

Internet services exempted from excise duty, rules SC

ISLAMABAD: The Supreme Court has ruled that voice communication through internet does not attract federal excise duty (FED).

“Internet services and facilities are wholly exempted from FED and nothing extraneous can be read into the relevant entry to qualify or restrict such exemption,” said Justice Maqbool Baqar on Friday in a judgement he authored.

It is a settled point in law that a fiscal provision of a statute has to be construed literally in favour of the taxpayer since any charge or levy of tax can be imposed in unambiguous and categorical terms only and not by presuming any intendment, said the judgement.

The verdict came on an appeal moved by Islamabad’s commissioner of inland revenue (legal) against a May 21, 2018, order of the Islamabad High Court.

The dispute revolved around the question that since internet services were exempted from payment of FED under the Federal Excise Act (FEA) 2005, would the transmission of ‘voice content’ through internet attract levy of the duty or not. In the end, the Supreme Court, however, dismissed the appeal.

Messers Wi-Tribe Pakistan, which holds a wireless local loop licence, was issued a show cause notice by the tax department for non-payment of FED on account of services falling under the definition of “telecommunication services” rendered from Jan 2011 to Dec 2012.

The issue was then taken up by a tribunal which held that since internet services were exempted from FED, voice content transmitted through internet also enjoyed such exemption.

The Islamabad High Court upheld the tribunal’s decision.

In its verdict on Friday, the Supreme Court held that although telecommunication services attract levy of FED, internet service has been exempted from payment of excise duties.

Table-II of the Third Schedule of the Federal Excise Act defines telecommunication services as: “Internet services, whether dialup or broadband, including email services, data communication network services (DCNS) and value-added data services.”

This throws light on two important aspects, the judgement said. First, not all communication services attract levy of FED, and second, internet services fulfil the definition of communication services, but do not attract levy of FED.

The judgement also noted that while granting exemption, no exception was created nor any categorisation developed.

The internet company, the judgement said, was an internet service provider (ISP) and it charges for such service only. Although a customer may utilise internet facility for different purposes, such as browsing and downloading, he has no concern with such facilities nor does he provide or control the same or charge any fee or amount.

The fee or amount that an ISP collects from its customers is for internet connectivity only, the verdict explained.

Since there is a zero charge in respect of internet service as neither any amount is paid nor any prescribed, no duty can therefore be charged due to this handicap, the verdict said. Moreover, the fee charged by the ISP is either by way of a package (fixed charges) or on actual usage of the internet data measured in bytes.

But there is no mechanism, device or formula to decipher or segregate such consumption for using different utilities nor were any rules, regulations or policy ever devised for such purposes, the judgement said.

There is no lawful means to determine or charge FED, as being sought by the petitioner, according to the judgement. Thus the respondent company cannot be deprived of the statutory benefit through misinterpretation and misreading, as attempted by the department, the ruling said.

“In view of the foregoing, we have found the high court judgement in consonance with the law and the same does not call for any interference by this court (Supreme Court),” the verdict said.