

Bharti Cellular Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-06-2005

Judge : S Kang, Vice-

Appellant : Bharti Cellular Ltd.

Respondent : Cce

Judgement :

1. The appellants filed this appeal against the order in appeal passed by the Commissioner (Appeals). The appellants in the present case were paying the Service Tax in respect of the services provided by the appellants. The appellants filed a Return from October, 1998 to March 1999 i.e. Half Yearly Return as provided under Rule 7 of the Service Tax Rules 1994. During this period for the month of October, 1998 and January, 1999, the appellants paid less Service tax than the payable.

For the remaining months, the appellants paid excess amount of Service tax than the Service Tax due.

2. In the impugned order the Commissioner (Appeals) held that wherever the appellants paid excess amount of Service Tax they can file return and wherever the appellants paid less amount they have to pay.

3. The contention of the appellants is that if the excess amount is to be adjusted against the short payment, there was no demand. The appellants relied upon the

provisions of Rule 7 of the Service tax whereby such adjustment is provided.

4. Learned Departmental Representative reiterated the finding of the lower authority.

5. In this case the appellants claimed the adjustment excess paid of Service Tax against the demand on account of short payment of Service Tax under Rule 7 of the service tax Rule, 1994. Rule 7 of Service Tax Rules, 1994 is as under: "Returns - Every assessee shall submit a half yearly return in Form 'ST-3' or 'ST-3A', as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly return.

(2) Every assessee shall submit the half-yearly return by the 25th of the month following the particular half-year.

(3) The Central Excise Office shall thereupon, assess the service tax payable including interest, if any, payable thereon and complete the assessment memorandum. A copy of the return so assessed shall be sent to the assessee.

(4) The service tax determined and paid by the assessee shall be adjusted against the service tax assessed by the Central Excise Officer under sub-rule (3) and where the service tax so assessed is more than the service tax determined and paid by the assessee, the assessee shall pay the deficiency, along with amount of interest determined thereon, within ten day of the receipt of the copy of the return from the Central Excise Officer and where such service tax is less, the assessee may apply for refund in accordance with the provisions of section 11B of the Central excise Act, 1944." 6. As per the declaration for the period October 1998 to March 1999, the appellants paid excess amount of Service Tax for the month of November, December 1998 and the February and March 1999, the appellants paid Service Tax in short for the month of October, 1998 i.e. Rs. 3,126/- and for the month of Rs. 6,09,065/-. I find appellants paid excess Service Tax of Rs. 5,51,251/- for the month of 1999 and also paid excess for the month of November and December 1998 and February 1999.

If the adjustment of excess paid service Tax is made against short payment, the appellants still have paid more Service tax.

7. The Rule 7 of Service Tax Rule provides the adjustment of excess payment of Service Tax against the deficiency in respect of payment of Service Tax during the period covered under the Return. Therefore, the finding of the Commissioner (Appeals) in the impugned order is that such adjustment is not permissible is not sustainable, hence set aside.

The impugned order whereby the demand was confirmed in respect of the short payment is set aside and the appeal is allowed.

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