subscriber gets a right to access the network.

In view of the amendments in Constitution and in section 2(21) read with explanation 3B, the assessments were made on BSNL by virtue of the charging Section 5(1)(iii) of the KGST Act, 1963. The assessments made Under Section 3F(1) of the UP Trade Tax Act which is analogous to explanation 3B of section 2(21) of the KGST Act, 1963 were upheld by the Supreme Court. On receipt of the assessment passed by the assessing authority, Special circle, Thiruvananthapuram, the BSNL filed OP No. 5198/03 and the Kerala High Court issued stay on collection, but ordered that assessment can be proceeded with till a decision is taken by the Supreme Court on the Civil Appeal filed by the BSNL

against the UP decision reported in (2003) 130 STC 1 SC vide CA No. 2408/02 dt. 25.09.03. It is also understood that the BSNL is not paying tax on the sale of SIM Card which was held to be goods and its sale is taxable as held by the Kerala High Court in Escotel Mobile Communications Ltd. Vs Union of India reported in (2002) 10 KTR 318 KR.

The analogous provision of the Kerala Value Added Tax Act, 2003 is explanation V of clause 43 of section 2 and section 6(1)(e). As per the charging section 6(1)(e) the transfer of right to use any goods for any purpose (whether or not for a specified period) is taxable at 4 % at all points of such transfer. The Special Government Pleader, Taxes, has opined that the Commercial Taxes Department can validly make levy of tax on rental collected by BSNL from customers.

The Reliance India Mobile and TATA Indicom are two other service providers of telephone facility in Kerala operating from Ernakulam in the State. Reliance has transportable telephone service as mobile phone. TATA Indicom is also having both facilities. They are not selling SIM card since their system is different. Hence these two categories can also be assessed on the telephone rent collected by them on par with BSNL.

But no effective steps have been taken by the assessing authority of Ernakulam to assess these two service providers. Similarly BSNL is not paying tax on SIM Card. Assessments have to be completed under section 22(3) of the KVAT Act, 2003 in connection with the scrutiny of monthly returns.

In Kerala, Asianet Cable Visions is providing Cable T.V service to customers in the State. Other channels are selling times slot also for advertisements in the channel and when a cable TV operator is receiving signals of various other TV Channels by installing suitable equipments and the signals thus received are extended to his consumer through cables. A person who is provided with cable television connection can view various television channels through his television. The viewer is making payment of monthly rent. This is similar to telephone rent as opined by Special Government Pleader, Taxes in his letter dt. 23.01.04.

The time slot allotted for advertisement in intervals is also assessable U/s 6(1)(e) of the KVAT Act, 2003 and U/s 5(i) (iii) of the KGST Act 1963 and this is deemed sale within the extended definition of sale by virtue of the amendments made to article 366 of the constitution of India inserting clause 29A.

In the light of the facts mentioned above the officers concerned are directed to goahead with the assessments of BSNL and other telephone service providers including cable TV operators for the rent collected every month.

The Asst. Commissioner (Assmt) spl.Cir. Thiruvananthapuram is also directed to take up action to assess the Asianet cable Vision since Asianet cables visions is an assessee on the rolls of that office.

Sd/  
COMMISSIONER

