

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

SERVICE TAX APPEAL NO. 50301 OF 2016

(Arising out of Order-in-Original No. 37/COMMR/DDN/2015 dated 30 November, 2015 passed by the Commissioner of Central Excise, Dehradun)

Vedic Broadcasting Limited

7A, Sandesh Nagar
Kankhal, Haridwar (UP)

... **Appellant**

VERSUS

Commissioner of Central Excise & Service Tax ...Respondent

E-Block, Nehru Colony
Dehradun, Uttarakhand

APPEARANCE:

Shri Vishal Kumar, Advocate, for the Appellant
Shri Vivek Pandey, Authorised Representative of the Respondent

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50712/2020

DATE OF HEARING: 25.10.2019
DATE OF DECISION: 08.07.2020

JUSTICE DILIP GUPTA :

The order dated November 30, 2015 passed by the Commissioner of Central Excise, Dehradun¹ to the extent it confirms the demand of service tax amounting to Rs. 87,05,130/-

1 the Commissioner

with interest and penalty, has been assailed in this Appeal filed by M/s Vedic Broadcasting Ltd., Haridwar². The Commissioner, however, dropped the demand of Rs. 19,38,492/-.

2. The issue involved in this Appeal is as to whether the charges paid by the Appellant to M/s Intelsat Global Sales & Marketing Ltd., UK³ are for a service provided by Intelsat (situated outside India) to the Appellant, that would be leviable to service tax under the head 'broadcasting service' in the hands of the Appellant under the reverse charge mechanism. According to the Appellant, the Master Service Agreement⁴ entered into between Intelsat and the Appellant is for securing a dedicated 8MHz bandwidth on the transponder of Intelsat satellite IS-10/IS-20⁵, while according to the Department the down linking of the signals from the satellite is transmission of signals covered by the definition of 'broadcasting' and, therefore, leviable to service tax.

3. The Appellant is a Public Limited Company having its corporate office in Noida and its registered office at 7A, Sandesh Nagar, Kankhal, Haridwar. The Appellant claims to be engaged in the business of broadcasting socio, spiritual and cultural television channels, for which it has a network of three 24x7 television channels, namely Aastha, Aastha Bhajan and Vedic.

2 the Appellant
3 Intelsat
4 the Agreement
5 the satellite

4. An Agreement was entered into between the Appellant and Intelsat on February 27, 2008. It provides that upon execution of a service order by both the parties under the Agreement, Intelsat shall provide to the Appellant and the Appellant shall purchase from Intelsat, the services described in the service order in accordance with and subject to the conditions stipulated in the Agreement and the Service Order.

5. According to the Appellant, a cumulative reading of the terms of the Agreement as well as the Service Order would demonstrate that the essence of the contract is to secure a dedicated 8MHz bandwidth on the transponder of the satellite belonging to Intelsat and the charges paid for this purpose by the Appellant to Intelsat are not for provision of any service.

6. It was, however, believed by the Officers of the Internal Audit Wing of the Department during the course of audit that the Appellant had received 'broadcasting services' from Intelsat by using the transponder of the satellite owned by Intelsat for up linking and down linking the programme signals through the services of Noida Software Technology Pvt. Ltd.⁶ and for which the Appellant had been making payments in foreign currency to Intelsat.

6. NSTPL

7. Accordingly, a show cause notice dated September 05, 2014 was issued to the Appellant. The relevant portion of the show cause notice is reproduced below:

"4. Whereas, the noticee in their reply dated 03.10.2013 (RUD -5) has submitted that the proposal for demand of Service Tax on utilization of the transponder of the satellite for the down-linking and up-linking of the programme signals is bad in law and without any basis. The noticee has stated that the services as availed relate to the utilization of the bandwidth on the satellite on IGSMIL and do not relate to utilization of the transponder of the satellite. They further stated that the service of the utilization of the bandwidth of the satellite do not fall under any of the service categories as laid down under Section 65 (105) of the Finance Act, 1994. **The contention of the noticee does not appear to be tenable in view of the fact that the "Broadcasting Service", as received by the noticee from the service provider situated abroad, is covered under Section 65(105)(zk) of the Finance Act, 1994. The meaning of 'Broadcasting' as defined under clause (c) of Section 2 of the Prasar Baharti (Broadcasting Corporation of India) Act, 1990 (25 of 1990) also includes the rights to receive any form of communication like signal by transmission of electro-magnetic waves.**

In view of above, the noticee appears liable to pay service tax as per reverse charge basis under Section 66A of the Finance Act, 1994 on the above said amount paid during the period 2009-10 to 2014-15 (upto July 2014)xxxxxxxxxx

5. In view of the above, it appears that the assessee is liable to pay Service tax amounting to Rs. 1,06,43,622/- including Edu. Cess and SHE Cess for the period 2009-10 to 2014-15(upto July 2014) at applicable rates on the amount of paid to M/s Intelsat using the transponder of their satellite for down-linking and up-linking of the programme."

[emphasis supplied]

8. The Appellant submitted a detailed reply pointing out that it had not received any 'broadcasting service' from Intelsat, since the activity of using the transponder of the Intelsat satellite for down linking and up linking of the programme signals is not covered under the definition of 'broadcasting service'. It was also stated that the Appellant was neither a recipient of 'broadcasting service', nor was Intelsat a service provider.

9. The Commissioner, however, did not accept the contentions advanced by the Appellant and confirmed the demand for the period upto June, 2012 but dropped the demand for the remaining period after June, 2012. The Commissioner observed that the activity would fall within the definition of 'broadcasting' under section 2(c) of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990⁷ and the relevant portion of the order passed by the Commissioner on this issue is reproduced below :

"5.5.3 The Section 2 (c) of the Prasar Bharti Act provides that "broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space...". As noted by me herein above, M/s Intelsat provided means to uplink the low frequency signals which were then upgraded and transmitted back to the designated footprint area. Here I do not find merit in the plea of the party that the transponders were merely being used for up linking. **I find that in this case they were also used, as per commands received from M/s Intelsat, to amplify the low frequency signals/data received through M/s NSTPL to higher frequency and re transmission of these improved signals back to earth. Thus some human effort was put in by the controlling technicians of M/s Intelsat by way of giving commands which leads to retransmission of data back to the earth. The area or the footprint could be altered as per the service order. xxxxxxxxxxxx** Thus, the activity under taken by M/s Intelsat was very much within the purview of the definition of 'broadcasting' as provided under Section 2 (c) of the Prasar Bharti Act which was *pari materia* to the Section 65(105) (15) of the Act. Further, as the programme down linked by various MSOs/DTH operator was available for viewing in India, in spite of the encryption of signals or beaming thereof through the satellite being performed by M/s Intelsat outside India, the service was taxable.

10. The Commissioner also observed that Intelsat was a 'broadcasting agency or organization' under section 65(105)(16) of

7 **Prasar Bharati Act**

the Finance Act, 1994⁸ and, therefore, the service provided would be taxable under section 65(105)(zk) of the Finance Act. The observations are as follows :

5.5.5 It is clear that the definition under Section 65(16) does not excludes an agency located outside India as long as it is engaged in providing service of broadcasting but the definition brings within its ambit even the branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner. The use of word 'includes' expands the 'persons' who can be subjected to levy of tax. In case the 'person' located in India, engaged in providing broadcasting service, had its head office outside India, he could not escape the tax on this ground and he too was brought within the ambit of service provider, therefore, the party's interpretation is wrong to assume that only Indian broadcasting entities could be taxed. The taxing event is the provision of taxable service which in the instant case, though being performed outside India, is very much covered within the definition of taxable service in the light of Explanation to Section 65(105)(zk) of the Act. Further, as the taxable service has been provided by a broadcasting organization not having any branch/subsidiary etc. in India the service tax has to be recovered from the recipient located in India in terms of Section 66A of the Act.

11. The Commissioner repelled the submissions advanced by the Appellant that allocation of bandwidth was not a service but supply of goods and the observations are as follows :

5.6.9 I would like to refer to Point 5.1 and 5.3 of the MSA which titled "Confirmed Outage" and "Outage credits" respectively xxxxxxxxxxxxxx.

The provisions contained herein above not only point that the agreement between the party and M/s Intelsat was for provision of service but also indicate that the fee paid to Intelsat was directly related to the provision of uninterrupted service which enables down linking of signals retransmitted to earth. It nowhere talks about the consideration linked to availability of the space segment in a satellite's transponder xxxxxxxxxxxxxx. Thus, it is clear that in the instant transaction service factor is dominant and the transfer of space segment in itself is incomplete to achieve the intended goal of the party. Thus, at best, even after applying the ratio in Antrix Corporation Ltd., the transaction between the party and M/s Intelsat can be said to be a composite

8 Finance Act.

transaction involving both sale of space segment as well as for providing broadcasting services.

5.6.11.....Further, as regards to intention behind the instant contract, the Points of the MSA reproduced in the preceding paras clearly bring out that the consideration paid by the party to M/s Intelsat was in lieu of provision of service of transmitting signals and not for transfer of right to use any goods. **The 'space segment capacity' even if considered as 'goods' in the light of decision in Antrix Corporation Ltd., was merely a medium through which the end result of transmitting the signals in a designated region was performed. Thus, after giving effect to "dominant nature test", I am of the opinion that the transaction between the party and M/s Intelsat was that for provision of "broadcasting" services as defined under Section 65(15) of the Act read with Section 2(c) of Prasar Bharti Act.** I further hold that the services received by the party were taxable services falling under Section 65(105)(zk) of the Act on which they were required to discharge service tax under Section 66A of the Act.

5.7 In view of the aforesaid observations and the provisions of their MSA I also find no force in the party's plea that the contract was merely for allotment of space segment capacity and nothing more and that they did not receive any broadcasting services from Intelsat.

Their plea is that whatever is received in form of retransmitted electro magnetic waves (signals) was incidental. This, I find is not correct at all. When the payment is linked to the uninterrupted availability of signals it becomes prime objective and the intention behind entering into the agreement. It is a settled principle of law that sale and purchase of goods is made for cash, deferred payment or other valuable consideration. As already pointed out this is a case where the provider is actively involved throughout the tenure of the MSA and is also governed by the requisition made by the party in a Service Order. The transmission plan too is provided to M/s Intelsat which can be amended from time to time. I find this is not case of simple one time sale where the act of sale occurs in the beginning. It is provided in Point 4.2 of the MSA that the invoices are to be raised on monthly basis, thus it is a case of continuous supply. Therefore, I find that in such case the reason for making the payment or not making a payment or making a part payment for any duration, become the principal aim of the said contract. This reason has clearly been linked with the uninterrupted availability of Signals as per Point 5.1 and 5.3 of the MSA. Accordingly, I reiterate that what has been provided by M/s Intelsat was 'broadcasting' service only."

[emphasis supplied]

12. The Appellant has been depositing service tax under the taxable service category of 'broadcasting service' on its income

from advertisement fees and sponsorship fees recovered from third parties desirous of advertising on the channels of the Appellant.

13. Shri Vishal Kumar, learned Counsel appearing for the Appellant has made the following submissions :

- (i) The Appellant has not received any 'broadcasting service' from Intelsat situated outside India and, therefore, there cannot be any import of 'broadcasting service' leviable to service tax. The activity of using the transponder of the satellite for up-linking and down-linking of the programme signals is not covered under the definition of 'broadcasting service'. The activity of up-linking of signals by NSTPL to the satellite of Intelsat and down-linking of such signal by Multi System Operators (MSOs) and cable operators in India is a continuous sequence and, therefore, it cannot be urged that the Appellant is the recipient of 'broadcasting service' rendered by Intelsat;
- (ii) Intelsat is not a 'broadcasting organization' and hence the Appellant is not engaged in any broadcasting activity;
- (iii) Intelsat is not engaged in 'broadcasting' in terms of section 2(c) of the Prasar Bharti Act. In fact, Intelsat is merely facilitating the broadcast of programme signals in the capacity of a relay station. This is for the reason that Intelsat merely receives the transmitted signals, amplifies it into high frequency and re-transmits the same to the desired footprint area. This activity is not akin to broadcasting;

- (iv) In terms of the Agreement, Intelsat has leased the transponder of the satellite to the Appellant for the purposes of up-linking and down-linking of signals using the 8 MHz space segment (bandwidth) on its satellite IS-10/IS-20;
- (v) No value addition is undertaken by Intelsat insofar as the programme content of the Appellant is concerned. Intelsat merely converts the low-band frequency into high-band frequency and relates the same over the desired footprint area. In fact, the re-transmission of amplified signals through the transponder belonging to Intelsat completes the 'broadcasting service' provided by the Appellants on its account;
- (vi) The definition of 'broadcasting' under section 65(15) of the Finance Act has been grouped into three categories. It would be evident that the definition of 'broadcasting' in terms of section 2(c) of the Prasar Bharat Act would only include the actual broadcaster and not the satellite service provider; and the later parts of the definition would include specific activities specified thereunder which would in no manner cover the case of Intelsat as a 'broadcasting agency or organization', as defined under section 65(16) of the Act. In support of this contention, reliance has been placed upon the decision of the Delhi Tribunal in **ESPN Software India (P) Ltd. vs CST, New Delhi**⁹;

- (vii) If the activity of re-transmission of amplified electromagnetic waves by Intelsat is held to comprise broadcasting, then this would lead to double taxation on the same activity; and
- (viii) Intelsat has leased the space segment to the Appellant and this transaction would amount to direct sale of 'goods' within the meaning of article 366(12) of the Constitution and not for providing any service.

14. Shri Vivek Pandey, learned Authorized Representative of the Department, has, however, made the following submissions:

- (i) The definition of 'broadcasting agency or organization' under section 65(16) of the Act means **any agency or organization** engaged in providing services **in relation to** broadcasting **in any manner** and so the activity of Intelsat falls under the definition of 'broadcasting' since the definition is very broad. Elaborating this submission, it has been pointed out that the activity of Intelsat in providing a designated band with a frequency of a particular band in a particular transponder of a satellite which is used for transmitting signals at a particular minimum speed and of a particular power means that the activity carried out by Intelsat is nothing but 'broadcasting';
- (ii) The Agreement contains features relating to both allocation of bandwidth and transmission of signals. It is clear that the speed and strength of transmission of data/signal has been recognized

as crucial factors in forming the provision of service under the Agreement and, therefore, it can be said that the transmission of signals is the predominant character of the service being provided; and

- (iii) Even if the test of 'intention of the parties' behind the transaction as laid down by the Supreme Court in **Bharat Sanchar Nigam Ltd. & Anr. vs Union of India & Ors.**¹⁰, is adhered to, the intention of the Appellant is to get its TV programmes in the form of radio waves transmitted from one part of the earth to another and it is not the intention of the Appellant to hire a space on the satellite.

15. The submissions advanced by learned Counsel for the Appellant and learned Authorized Representative of the Department have been considered.

16. In order to appreciate the controversy involved in this Appeal, it will be necessary to examine, in brief, the methodology of broadcasting, as has been explained by the experts who had been asked to assist the Bench. The same is as follows :

A. Introduction to Cable/ Satellite TV Broadcasting:

Cable/ Satellite TV broadcasting is an activity, which serves the purpose of creating audio visual content and then disseminating it to a wide audience for viewing/listening and involves roles of many players. These players are broadcaster, uplink service provider (also known as earth station or teleport operator), satellite operator and Cable/ DTH operators.

10 (2006) 145 STC 91 (SC)

1) **Broadcaster:** A broadcaster produces/ aggregates the program content, which can either be news or non-news content. Non-news content includes general entertainment channels, sports channels, religious channels, music channels, movie channels and infotainment channels. The digital audio-video outputs from these servers are subsequently passed on to the earth station or teleport.

2) **Earth station/ Teleport operator:** The earth station/ teleport operator takes the audio-video signals from the broadcaster and encodes, modulates and converts the content to high power electro-magnetic waves and up-links it to the allocated/ designated space segment of the satellite, which is located in the geo-stationary orbit of the earth. A geo-stationary orbit is an imaginary orbit located above the earth's meridian at an approximate height of 36,000 kms. from the surface of the earth. The earth station has a transmit antenna pointing accurately to the satellite to which the signal is to be transmitted/ beamed. This is known as the uplink antenna and is generally 9.3 meters in diameter.

3) **Satellite Operator:** Satellites are used for many purposes including broadcasting. The satellite operator owns the satellite and leases out space segments on the satellite to customers as per their requirement. The satellite operator can either be a government organization or a private organization. In India, only Indian Space Research Organization owns and operates Indian owned satellites. The radio frequency or electro-magnetic waves uplinked from the earth station are reflected back to the earth by the satellite. The satellites are designed in such a manner that the radio frequency up-linked with a particular power are automatically reflected back as it is, i.e. without any alteration/ modification of the program content, through the help of internal process of set on-board equipments, i.e. without any human intervention, whatsoever. The availability and the strength of the reflected signal will vary on the basis of the geographical footprint of the satellite.

4) **Cable Operators or DTH (Direct-to-Home) Operators:** The radio frequency signal sent back to the earth by the satellite is received by the cable operator/ DTH service provider through a downlink antenna, which points towards the satellite. The cable/ DTH operators aggregate the received signals comprising of multiple channels, which would emanate from various satellites.

B. Regulators and Permissions for each player :

There are many regulatory agencies of the Government, which have framed rules and regulations on different aspects with respect to different players in the business. These Government agencies charge license fees, spectrum charges, monitoring charges, etc. from the different players and also play a vital role in regulating and monitoring the activities of the players, at all times. The mandatory permissions/ rules/ regulations/ fees required by each player are as under:

1) Broadcaster:

- a) A broadcaster who desires to launch a channel first approaches a satellite operator for leasing space segment on a satellite. The satellite chosen would depend on the target audience which is based on the footprint area of the satellite. The satellite operator then allocates the required space segment on the appropriate transponder of the satellite and thereafter the broadcaster and the satellite operator enter into an agreement for the charges towards the space segment allocation on the transponder of the satellite to be paid by the broadcaster.
- b) Simultaneously, the broadcaster also enters into an agreement with an earth station (i.e. uplink service provider) with respect to up-linking of the proposed television channel.
- c) Thereafter, the broadcaster approaches the Ministry of Information and Broadcasting for obtaining uplink and downlink permission/ license.
- d) After the broadcaster receives the license for a particular TV Channel, it approaches the uplink service provider for up-linking of the TV channel. The Uplink Service Provider also has to take certain permissions from Wireless Planning Commission, Wing of Department of Telecom (DoT), Ministry of Communication and Network Operation and Control Centre for Uplink of that particular TV channel. After obtaining the requisite permissions from the concerned Regulatory Authorities, the teleport owner i.e. uplink service provider starts the uplink of the channel. The satellite operator provides the technical parameters related to the allocated space segments/ bandwidth on the particular transponder of the satellite on which the earth station is required to uplink the radio frequency signals.
- e) Based on the technical parameter provided by the satellite operator, a detailed carrier plan giving all the technical details about the uplink is prepared by the earth station operator and sent to Wireless Planning Commission and Network Operation and Control Centre for necessary approvals.
- f) The earth station can only uplink Radio frequency to the satellite, as per the carrier plan approved by the Government of India, on payment of annual spectrum charges to them.
- g) In the present case, the Appellant as broadcaster has entered into an agreement with Noida Software Technology Park Ltd. ("NSTPL") i.e. earth station/ teleport operator for up-linking the program signals and has agreed to pay a fixed amount for rendering the said activity. The Appellant broadcaster also pays annual up-linking and downlinking fees to the Ministry of I&B.

2) Teleport/ Earth Station Owner or Uplink Service Provider:

- a) A teleport operator is purely a technical service provider having the required regulatory permissions from concerned regulatory authorities to provide up-linking service to the broadcasters and has a functioning teleport or earth station with all the necessary equipments to provide un-interrupted uplink service.
- b) A teleport operator is also required to seek permission from the Ministry of Information and Broadcasting for setting up an up-linking teleport. Prior to commencement of operations, the earth station is also required to obtain permission from Standing Advisory Committee on Radio Frequency Allocation under the Department of Telecommunications for site clearance with respect to setting up of a teleport. The teleport operator is also required to seek permission from the concerned department for setting up a teleport called Letter of Intent.
- c) After obtaining the Letter of Intent the teleport operator has to seek import license with respect to import of required uplink equipments. After obtaining import license for equipments, the teleport operator imports the equipments and installs the same.
- d) After installation, the concerned departments issue clearance certificate called the Mandatory Performance Verification Testing Certificate.

3) Satellite Operator:

- a) A Satellite operator desiring to launch a satellite approaches the International Telecommunication Union (ITU), which is a regulatory body that governs the orbital traffic for launch of a satellite. The Satellite Operator prepares and submits a proposal for launching of a satellite into a proposed orbital location targeting a particular footprint and specification with the ITU.
- b) Thereafter, the ITU, in coordination with all members countries, approves the location of the satellite and grants permission to launch the satellite.
- c) The space on satellite can be independently and simultaneously be used for any purpose for example Communication, VSAT, Navigation etc. from different geographically locations."

4) Cable Distributor (MSO and Local Cable Operator) :

A cable/ DTH operator obtains a copy of the downlink permission granted to a channel, which approaches it for

carrying their channels, on their network for further re-distribution to the masses/ end users/ consumers/ subscribers.

17. To appreciate the contentions of the parties, it would also be appropriate to reproduce the relevant terms of the Agreement and the Service Order.

AGREEMENT

18. Clause 1 deals with 'AGREEMENTS', while the 'Provision of Services' is contained in clause 2 of the Agreement. They are reproduced below :

"1. AGREEMENTS

1.1 Agreements. By executing this MSA, Intelsat and Customer agree that, upon execution by both Parties of a service order pursuant to this MSA (each, a "**Service Order**"), Intelsat shall provide to Customer, and Customer shall purchase from **Intelsat**, the services described in such Service Order (the "**Service(s)**"), in accordance with, and subject to the conditions of, this MSA and such Service Order.xxxxxxxxxx

2. PROVISION OF SERVICES

2.1 General. Intelsat shall provide each Service in accordance with the "**Service Specifications**" defined in the relevant Service Order. All Services are offered on a non-exclusive basis.

2.2 Intelsat-Provided Facilities. Intelsat shall provide each Service using satellite and/or terrestrial facilities owned and/or operated by Intelsat and/or third parties under contract with Intelsat (the "**Intelsat-Provided Facilities**"). Any third party facilities used for any Service as part of the Intelsat-Provided Facilities shall be subject to the terms and conditions of Intelsat's agreement with such third-party provider, as amended from time to time.

2.3 Space Segment Allocation. Intelsat reserves the right to assign and/or reassign Customer's space segment allocation within the satellite identified in the Service Order or to move the Service to a different satellite and/or a different orbital

location (the satellite being used for the Service at any given time referred to herein as the Satellite"), or in any other way to alter the method by which it provides a Service, provided that any such change does not result in a failure of the Service to meet the Service Specifications. Except in emergency circumstances, Intelsat shall notify Customer of any changes to its allocation as soon as reasonably practicable prior to such change and shall use reasonable efforts to minimize disruption to Customer's Service during any such change."

19. The 'Customer Obligations and Use Restrictions' are contained in clause 3 of the Agreement and they are reproduced below:

"3. CUSTOMER OBLIGATIONS AND USE RESTRICTIONS

3.1 Customer's Use and Third Party Use. Each Service is provided for Customer's own use and in no event shall Customer be permitted to resell a Service to any other person or entity unless Customer's provision of services to such person or entity includes substantially more communications facilities than the Service provided by Intelsat. For purposes of this Section, "resell" shall include any means allowing another person or entity to utilize the Service, in whole or in part, including through sale, resale, license, lease, sublease, grant, assignment, or any other means of direct or indirect conveyance. Without limiting the foregoing, Customer shall be responsible to Intelsat for any and all use of the Service or transmissions via the Service by any third party user throughout the chain of use (each a "**User**" and collectively the "**Users**") to the same extent as Customer would be for its own use or transmissions, and all references in the Agreement to Customer's responsibilities to Intelsat regarding Customer's use or transmissions shall be interpreted accordingly.

3.3 Operational Requirements and Non-interference. Customer shall use each Service, and shall require that its Users use such Service, if applicable, in compliance with the "**Operational Requirements**" contained in the Service Order, as such may be amended by Intelsat from time to time upon notice to Customer, and which can, for convenience, be located at <http://www.intelsat.com/resources/earthstations/iess.asp> or www.panamsat.com/customer_support/legal_agreements.asp. Customer shall configure, equip and operate its transmit facilities so that the interface of these facilities, in outerspace, with the Satellite shall conform to the characteristics and technical parameters of the Satellite. Customer shall follow Intelsat's procedures for initiating or terminating any transmission to the Satellite. Customer shall operate all

transmit facilities in a manner that allows for cessation of, and shall cease, transmission immediately upon receiving notice from Intelsat under Section 13.2 below. Customer shall furnish such information regarding the technical parameters of its transmissions as may be required by Intelsat prior to commencing, during, and upon the conclusion of, any transmission to the Satellite. Customer shall, upon Intelsat's request, provide measured proof that any transmit facility meets any material requirement specified in the Operational Requirements. Customer shall follow established practices and procedures for frequency coordination and shall not use the Service, or any portion thereof, in any manner that would or could be expected, under standard engineering practice, to cause harm to any satellite or related infrastructure of Intelsat or a third party, or to cause interference with any satellite or related infrastructure of Intelsat or a third party.

3.4 Customer-Provided Facilities. Unless otherwise specified in the Service Order, Customer shall be responsible for the provision, installation, operation, maintenance of, and for securing all necessary licenses and/or authorizations for, all earth station facilities and equipment ("**Customer-Provided Facilities**") for transmitting signals to, or receiving signals from, the Satellite in accordance with the requirements set forth in the Service Order. In addition, all Customer earth stations must be registered by Intelsat prior to operation, in accordance with the Service Order. By executing a Service Order, Customer represents and warrants that the information it will provide to Intelsat in connection with earth station registration will be complete and accurate in all material respects. Customer may contract with parties other than Intelsat to transmit its signals to, or receive its signals from, the Satellite, provided that Customer shall require that its contractors comply with all of the requirements of this MSA and the Service Order. If Customer retains third parties as permitted by the previous sentence, those third parties' facilities and personnel shall be deemed to be Customer-Provided Facilities and the acts and omissions of those third parties shall be deemed to be the acts or omissions of Customer. Intelsat shall have the right, but not the obligation, to inspect any Customer-Provided Facilities together with associated facilities and equipment used by Customer, or by a third party under the authority of Customer, to transmit to the Satellite. Intelsat shall use all reasonable efforts to schedule inspections to minimize the disruption of the operation of the facilities, and Customer shall make the facilities available for inspection at all reasonable times. Any such inspection shall not be deemed approval of the facilities by Intelsat or a waiver of any of Intelsat's rights hereunder.

3.5 Transmission Plan. No later than ten (10) business days prior to the Service Start Date, Customer shall provide Intelsat with a transmission plan (the "**Transmission Plan**") which

complies with the Operational Requirements. Customer must have Intelsat's written approval of the Transmission Plan, which approval shall not be unreasonably withheld or delayed, prior to, and as a condition to, Customer's commencement of the Service. Customer shall also be permitted, subject to Intelsat's prior written approval, to modify the Transmission Plan from time to time, subject to the terms of the applicable Service Order. Intelsat's approval of a Transmission Plan shall not constitute, nor does Intelsat make any representation, warranty, or covenant regarding the efficacy of the use of any number of carriers or other alternative uses of the Services. In addition, Intelsat does not make any representation, warranty or covenant regarding the efficacy of any Transmission Plan or use of the Service in relation to potential sources of terrestrial interference, and the absence of terrestrial interference is not a Service Specification."

20. The 'Service Outage' is contained in clause 5 of the Agreement and the relevant clause 5.1 is reproduced below :

"5. SERVICE OUTAGE

5.1 Confirmed Outage. A "**Confirmed Outage**" shall have occurred when the Service fails to meet the Service Specifications for a period of time specified in the Service Order, and such failure is confirmed by Intelsat. If a Confirmed Outage has occurred, it shall be deemed to commence when Customer notifies Intelsat of the occurrence of the Confirmed Outage (subject to Intelsat's confirmation), and to end when Intelsat notifies Customer or Customer has actual knowledge that the Service has been restored. Any period during which Customer uses the applicable Service shall not count towards the duration of the Confirmed Outage."

5.3 Outage Credits. If a Confirmed Outage occurs, Intelsat shall give Customer a credit (an '**Outage Credit**') against future Charges for that Service. Unless otherwise specified in a Service Order, Outage Credits shall equal pro rata Service Fees due for that period of time during which a Confirmed Outage of the Service, or any portion thereof, has occurred."

21. Clause 6 of the Agreement deals with 'Interruption of Service' and the relevant clause 6.1 is reproduced below :

“6. INTERRUPTION OF SERVICE

6.1 Interruption Rights. Customer recognizes that it may be necessary, if the Satellite or any component thereof loses power, or in other unusual or abnormal technical situations, or other unforeseen conditions, for Intelsat to deliberately interrupt Customer's use of the Service. Intelsat shall make decisions to interrupt Services for such purposes in good faith. To the extent technically feasible, Intelsat shall give Customer at least 24 hours notice of such interruption and shall use all reasonable efforts to schedule and conduct its activities during periods of such interruption so as to minimize the disruption to users of the Satellite. Customer acknowledges, however, that Intelsat may interrupt Service without notice in any situation that in the opinion of Intelsat has caused or is likely to cause harm to any satellite or related infrastructure of Intelsat or a third party or interference with any satellite or related infrastructure of Intelsat or a third party. Customer shall immediately cease transmissions to the affected Satellite when required to do so by Intelsat under this Section.”

22. The ‘Suspension of Service’ is contained in Clause 8 of the Agreement and relevant clauses 8.1 and 8.3 are reproduced below :

“8. SUSPENSION OF SERVICE

8.1 Suspension for Cause. Intelsat may suspend a Service in any circumstance in which Intelsat would have the right to terminate the related Service Order or this MSA for cause under Section 7.1 above, provided that any notice that would be required for termination for cause is also given for such suspension. In no event shall Intelsat's election to suspend a Service be construed as a waiver of Intelsat's right to terminate the Service Order or this MSA.

8.3 Effect of Suspension. Customer shall immediately cease transmissions to the Satellite (if applicable) upon notice of suspension by Intelsat in accordance with this Article 8. Intelsat may continue to suspend the Service until any breach of the related Service Order by Customer is cured and, in the case of any suspension of Service pursuant to Section 8.2 above, until any action or threat of action is resolved in Intelsat's favor or removed and, in each case, until assurances are given to Intelsat's reasonable satisfaction that the matter(s) giving rise to a suspension of Service will not reoccur. Intelsat's suspension of a Service in accordance with this Article 8 shall not result in any Outage Credit to Customer, and all Charges for the Service shall continue to be due and payable.”

SERVICE ORDER

23. It would also be useful to reproduce the relevant portion of the **Full Time Agreement – Service Order** dated August 27, 2002 executed between PanAmSat and CMM Broadcasting Network Limited and the same is as follows :

"FULL-TIME AGREEMENT-SERVICE ORDER#7261

		PanAmSat Information:		Customer Information	
Name:		PanAmSat Corporation		CMM Broadcasting Network Limited	
Place/Type of Organization:		A Delaware corporation		India	
General Information					
Service Start Date	Service End Date	Non-Recurring Connection Fee	Service Fee	Security Deposit (Last 1 Month)	Total Initial Payment
August 1, 2002	August 31, 2012	NA	US\$40,000 per month	US\$40,000	US\$120,000
Transponder Segment Service					
Satellite:		PAS-10			
Planned Orbital Location:		68.5 degrees West Longitude			
Beam(s):		Global Beam			
Band:		C-Band			
Bandwidth/Circuit:		Two(2) 4065.7 kbps,QPSK,R ¾ (Reed Solomon) Simplex Digital Video Channels			

This "**Full-Time Agreement**" is subject to, and entered into in accordance with, that certain Master Services Agreement Number 7106 entered into by and between PanAmSat Corporation and Customer, dated 8-9-2002 (the "**Master Agreement**") that is incorporated herein by this reference. By signing below, Customer confirms receipt of and agreement to this Service Order and the following Attachments that are attached hereto and incorporated herein by reference, which collectively comprise this Full-Time Agreement:

Attachment 1(a)	Transmission Parameters (Channel 1)
Attachment 1(b)	Transmission Parameters (Channel 2)
Attachment 2	Service Attachment for Transponder Segment Services
Attachment 3	Operational Requirements for PanAmSat Satellites
Attachment 4	Special Terms And Conditions

Title : Eup Global Sales & Marketing
Date : August 27, 2002"

24. The aforesaid Service Order refers to four Attachments. Attachments 1(a) and 1(b) dealing with Transmission Parameters are as follows :

Attachment 1(a)

Transmit Location:	Singapore, Singapore
Satellite SFD:	-86.50 dBW/m ²
Tx Earth Station Size:	13.0 m
Tx EIRP:	59.2 dBW
Rx Location:	Various, India
Rx Earth Station Size:	3.0 m
Rx Earth Station G/T:	19.7 dB/K
EIRP Twd Rx Earth Station:	40.4 dBW
Satellite EIRP (per carrier):	25.2 dBW
Satellite EIRP Beam Centre:	26.6 dBW
Minimum C/N:	7.47 dB
Allocated Bandwidth:	4.0000 MHz
Uplink Frequency:	6002.0000 MHz
Uplink Polarization:	Vertical
Downlink Frequency:	3773.0000 MHz
Downlink Polarization:	Vertical"

Attachment 1(b)

Transmit Location:	Singapore, Singapore
Satellite SFD:	-86.50 dBW/m ²
Tx Earth Station Size:	13.0 m
Tx EIRP:	59.2 dBW
Rx Location:	Various, India
Rx Earth Station Size:	3.0 m
Rx Earth Station G/T:	19.7 dB/K
EIRP Twd Rx Earth Station:	40.4 dBW
Satellite EIRP (per carrier):	25.2 dBW
Satellite EIRP Beam Centre:	26.6 dBW
Minimum C/N:	7.47 dB
Allocated Bandwidth:	4.0000 MHz
Uplink Frequency:	5998.0000 MHz
Uplink Polarization:	Vertical
Downlink Frequency:	3773.0000 MHz
Downlink Polarization:	Vertical"

25. Attachment 2 deals with 'Service Attachments for Transponder Segment Services' and the relevant portion is reproduced below :

"1.0 GENERAL. This "Service Attachment" sets forth additional terms and conditions regarding the Transponder Segment Service (as defined in the Service Order), as well as information regarding the Satellite which provides such service. Unless otherwise specified in the Service Order, that portion of the Service Transponder which comprises Customer's Service shall be power and bandwidth limited, consisting of a Transponder segment, equivalent to the amount of bandwidth specified in the Service Order and associated power on the Service Transponder (a "Transponder Segment"). In the event PanAmSat approves any Customer request to increase power whereby Customer's Service becomes power limited (i.e., the proportion of power exceeds the proportion of bandwidth allocated), then PanAmSat shall increase the Service Fee to reflect such increase in power. Unless otherwise expressly defined herein, defined terms shall have the meanings ascribed

to them in the Agreement and in the Satellite Information above.

3.3 Frequency Assignment. PANAMSAT reserves the right to assign and/or reassign Customer's space segment allocation (and its other Customer's space segment allocations) within the Service Transponder or to other Transponders within the applicable Uplink and/or Downlink Beam of the Satellite in order to minimize mutual interference between adjacent satellites, to ensure compliance with applicable coordination agreements with other networks, and/or to permit efficient loading of the Satellite. Except in emergency circumstances, PANAMSAT shall notify Customer of any changes to its initial allocation as soon as reasonably practicable prior to such change and shall use reasonable efforts to minimize disruption to Customer's Service during any such change."

26. Attachment 4 deals with 'Special Terms & Conditions' and the relevant portion is reproduced below :

"2. Total Initial Payment/Termination Right: PanAmSat acknowledges and agrees that Customer must obtain certain licensing from the Indian government in order to comply with the payment terms of this Full-Time Agreement. Accordingly, notwithstanding Section II(A)(1) of the Master Agreement, PanAmSat hereby agrees to permit Customer to pay PanAmSat the Total Initial Payment (consisting of the Service Fees for the September and October, 2002 and Security Deposit) by not later than October 31, 2002. Accordingly, from and after November 1, 2002, all other payments shall be due in advance on the first business day of the month in accordance with Article II of the Master Agreement. xxxxxxxxxx"

27. It is important to note that the name of the PanAmSat Corporation was changed to Intelsat Corporation by Certificate of Amendment dated July 03, 2006. This apart, CMM Broadcasting Network Limited was changed to Aastha Broadcasting Network Limited on October 13, 2003.

28. In April, 2008 Customer Service Transfer Agreement was entered into between Aastha Broadcasting Network Limited (Transferor), Vedic Broadcasting Limited (Transferee) and Intelsat Corporation and the relevant portion is reproduced below :

“WHEREAS, both the Transferor and transferee are Customers of Intelsat under certain Agreements executed by and between the Transferor and Intelsat Corporation on 9 August 2002 (Master Service Agreement, contract number 7106, the “**Transferor’s MSA**”), and by and between the Transferee and Intelsat on 27 February 2008 (Master Service Agreement, contract number 20885, the “**Transferee’s MSA**”) and

WHEREAS, the Transferor, as of the Effective Date, as set forth in Section 3 below (“Effective Date”), desires to transfer the services it receives under the Transferor's MSA, as set forth in Annex 1 (the “**Transferred Services**”), to the Transferee to be held in the Transferee's name and on the Transferee's account under the Transferee's MSA, and the Transferee, as of the Effective Date, accepts all rights and obligations, including financial and payment obligations, for such Transferred Services as of the Effective Date and Intelsat hereby agrees to such transfer subject to the terms contained in this Agreement.”

29. What also needs to be noticed is that by Office Memorandum dated July 07, 2015, the Department of Telecom in the Ministry of Communications & IT, Government of India, approved the carrier plan submitted by the Appellant for 8 MHz space segment in C-Band on a transponder (TX#LM4C/LM4C) of IS-20 with frequency range from 5996.00 MHz to 6004.00 MHz (Vertical) that was necessitated due to shifting of services from IS-10 to IS-20.

30. The methodology of broadcasting, as has been described above, needs to be briefly understood. The Cable/Satellite TV broadcasting broadly is an activity which creates audio visual content which is disseminated to the audience. The players involved are (i) **broadcaster**, (ii) **uplink service provider** (more popularly known as earth station or teleport operator), (iii) **satellite operator**, and (iv) **Cable/DTH operators**. A broadcaster produces or aggregates the program content. The

digital audio-video outputs are subsequently passed on to the earth station or teleport. The earth station then modulates and converts the content to high power electro-magnetic waves and uplinks it to the allocated/designated space segment of a satellite, which is located in the geo-stationary orbit of the earth. The satellite operator owns the satellite and leases out space segments on the satellite to customers as per their requirement. The radio frequency or electro-magnetic waves uplinked from the earth station are automatically reflected back to the earth by the satellite without any alteration/modification of the program content with the help of internal process of set on-board equipments. The radio frequency signal sent back to the earth by the satellite is received by the cable operator/DTH service provider through a downlink antenna, which points towards the satellite.

31. It also needs to be kept in mind that a broadcaster who desires to launch a channel, has to first approach a satellite operator for leasing a space segment on its satellite. The choice of a satellite depends on the target audience which is based on the footprint area of the satellite, which is a designated region on earth. The satellite operator then allocates the required space segment on an appropriate transponder of the satellite. Thereafter, the broadcaster and the satellite operator enter into an agreement for the charges to be paid by the broadcaster. The broadcaster has also to enter into an agreement with an earth station for up-linking the proposed television channel. For this purpose, the broadcaster has to obtain permission/licence for uplinking and down linking.

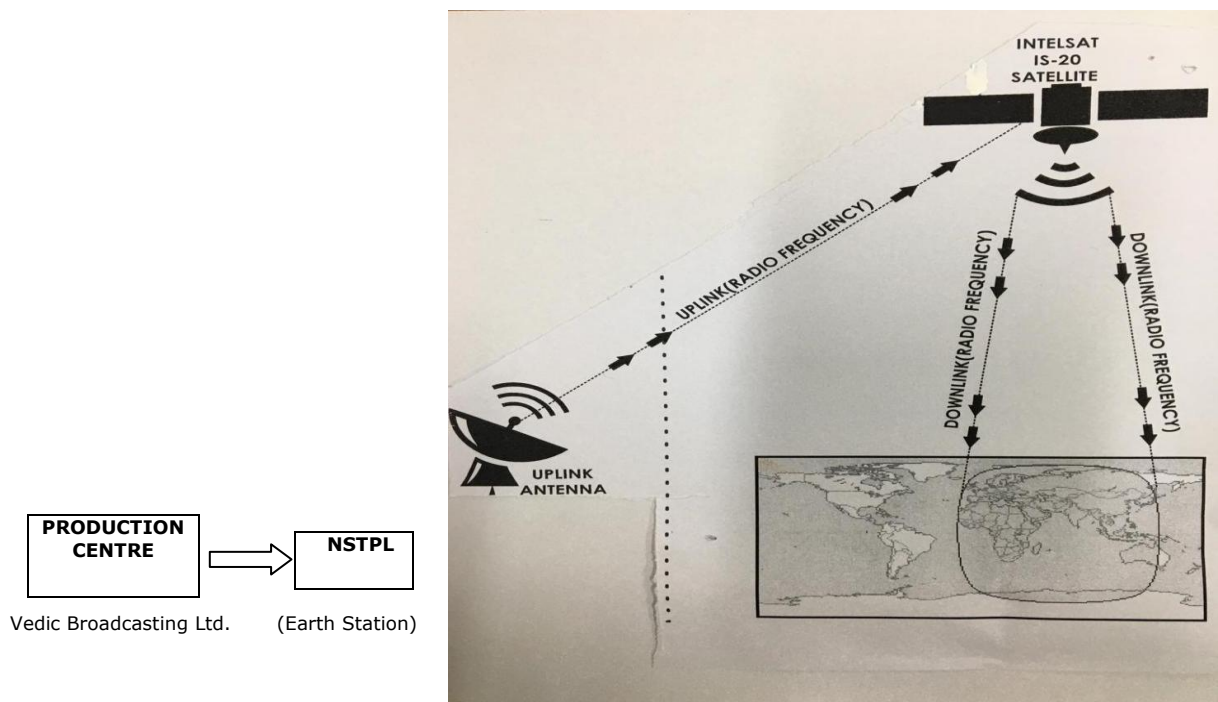
Based on the technical parameters provided by the satellite operator, a detailed carrier plan giving all the technical details about the uplink is prepared by the earth station operator for obtaining approval from the concerned Wireless Planning Commission. In fact, the earth station can only uplink radio frequency to the satellite as per the carrier plan approved by the Government of India. A **carrier plan** specifies parameters for the desired carrier in a particular space segment on the satellite transponder. These parameters are arrived at for the optimum utilization of the space segment and at the same time concluding on transmit power levels that will not cause any interference to adjacent carriers and will also not pose any damage threat to the transponders on the satellite. Upon leasing of the space segment to the broadcaster and understanding the proposed usage pattern of the broadcaster and also considering safety and operational parameters of the transponder, the satellite operator provides tentative parameters for carrier plan to the broadcaster.

32. It also needs to be noted that the earth station owner has also to obtain the necessary permission. The satellite operator desirous of launching a satellite has also to approach the regulatory body for launching the satellite into a proposed orbital location targeting a particular footprint.

33. The Appellant contends that as a broadcaster it entered into an agreement with NSTPL, which is an earth station, for up-linking the program signals and agreed to pay a fixed amount to

NSTPL for rendering the said activity. It also entered into an Agreement with Intelsat for lease of a transponder on the satellite to the Appellant for the purpose of up-linking and down-linking the signals for which certain charges were paid by the Appellant.

34. What has been stated above can conveniently be described by a pictorial representation which is drawn below :



35. In order to appreciate the aforesaid contentions raised on behalf of the Appellant and the Department, it would be necessary to appreciate the contents of the Agreement and the Full Time Agreement – Service Order. **Clause 1.1** of the Agreement provides that upon execution of a Service Order pursuant to the Agreement, Intelsat shall provide to the Appellant and the Appellant shall purchase from Intelsat the services described in such Service Order. **Clause 2.1** of the Agreement stipulates that Intelsat shall provide service in accordance with the 'Service

Specifications' defined in the Service Order. Under **Clause 2.3** Intelsat reserved to itself the right to assign and/or reassign the space segment allocation of the Customer within the satellite identified in the Service Order or to move the Service to a different satellite and/or a different orbital location. **Clause 3.3** of the Agreement requires the Appellant to use each Service in compliance with the 'operational requirements' contained in the Service Order. The Appellant has also to configure, equip and operate its transmit facilities so that the interface of these facilities, in outerspace, with the Satellite shall conform to the characteristics and technical parameters of the Satellite. **Clause 4** deals with 'charges and payments'. 'Charges' have been explained to refer to all charges specified in the Service Order and the fixed recurring monthly charges specified in the Service Order are due and payable in advance. **Clause 5** deals with 'Service Outage'. A 'confirmed outage' occurs when the Service fails to meet the service specifications for a period of time specified in the Service Order and such failure is confirmed by Intelsat. If a confirmed outage occurs, then under **Clause 5.3** Intelsat shall give the Appellant a credit against future charges for that Service. **Clause 6** deals with 'Interruption of Service'. Under this clause, the Appellant recognizes that it may be necessary for Intelsat to deliberately interrupt the use of the Service by the Appellant if the satellite or any component thereof loses power. **Clause 6.4** provides that to the extent that any period of interruption results in a loss to the customer of the use of the Service sufficient to

constitute a 'Confirmed Outage', the Appellant shall have all rights and remedies regarding Outage Credits.

36. The Full Time Agreement-Service Order has been reproduced above. It would, however, be relevant to also briefly describe what is contained in the Service Order. The Service Order has been executed between PanAmSat Information and CMM Broadcasting Network Limited. For the service starting from August 01, 2002 and ending on August 31, 2012 Service Fee of US\$ 40,000 has been prescribed. The Service Order refers to two bandwidths and four Attachments.

37. Attachment 1(a) deals with first allocated bandwidth of 4 MHz, while Attachment 1(b) deals with the second allocated bandwidth of 4MHz. Attachment 1(a) deals with transmission parameters of channel 1, while Attachment 1(b) deals with transmission parameters of channel 2. The uplink frequency as provided in Attachment 1(a) is 6002.00 MHz, while the downlink frequency is 3777.00 MHz. The uplink frequency as provided in Attachment 1(b) is 5998.000 MHz, while the downlink frequency is 3773.00 MHz.

38. Attachment 2 of the Full Time Agreement – Service Order deals with 'Transponder Segment Services'. **Clause 1.0** provides that unless otherwise specified in the Service Order, that portion of the service transponder which comprises Customer's Service shall be power and bandwidth limited, consisting of

transponder segment, equivalent to the amount of bandwidth specified in the Service Order and associated power on the service transponder which would be known as "Transponder Segment". **Clause 3.3** provides that PanAmSat reserves the right to assign and/or reassign Customers space segment allocation within the service transponder or to other Transponders within the applicable uplink and/or downlink beam of the satellite in order to minimize mutual interference between adjacent satellites.

39. Attachment 4 deals with 'Special Terms and Conditions'. **Clause 2** provides for total initial payment/termination right. Under this clause PanAmSat acknowledges that the customer has to obtain certain licensing from the Indian Government in order to comply with the payment terms of the Full Time Agreement. It is for this reason that the customer has been permitted to pay the charges for the month of September and October, 2002 and the security deposit by October 31, 2002, but from and after November 01, 2002 all other payments would be due in advance on the first business day of the month in accordance with Article II of the Master Agreement.

40. This fact is also clear from the Office Memorandum dated 25 June, 2006 issued by the Ministry of Information & Broadcasting regarding remittance of foreign exchange towards hiring of transponder by the Appellant and the same is reproduced below :

"This is with reference to M/s. Vedic Broadcasting Ltd's letter dated 22.1 2009 and subsequent correspondence requesting for correction in the No Objection issued vide OM of even number dated 21.1.2009 for remittance of foreign exchange towards hiring of transponder on foreign satellite.

2. In supersession to this Ministry's O.M. of even No. dated 21.1.2009, **the undersigned is directed to convey no objection on technical grounds for remittance of foreign exchange by M/s. Vedic Broadcasting Ltd. to the extent of USD 4,80,000 to M/s. Intelsat Global Sales & Marketing Limited, London towards meeting the charges for hiring transponder on IS-10 satellite for the period from November, 2008 to October, 2009 for the TV channels namely "AASTHA" & "AASTHA BHAJAN"** (earlier AASTHA INTERNATIONAL) subject to the following conditions:

1. M/s. Vedic Broadcasting Ltd. will continue to uplink from India.
2. M/s. Vedic Broadcasting Ltd. will adhere to Programme and Advertisement Codes laid down by Ministry of Information & Broadcasting while uplinking their channels.
3. M/s. Vedic Broadcasting Ltd. would furnish an undertaking that the amount of foreign exchange was spent for the bandwidth utilized for uplinking of the said channels by 31.10.2009 along with receipts giving details of payments made to M/s. Intelsat Global Sales & Marketing Limited, London."

(emphasis supplied)

41. It is, therefore, clear from the aforesaid Office Memorandum dated 25 June, 2009 issued by the Ministry of Information & Broadcasting, Government of India, that the Ministry had conveyed its no objection to the Appellant for remittance of foreign exchange by the Appellant to the extent of US\$ 4,80,000 to Intelsat towards **meeting the charges for hiring transponder on IS-10 satellite.**

42. The issue, therefore, that arises for consideration is as to whether under the Agreement Intelsat has leased out 8MHz bandwidth of its transponder or Intelsat is engaged in transmitting

signals. To appreciate this, it would be necessary to examine the purpose for which charges have been paid by the Appellants to Intelsat. The contents of the Service Order and the four Attachments to the Service Order leave no manner of doubt that the Appellant is required to pay a fixed fee of US\$ 40,000 per month to Intelsat. The Transponder Segment Service refers to two bandwidths and Attachments 1(a) and 1(b) each refer to allocated bandwidth 4.00 MHz bandwidth, thus making a total of 8MHz bandwidth. It is also clear from clause 1.0 of Attachment 2 to the Service Order that unless otherwise specified in the Service Order, that portion of the service transponder which comprises the Service to the Appellant shall be power and bandwidth limited, consisting of a Transponder Segment equivalent to the amount of bandwidth specified in the Service Order and associated power on the service transponder. Thus, the monthly fixed payment made by the Appellant to Intelsat relates to the lease of space segment capacity of the transponder and has nothing to do with the signals that are transmitted. This apart, the Office Memorandum dated 25 June, 2009 also supports this position. By the said Office Memorandum, the Ministry of Information & Broadcasting conveyed its no objection for remittance of foreign exchange by the Appellant to the extent of US\$ 4,80,000 for the period from November, 2008 to October 2009 to Intelsat towards meeting the charges for hiring transponder on IS-10 satellite. It needs to be noted that if the monthly services were dependent on signals, the charges would be variable and not fixed and would, therefore, be calculated at the end of the month. The transmission of signals is as a result of the

use of the space segment capacity of the transponder of the satellite. The relay station, as noticed above, is able to uplink the programme signals which are then reflected to the earth by the Intelsat transponder on the footprint area of the earth. This is so evident from the pictorial representation drawn above. This is also clear from the procedure described by the two experts that frequency uplinked with a particular power is automatically reflected back by the satellite without any alteration/modification of the programme contents with the help of equipments on the satellite and no human intervention takes place.

43. It is in the light of the aforesaid discussion that the issue as to whether any service has been provided by Intelsat, situated outside India, to the Appellant and this service is leviable to service tax under the head 'broadcasting service' in the hands of the Appellant under the reverse charge mechanism is required to be examined. The Appellant contends that the Agreement entered into between the Appellant and Intelsat is with respect to 'space segment allocation' for utilizing 8MHz bandwidth on a transponder of the satellite, while the Department contends that the down linking of the signals from the satellite is transmission of signals covered by the definition of 'broadcasting' and, therefore, leviable to service tax.

44. It would, therefore, be appropriate to reproduce the definitions of 'broadcasting' and 'broadcasting agency or

organization' under sections 65(15) and 65(16) of the Finance Act and they are as follows :

“65(15) ‘broadcasting’ has the meaning assigned to it in clause (c) of section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990) and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be; and in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means to cable operator including multisystem operator or any other person on behalf of the said agency or organisation, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner.”

“65(16) ‘broadcasting agency or organization’ means any agency or organization engaged in providing service in relation to broadcasting in any manner and, in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means to cable operator including multisystem operator or any other person on behalf of the said agency or organization.”

45. ‘Taxable Service’ under section 65(105)(zk) of the Finance Act means :

“65(105)(zk) – ‘taxable service’ means any service provided or to be provided to a client, by a broadcasting agency or organization in relation to broadcasting, in any manner and, in the case of broadcasting agency or organisation, having its

head office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programmes or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multisystem operator or any other person on behalf of the said agency or organisation.

Explanation: For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be taxable service in relation to broadcasting, even if the encryption of the signals or beaming thereof through the satellite might have taken place outside India."

46. A perusal of section 65(15) of the Finance Act shows that the definition of 'broadcasting' contains three parts, which are as under :

- (i) the means part;
- (ii) the first inclusive part; and
- (iii) the second inclusive part

47. Under the 'means part', reference has been made to the definition of 'broadcasting' under clause (c) of section (2) of the Prasar Bharati Act. It would, therefore, be appropriate to reproduce section 2(c) of the Prasar Bharati Act, which is as under:

2(c) "broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expression shall be construed accordingly."

48. Under the first inclusive part, programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing are also included in the definition of 'broadcasting'.

49. The second inclusive definition consists of the following three limbs :

- (a) List of entities in case of 'broadcasting agency or organization', having their head office situated outside India -
 - (i) branch office
 - (ii) subsidiary
 - (iii) representative in India
 - (iv) any agent appointed in India
 - (v) or by any person who acts on its behalf

- (b) List of activities performed by the service providers mentioned under (i) to (v) above, like the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means.

- (c) Last limb of the definition enumerates the list of recipients of the service, namely, cable

operators, multisystem operators or any other person.

50. The contention of the Department is that the activity undertaken by Intelsat in downlinking of the signal is transmission of signal and would fall in the definition of 'broadcasting' and, therefore, service tax is required to be paid by Intelsat, but since it is situated outside India, the recipient of service, that is the Appellant, shall have to pay service tax on reverse charge mechanism.

51. It would, therefore, have to be examined whether the activity said to have been performed by Intelsat would fall in the definition of 'broadcasting' as contained in section 65(15) of the Finance Act. The definition, as pointed out above, has three categories. Under the first category, 'broadcasting' has been assigned the meaning as contained in clause (c) of section (2) of the Prasar Bharati Act. Section 2(c) of the Prasar Bharati Act defines 'broadcasting' to mean the dissemination of any form of communication by transmission of electro-magnetic waves through space intended to be received by the general public through the medium of relay stations.

52. The contention of the Appellant is that it is the Appellant who would fall in the definition of 'broadcasting' and not 'Intelsat' for the simple reason that the activity of dissemination of various forms of communication by transmission of electromagnetic

waves through space through the medium of relay stations is at the instance of the Appellant, for which it has deposited service tax under forward charge as a 'broadcasting' service provider.

53. This submission of learned Counsel for the Appellant deserves to be accepted. The use of the words '**through the medium of relay stations**' is very significant in the definition of 'broadcasting' under section 2(c) of the Prasar Bharati Act. For Intelsat to fall in the definition of 'broadcasting', it must necessarily disseminate any form of communication by transmission of electromagnetic waves through space through the medium of relay stations. The definition 'broadcasting' under section 2(c) of the Prasar Bharati Act brings within its sweep the provision of broadcasting service by an actual broadcaster by availing the service/facility of a relay station which would be a satellite service provider, as Intelsat is in the present case. The activity of dissemination of any form of communication by transmission of electromagnetic waves through space alone cannot be regarded as 'broadcasting', unless it is intended to be received by the general public **through** the medium of relay station and not **by** a relay station. The term 'relay station' has not been defined under the Prasar Bharati Act. A relay station would be a fixed station or a mobile station such as a satellite that receives signals and rebroadcasts them at the same or a different frequency to extend the reach of the broadcaster. In the present case, relay station would be Intelsat that receives, amplifies and retransmits the signals to the desired footprint area on the earth. Intelsat, being a

relay station itself, therefore, cannot be said to be a broadcaster under section 2(c) of the Prasar Bharati Act. The Commissioner, therefore, clearly fell in error in concluding that Intelsat would be a broadcaster under section 2(c) of the Prasar Bharati Act.

54. It has now to be seen whether any service of 'broadcasting' as contemplated under the first inclusive part of the definition of 'broadcasting' under section 65(15) of the Finance Act has been performed by Intelsat.

55. The submission of learned Counsel for the Appellant is that Intelsat has not carried out any activity like programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing. This position is not disputed by the Department and there is no finding also of the Commissioner that the activity undertaken by Intelsat would fall in the first inclusive part of the definition of 'broadcasting' under section 65(15) of the Finance Act. The Department has, in fact, laid emphasis on the second inclusive part definition of 'broadcasting' under section 65(15) of the Finance Act.

56. As noticed above, the second inclusive part of the definition of 'broadcasting' under section 65(15) of the Finance Act deals with **broadcasting agency or organization** having its head office situated in any place outside India. It is for such a broadcasting agency or organization that the definition of 'broadcasting' includes the activity of selling of time slots or

obtaining sponsorships for broadcasting of any programme or permitting the rights to receive any form of communication by transmission of electro-magnetic waves through space or through cables or by any other means to cable operator including multisystem operator or any other person on behalf of the said agency or organization, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on his behalf.

57. It has, therefore, to be determined whether Intelsat is a 'broadcasting agency or organization' as defined under section 65(16) of the Finance Act. Under this section, 'broadcasting agency or organization' has been defined to mean any agency or organization engaged in providing service in relation to broadcasting in any manner. The contention of learned Counsel for the Appellant is that unless any 'agency or organization' is engaged in providing service **in relation to broadcasting** in any manner, it cannot be regarded as a 'broadcasting agency or organization'. The contention, therefore, is that if Intelsat is not a 'broadcasting agency or organization', it cannot be said to be providing any service of broadcasting under the second inclusive part of the definition of 'broadcasting' under section 65(15) of the Finance Act.

58. The contention of learned Authorized Representative of the Department, however, is that Intelsat is a 'broadcasting agency or organization' because the definition is very wide and would also include any agency or organization engaged in providing service **in**

relation to broadcasting in any manner. The contention is that by providing a designated band with a frequency of a particular band in a particular transponder of a satellite which is used for transmitting the signals at a particular minimum speed and of a particular power means that the activity carried out by Intelsat would be of 'broadcasting' and, therefore, Intelsat would be a 'broadcasting agency or organization'.

59. It is not possible to accept the contention of learned Authorised Representative of the Department. The second inclusive part of the definition of 'broadcasting' under section 65(15) of the Finance Act is in the context of a 'broadcasting agency or organization' having its head office situated in any place outside India. It is only in the case of a 'broadcasting agency or organization' that the activities mentioned in the second inclusive part of the definition, have to be examined, since 'broadcasting agency or organization' under section 65(16) of the Act means any agency or organization engaged in providing service **in relation to broadcasting**. It has already been seen that Intelsat is not providing any service of 'broadcasting' under the means part of the definition or the second inclusive part of the definition of 'broadcasting' under section 65(15) of the Finance Act. The meaning of the term 'in relation to' cannot be stretched to such an extent so as to include an activity which is not even covered under the definition of 'broadcasting'.

60. It also needs to be appreciated that the Appellant considers itself to be a broadcaster, and the service it provides as a broadcaster would be leviable to service tax under the head 'broadcasting' as it uplinks programmes through the relay station to a transponder of Intelsat from where it is downloaded for distribution to the cable distributors. It is only a portion of this activity of downlinking from the transponder of Intelsat to the footprint area on earth that is alleged to be a service provided by Intelsat to the Appellant, which service is alleged to be taxable on a reverse charge mechanism upon the Appellant. Since the entire activity comprising of production of programme content, encoding, modulating, up-linking and subsequent downlinking on the footprint area completes the activity of broadcasting at the end of the Appellant, on which it is depositing service tax, the limited activity of downlinking cannot be again made liable to tax as 'broadcasting' service in the hands of Intelsat, whose role is limited to leasing of space segment capacity on the transponder of its satellite.

61. The Appellant further contends that Intelsat is not engaged in transmitting signals *per se* but is instead engaged in the activity of leasing out space segment capacities of transponders on its satellite. The transmission of signals is the result of use of space segment capacity of a transponder of the satellite as a result of which the relay station is able to uplink the programme signals which are merely reflected to the earth by Intelsat on the footprint area. To support this contention, the

Appellant has relied upon the procedure explained by the two experts and has submitted that a satellite is designed in such a manner that the radio frequency uplinked with a particular power are automatically reflected back without any alteration/modification of the programme contents with the help of internal process of set on-board equipments. Thus, no human intervention takes place. Thus, according to the Appellant, the Agreement with Intelsat is with respect to **leasing of space segment capacity of its transponder** and, therefore, it cannot be said that Intelsat is engaged in transmission of electromagnetic waves/signals.

62. This position has been seriously disputed by learned Authorized Representative of the Department and some interesting issues have been raised to defend the impugned order of the Commissioner. It has been submitted that the Agreement contains features relating to both allocation of bandwidth and transmission of signals and, therefore, the activity which gives the essential character to the transaction as per section 65(A)(2)(b) of the Finance Act would be the main activity. In this connection, the following submissions have also been advanced :

- (i) In the Revised Carrier Plan, the rate of transmission of data/signal has been specified as 4095.8 Kilobytes per second and the minimum downlink signal strength as 15.6 decibel watts which indicates that the speed and strength of transmission of data/signal have been recognized as two crucial aspects of the Agreement in addition to frequency bandwidth;

- (ii) As per clause 3.3 of Attachment 2 relating to Services Attachment dealing with frequency assignment, PanAmSat reserved the right to assign and/or reassign customers space segment allocation within the service transponder or to other transponders within the applicable uplink and/or downlink beam of the satellite. Attachment 1(a) and 1(b) also show that frequency assignments are tentative and subject to change. Thus, there is no fixed frequency band or a fixed transponder that is hired by the Appellant since both the transponders and the frequency of bandwidth can change;
- (iii) Clause 4 of the Agreement dealing with charges and payments shows that the monthly charges paid by the Appellant are not based on the amount of bandwidth being hired. In fact, the charges are based on the amount of data/signal being transmitted and the speed of the data as is clear from the third column of the Revised Carrier Plan;
- (iv) From a perusal of clauses 2, 2.1, 2.3, 3.3, 3.4, 3.5 and 6.1 of the Agreement, it is clear that :
- (a) Certain terrestrial facilities have also been provided under the Agreement along with space segment allocation.
 - (b) The Agreement covers not only allocation of a particular bandwidth of a particular band of a particular transponder of the satellite owned by Intelsat but also transmission of signals at a

particular minimum speed and of particular strength/power also takes place under the Agreement.

- (c) The same transponder and the same satellite is also being used simultaneously by other customers of Intelsat (non-exclusive use).
- (d) The term "interruption of service" refers specifically to transmission of signals because a bandwidth once allocated cannot be interrupted. Interruption can only be of transmission and not of allocation of bandwidth.
- (e) The payment is linked to the uninterrupted transmission of signals. The charges for the provision of service are not for the amount of bandwidth allocated but for the amount of data and the speed of data being transmitted.
- (f) Intelsat can change frequency bandwidth or the transponder or the satellite whenever it likes but it has to ensure the transmission of signals at a particular minimum speed and of specified strength to ensure proper transmission of TV programs of the appellant.;
- (v) It is clear from the above that the transmission of signals, the minimum speed of data and the strength of signal during down linking are the critical factors governing the provision of services under the Agreement and, therefore, the transmissions of signals is a predominant character of the services being provided by Intelsat; and

(vi) Even if the test of "intention of the parties" behind the said activity as explained by the Supreme Court in **Bharat Sanchar Nigam Ltd.** is applied, it would be clear that the intention of the Appellant is to get the TV programmes in the form of radio waves transmitted from one part of the earth to another and it is not the intention of the Appellant to hire a space on the satellite. It is of prime importance to the Appellant that the transmission of TV programmes at a particular speed and of a particular power or signal is obtained so that the quality of TV programmes remain unaffected during the transmission. Clauses 5.1 (confirmed outage) and 5.3 (outage credit) of the Agreement indicate that the fee paid to Intelsat is directly related to the provision of uninterrupted service.

63. Learned Authorized Representative of the Department has laid much emphasis on the Revised Carrier Plan to contend that since the rate of transmission of data signal has been specified as 4095.8 Kilobytes per second and the minimum downlink signal strength as 15.6 decibel watts, it means that the speed and strength of transmission of data/signal are two crucial aspects of the Agreement in addition to frequency bandwidth.

64. As noticed above, what is important to note is that the fixed charges are purely based on assignment of space segment capacity of a transponder and are not linked to speed and strength of transmission of data/signal. Even under the Revised Carrier Plan dated July 7, 2015, the monthly charges remain at US\$ 40,000 per

month. A carrier plan is an estimated calculation based on various technical aspects in order to obtain optimum quality of video. It specifies parameters for the desired carrier in a particular space segment on the satellite transponder. A Revised Carrier Plan is drawn when a broadcaster desires to add an additional channel within the located bandwidth. This has to be approved by the Wireless Planning Commission and the concerned Ministry and may result in change of the parameters drawn up in the earlier Carrier Plan. Thus, parameters are arrived at for the optimum utilization of the space segment and to ensure that the transmit power levels will not cause any interference to adjacent carriers and will also not pose any damage threat to the transponders on the satellite. Therefore, the parameters mentioned under the Carrier Plan have no linkage to the fixed monthly charges for the allocation of 8 MHz bandwidth. The mere fact that the assignment of space segment capacity of transponder is fixed at USD 40,000 per month, for contracted 8 MHz bandwidth, whether used or not, would conclusively prove that the said charges are not towards transmission of signals, otherwise the same would have been variable every month, as per the quantum/speed of frequencies transmitted. It is, therefore, not possible to accept the submission of learned Authorized Representative of the Department.

65. Learned Authorized Representative of the Department also laid emphasis on Clause 3.3 of Attachment 2 dealing with the right reserved by Intelsat to assign and/or reassign Customer's space segment allocation within the service transponder or to other

transponders and to the contents of Attachment 1(a) and 1(b) to demonstrate that there is no fixed transponder or fixed frequency bandwidth that is hired by the Appellant since both the transponders and the frequency of bandwidth can change.

66. This submission is based on a misreading of Clause 3.3 of Attachment 2 and the provisions of Attachment 1(a) and 1(b). A reading of Clause 3.3 of Attachment 2 makes it clear that the assignment and/or reassignment of the space segment allocation of the Appellant and space segment allocation of other customers within the service transponder or to other transponders within the applicable uplink and/or downlink beam of the satellite is to minimize mutual interference between the adjacent satellites in order to ensure compliance with applicable coordination agreements with other networks, and/or to permit efficient loading of the satellite. This is a step to ensure non-interference of signals with corresponding transponders so that the lease segment capacity of the transponder is effectively utilized by the broadcaster or broadcasting agencies or organizations.

67. It has also been submitted by the learned Authorized Representative of the Department that certain terrestrial facilities have also been provided under Clause 2.2 of the Agreement with space segment allocation.

68. It is not possible to accept this submission. Clause 2.2 of the Agreement provides that Intelsat shall provide its service

using satellite and/or terrestrial facilities owned and/or operated by Intelsat and/or third parties under contract with Intelsat. This simply means that Service would be provided to the Appellant using a satellite and/or terrestrial facilities. The term 'terrestrial' means 'of or related to the earth or its inhabitation'. It does not mean that Intelsat is providing certain terrestrial facilities with the space segment allocation.

69. Learned Authorized Representative also submitted that the Appellant does not have a non-exclusive right to use the Service since the same transponder and the same satellite is also simultaneously used by other customers of Intelsat.

70. This submission is based on Clause 2.1 of the Agreement which provides that all Services are offered on a non-exclusive basis. This only means that the satellite including its transponders is not used for providing Service on an exclusive basis to a particular user. A space segment capacity of a transponder in a satellite can be leased out to several/multiple users. It does not mean that the same space segment of a transponder can be used by multiple customers with the Appellant at the same time. A satellite has a number of transponders and each transponder has a certain amount of bandwidth. A customer may not take on lease the entire bandwidth of a particular transponder. In the instant case, the Appellant has taken lease of only 8 MHz bandwidth out of the 54 MHz bandwidth of the transponder. This 8 MHz bandwidth allocated to the Appellant is

for exclusive use of the Appellant and cannot be allocated to any other user. It is only the remaining bandwidth of the transponder that can be allocated to any other user. It cannot also be denied that Intelsat may be providing Services to many users from its various transponders. It is a particular space segment of a particular transponder that has been taken on lease by the Appellant.

71. Much emphasis has been laid by learned Authorized Representative of the Department on Clause 6 of the Agreement dealing with 'Interruption of Service' and it has been contended that the term 'Interruption of Service' refers specifically to transmission of signals because a bandwidth or frequency once allocated cannot be interrupted.

72. This submission is based on a misreading of Clause 6 of the Agreement. Clause 6 of the Agreement has to be read with Clause 2 of the Agreement relating to 'Provision of Services' as also Clause 1.0 of the Service Order. Under Clause 2.3 of the Agreement, Intelsat reserves to itself the right to assign and/or reassign space segment allocation provided to the Appellant within the satellite identified in the Service Order or to move the Service to a different satellite provided that any such change does not result in a failure of the Service to meet the Service Specifications. Clause 1.0 of Attachment 2 to the Service Order fixes the space segment. Thus, the Service agreed to be provided to the Appellant comprises of bandwidth which is the space segment capacity. Any

interruption of service will necessarily refer to the space segment capacity and not transmission of signals. 'Interruption of Service', therefore, would refer to non-functioning of the transponder, as a result of which there would be no transmission of signals. A transponder may not function for various reasons including loss of power. It is in such a situation that a right has been conferred on the Appellant to seek remedies regarding 'outage' credit in accordance with Clause 5.3 of the Agreement.

73. It has also been contended by learned Authorized Representative of the Department that the test of 'intention of the parties behind the transaction should be examined', as was observed by the Supreme Court in **Bharat Sanchar Nigam Ltd.** According to the learned Authorized Representative, it is clear that the intention of the Appellant is to get its TV programmes in the form of radio waves transmitted from one part of the earth to another part and it is not the intention of the Appellant to hire frequency bandwidth. In fact, what is of prime importance to the Appellant is the transmission of TV programmes at a particular speed and at a particular power of signal, so that the quality of TV programmes remains unaffected during the transmission.

74. This aspect has already been considered at length. It is clear that the intention of the Appellant is to secure a dedicated bandwidth for its use for uplinking and downlinking the programme signals. A dedicated use of bandwidth of the transponder of the satellite ensures that the Appellant is able to broadcast its

programme signals and it is, therefore, incorrect to suggest that the transmission of signal is the predominant intention of the parties. A satellite operator leases the space segment capacities of the transponder of the satellite and though it is correct that the lease of the space segment capacity of the transponder is utilized for uplinking and downlinking the programme, but it cannot be said the Intelsat has contracted to broadcast/transmit the programme signals. In case the space segment capacity of a transponder is not leased, a broadcaster would not be in a position to uplink and downlink the programme signals. Intelsat has, it is clear, leased space segment capacity of the transponder and transmission of signals is ancillary to such leasing activity. It also needs to be appreciated that whether or not the Appellant uses the space segment capacity of the transponder for uplinking and downlinking of signals, it has to pay the monthly charge of US\$ 40,000 to Intelsat.

75. Learned Authorized Representative of the Department laid much emphasis on section 65A of the Finance Act to contend that since the Agreement contains features relating to both allocations of bandwidth and transmission of signals, the activity which gives such a transaction its essential character, has to be determined in accordance with sub-section (2)(b).

76. It would, therefore, be necessary to reproduce section 65A of the Finance Act. It is as follows :

“65A. Classification of taxable service -

(1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clauses of clause (105) of section 65.

(2) When for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows:—

- (a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;
- (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, insofar as this criterion is applicable;
- (c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration.”

77. A bare perusal of section 65A(1) shows that classification of **‘taxable services’** shall be determined according to the terms of the sub-clauses of clause (105) of section 105. Sub-section (2) of section 65A stipulates that **when for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of section 65**, then the **classification shall be effected either under (a) or (b) or (c)**. Thus, for section 65A(2)(b) to apply, there has to be a classification dispute between two or more **taxable services**. In the present case, the lease of space segment capacity of the transponder is not taxable as it is subjected to State VAT, being akin to “transfer of right to use goods”. Even if the transmission of signals, as per the impugned order and as per the submissions of the learned Authorized Representative of the Department, is covered under ‘broadcasting service’, then too the rule of

classification contained in section 65A of the Finance Act cannot be applied since it involves only one taxable service and one non-taxable service. Thus, the essential character test cannot be applied in the present case.

78. The inevitable conclusion, therefore, that follows is that the contention of the Department that the down linking of the signals from the satellite is transmission of signals covered by the definition of 'broadcasting' and, therefore, leviable to service tax on the Appellant under a reverse charge mechanism cannot be accepted. The Commissioner, therefore, committed an error in holding that Intelsat has provided 'broadcasting' service to the Appellant and so the Appellant has to pay service tax on a reverse charge mechanism.

79. Thus, for all the reasons stated above, it is not possible to sustain the impugned order dated November 30, 2015 passed by the Commissioner. It is, accordingly, set aside and the appeal is allowed.

(Pronounced in the open Court on 08 July, 2020)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(P.V. SUBBA RAO)
MEMBER (TECHNICAL)**