

General Manager (Telecom) Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-10-2003

Reported in : (2003)(88)ECC800

Judge : K Usha, N T C.N.B.

Appellant : General Manager (Telecom)

Respondent : Cce

Judgement :

1. These two appeals by General Manager (Telecom), Chandigarh related to the same issue, demand for interest on the ground that there was delay in depositing service tax payable on Telecom service by the appellant Accordingly, both the appeals were heard together and are being disposed of under this common order. The alleged delay in regard to the payment of service tax arose for different months between 1995-1998. The allegation is that under Section 68 (2) of the Finance Act, a service provider is to make payment of service tax by the 15th day of the month immediately following the calendar month in which the amount of service tax is required to be collected, while it was observed from the quarterly returns that there was delay of varying periods in effecting the service tax payment. The contention of the appellant was that there was no delay at all in paying service tax to the Central Government inasmuch as the entire amounts payable by customers towards both telecom service and service tax was being credited to the account of the Central Government through Post Offices or otherwise at the time of recovery itself. It is the submission of the appellant that

during the relevant period, the appellant was a Central Government Department and in terms of the arrangement for collection of telecom charges, customers were making payment of the amount to the account of the Central Government in the Post Offices or other collection centres. In these circumstances, it is the contention of the appellant that the question of delay in crediting the service tax to the Government account cannot arise. During the hearing of the case, the appellant's counsel has explained in detail the mechanism laid down by the Government for collection of service tax. It was pointed out that, in terms of that arrangement, the entire amount paid by the subscribers is deposited into Central Government Accounts and the service tax amount is subsequently transferred through Book Entry to the relevant head. Learned Counsel submitted that in these circumstances, the General Manager of Telecom cannot cause any delay in depositing the service tax amount. The time taken for book entry is entirely attributable to the compilation and tallying of amounts separately, between the amounts attributable to the telecom charges and service tax.

2. Learned DR would contend that in terms of Section 68(2) of the Finance Act, 1994 service tax collected during any calendar month shall be paid to the credit of Central Government by 15th of the month following the said calendar month. He submitted that until the book entry is made and the amount is transferred to the relevant head for service tax 0044, the credit of the amount to service tax does not take place. It is his contention that date of payment of service tax would be the date on which the book entry is made, effecting the transfer of the amount to the service tax head 0044. He maintains that it is of no relevance that the entire amount attributable to the telecom charges as well as service tax remains deposited from the time of its collection in the credit of the Central Government.

3. During the relevant period the appellant was a part of Central Government. The accounting rule relating to collection of telecom charges and service taxes remained stipulated by the Government itself.

The appellant could not effect collection of amounts or disbursements from the same, in any manner other than in the manner stipulated. The entire amount due from customers as telecom charge and service tax were being deposited in the

Post Offices etc. in the account of the Central Government, In these circumstances, we find merit in the appellant's contention that there was no delay on its part in making payment of service tax in the credit of Central Government and he could not be faulted for following collection and accounting procedure laid down by the Government itself.

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