

G.M. Telecom, Bsnl Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-10-2005

Reported in : (2006)(113)ECC83

Judge : S Kang, Vice-, S T T.V.

Appellant : G.M. Telecom, Bsnl

Respondent : Cce

Judgement :

1. The appeal is being taken up with the stay petition as the appeal is also listed for regular hearing. appellant filed this appeal against the order in appeal passed by the Commissioner (Appeals) whereby the interest was demanded in respect of the service tax, which was paid late.

2. The contention of the appellant is that prior to September 2000, the appellants were the Department of Government of India. They are collecting telecom charges along with the service tax from their customers and Page 85 amounts were deposited in the account, i.e. under the head telecom receipt on day-to-day basis. Prior to October 1998, the service tax is to be paid through book adjustment from the account of telecom receipt and, thereafter, the appellant deposited the service tax after withdrawing the amount from telecom receipt. The contention is in the present case that the amount in respect of service tax duly collected from their customers were regularly deposited along with telephone charges in the telecom receipts. As the amount of service tax was deposited in the account of Central

Government Department and on pointing out by the Revenue by way of issuing a show cause notice, the amount of service tax was duly deposited in appropriate account relates to service tax. The contention is that as the amount is already deposited in the account of Central Government, i.e. Telecom receipt, therefore, the appellants are not liable to pay any interest in respect of the service tax. The appellants relied upon the following decision of the tribunal. General Manager (Telecom) v. CCE, Chandigarh. The appellants also submitted that being a government department they got clearance from the committee on disputes for pursuing the appeal with the tribunal and while granting the permission the committee was of the opinion that no interest is payable in view of the opinion obtained from the department of Legal Affairs, Ministry of Law. The contention is that the demand in respect of interest on the amount in question is not sustainable.

3. The contention of the Revenue is that appellants cannot take advantage being a government department and the liability to pay interest is there as appellant paid the service tax after the due dates. The Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Trade Tax, Lucknow v. Kanhai Jai Thekedar all the assesses are to be treated on the same footing and the appellant being Government of India Department, cannot be treated as the different assessee. As the appellant had paid service tax after the due date and this fact is not denied by the appellant, therefore, as per the provisions of Section 75 of the Finance Act, appellants are liable to pay interest upto the date of deposit of service tax. The Revenue also relied upon the decision of the Tribunal in the case of G.M. Telecom BSNL v. Commissioner of Central Excise, Chandigarh reported in 2003 (160) ELT 318 (Tri-Del.) to submit that the book adjustment in respect of service tax is only upto October, 1998.

4. In this case the issue is only in respect of the interest on the late payment of service tax. The appellant, up to September 2000, was the department of Central Government. The appellants collected the telecom charges along with the service tax from their customers. This amount was deposited in the Central Government account i.e. Telecom receipt on the day-to-day basis. No doubt, the amount of service tax collected by the appellant is to be deposited in the relevant head of service tax and this was done. As Page 86 Revenue pointed out this omission the

demand of interest was raised on the ground that service tax was deposited in the relevant Head after the due dates. The appellant approached the committee of Disputes for obtaining the necessary permission to pursue the appeal in the tribunal and the committee after obtaining the opinion of Department of Legal Affairs, Ministry of Law granted the permission by noticing the following observations: The committee noted that the matters in dispute relate mostly to the period prior to the coming into being of BSNL, a PSU, which has taken over the operations of telecom services in the country (except Mumbai and Delhi). Accordingly, the dispute relates to the period when the telephone services in the country (except Mumbai and Delhi) were being provided departmentally by the Department of Telecommunication, Ministry of Communications. The service tax was collected along with the bills for telephone rental, call charges etc. and the telephone subscribers had the facility to deposit their telephone bills (including service tax) in the post offices or other collection centres. The service tax was accordingly deposited in the government account in time and the said delay relates to transfer of the service tax deposited in time to the relevant budget head. It is clear that the due service tax was deposited with the government in time, thereafter, it is only a procedural matter of transferring the amount from one account of the government to the other account. The committee accordingly came to the conclusion that the delay in depositing of service tax referred to by CBEC is not really a delay at all and as such, the question of payment any interest and/or penalty does not arise. The committee noted that the Department of Legal Affairs, Ministry of Law and also had occasion to examine the facts involved in the so called dispute and had opined that in case the service tax had been deposited in a "head" different from the one in which the same is required to be deposited and subsequently in it was deposited in the appropriate head, in that event it may only be a technical default. The committee decided that it was not at all a question of depositing the amount first in a head different from the one, which was supposed to be deposited and later deposited in the relevant head, but only a question of book entries to transfer of the amount deposited in time to the relevant budget head of the account. What is important is that the due amount of service tax had been deposited in time in the government account and thus there was no delay in the tax being deposited with the government and as the government is one entity,

levy of interest and/or penalty does not appear to be justified for such construed delay in depositing of the service tax. The committee accordingly decided to give clearance to BSNL to the appeals in the CESTAT in respect of agenda Item Nos. 16, 17, 32, 33, 34, 43.

5. Further, we find that the issue of interest on the late payment of service tax by the appellant also came before the tribunal in the case of General Manager (Telecom) v. CCE, Chandigarh-2 . Page 87 It is also the issue before the tribunal in case relied upon by the Revenue i.e. G.M. Telecom BSNL v. CCE, Chandigarh reported in 2003 (16) ELT 318 (Tri-Del.). In the above decisions, the tribunal set aside the demand of interest on the ground that amount of service tax was deposited by the Telecommunication Department in the head other than the service tax and thereafter, the amount of service tax was transferred to the relevant head through book adjustment. Therefore, in these circumstances, and in view of the above decisions of the Tribunal, we find that demand of interest is not sustainable, hence, set aside after waiving the pre-deposit. The appeal is allowed.

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