

Fascel Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-24-2005

Reported in : (2006)STR103

Judge : A Wadhwa

Appellant : Fascel Ltd.

Respondent : Commissioner of Central Excise

Advocate for Pet/Ap. : Shri. Uday Joshi Id

Judgement :

1. The appellant is a cell phone service provider and is liable to pay service tax on the services provided. The appellant were separately registered at Ahmedabad, Baroda and Surat. During the year 1997-98, in respect of Baroda unit, duty to the extent of Rs. 2,95,155/- (Two lakhs ninety-five thousand one fifty-five only) was excess paid by them.

Subsequently, the appellant applied for the centralised registration, which was granted to them. They adjusted the above excess payment of duty towards the confirmed demand of duty at Ahmedabad which was objected to by the revenue and the matter was adjudicated by Ahmedabad Central Excise Authorities confirming the demand of duty in question.

On appeal, the appellate authority remanded the matter. In remand proceedings, duty was again confirmed against Ahmedabad and the appellant also paid the

same, with the result that the excess payment at Baroda became due to them. The order in remand proceedings, confirming the demand of duty against the Ahmedabad unit was passed on 29-11-2001. Thereafter, the appellant filed a refund claim of duty paid at Baroda on 7/10-1-2002. Deputy Commissioner vide his order dated 26-8-2003 allowed the refund of excess duty paid. The said order was reviewed, by the Commissioner and vide his impugned order dated 25-11-2004, he rejected the refund claim and ordered recovery of the same from the appellant on the ground that the excess duty was paid in the year 1997-98 and the refund claim was filed in January 2002 i.e.

barred by limitation of 6 months in terms of the provisions of Section 11B.2. I have heard Shri Uday Joshi Id. Advocate appearing for the appellant and Shri N.V.B. Nair, Id. JDR appearing for the revenue.

3. I find that in terms of Section 6(4) (sic) of Finance Act, 1994, there is a provision for assessment of duty on provisional basis in case any assessee makes a request in writing to the same effect to the Assistant Commissioner of Central Excise. As such, if the assessment are provisional, applying the relevant date as appearing in Section 11B, which has been made applicable to the provisions of Service Tax vide Section 83 of the Finance Act, 1994, the same would be the date of final assessment. Admittedly in the present case, neither the refund claim was filed within the period of 6 months nor the assessment was provision, in which case the refund claim having been filed in January 2002. prima facie, cannot be said to have been filed within the limitation period. Ld. Advocate contends that the assessment should be treated to have been finalised when the remand order confirming the demand of duty against Ahmedabad was passed in 2001, does not carry much force inasmuch as there is no such provision in law to treat the above situation as equivalent to finalisation of assessment. The appellant on their own opted for adjustment of excess payment at Baroda towards confirmed demand at Ahmedabad without any consent on the part of Central Excise authorities, instead of filing the refund claim at Baroda unit. As such, I am of the view that the appellant does not have a prima facie case in their favour. Accordingly, I direct the appellant to deposit an amount of Rs. 1.5 lakh within a period of 8 weeks from today and report compliance on 29th July 2005 when the appeal itself would be

taken up for final disposal after ascertaining compliance with the above order.

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