

M.T.N.L. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-27-2005

Judge : M T K.C.

Appellant : M.T.N.L.

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal is filed by M/s. Mahanagar Telephone Nigam Limited against Order-in-Appeal dated 25-3-2003 passed by the Commissioner of Central Excise (Appeals), Delhi-I.2. A show cause notice dated 1-10-97 was issued to the Chief General Manager, MTNL, that they have collected service tax during the months from Jan. 1997 to March, 1997 but have failed to credit such tax to the Central Government and accordingly, they are liable to pay interest of Rs. 6,72,205/- on delayed payment of service tax @ 1.5% per month Under Section 75 of the Finance Act, 1994. The show cause notice was adjudicated by the Dy. Commissioner under Order-in-Original No. 3/98 dated 19-11-98, by which he confirmed the interest upto the extent of Rs. 5,20,871/- and the balance amount was dropped. The appellants had filed appeal against this order of the Dy. Commissioner before Commissioner (Appeals). It was decided under Order-in-Appeal dated 4-5-2001 dropping the demand. When the appeal was pending before the Commissioner (Appeals), a show cause notice was issued to the appellants on 27-9-2000 by Additional Commissioner proposing to amend the order-in-original no. 3/98 dated 19-11-98 passed by the Dy.

Commissioner to the extent that differential amount of Rs. 1,51,334/- should not be recovered from them Under Section 75 of Finance Act. The Addl. Commissioner passed an order-in-original no. 3/2000 dated 16-11-2000 on the show cause notice and confirmed the demand of Rs. 1,51,334/-towards interest besides Rs. 5,20,871 /-, which was already confirmed by the Dy. Commissioner under his order dated 19-11-98. The appellants filed an appeal against this order of the Addl. Commissioner before the Commissioner (Appeals), who decided the appeal under the impugned order on 25-3-2003. Before the Commissioner (Appeals), the fact of passing of the order-in-appeal dated 4-5-2001 was stated and a copy of order-in-appeal No. 492/2001 dated 4-5-2001 passed by the Commissioner (Appeals) earlier was also placed on record. However, under the impugned order, the Commissioner (Appeals) simply ignored the order without giving any finding on those facts and passed the present order. It was argued that the Commissioner (Appeals) in the earlier order had held that the assessments were provisionally made and the duty was paid in time and hence, interest was not chargeable. This ground was not taken into consideration in the present impugned order of the Commissioner (Appeals). Therefore, the order may be set aside.

3. On behalf of Revenue, it was pleaded that the original authority has issued the show cause notice within his power Under Section 74 for rectification of mistake. The mistake was in calculation of the demand and, therefore, it was correctly issued as at that time, no order has been passed by the Commissioner (Appeals). However, when the Commissioner (Appeals) has passed an order and this order of the Commissioner (Appeals) was produced before the second Commissioner (Appeals), whose order is under appeal at present, he has not given any finding. Therefore, apparently, there is a contradiction between these two orders of the Commissioner (Appeals), one dropping the demand of Rs. 5,20,871/- whereas under the impugned order this dropped demand along with additional demand of Rs. 1,51,334/- has been confirmed.

Thus, there is apparent contradiction in both the orders.

4. I find that the Commissioner (Appeals) under the impugned order has given a finding that this is not an appeal against earlier order No.3/98 dated 19-11-98

passed by the Dy. Commissioner, Central Excise and, therefore, I need not to go into the grounds concerning issue involved therein. I find that this finding of the Commissioner (Appeals), on fact, is correct. In the earlier order-in-original No. 3/98 dated 19-11-98, the demand of Rs. 5,20,871/- was confirmed. This demand was dropped by the Commissioner (Appeals) under order-in-appeal no.

492/2001 dated 4-5-2001. Show cause notice was issued to appellants for amendment of order-in-original no. 3/98 dated 19-11-98 demanding duty of Rs. 1,51,334/- and this was confirmed by the Additional Commissioner. On appeal, Commissioner (Appeals) under impugned order in para-6 has held that appellants ought to have paid interest of Rs. 5,20,871/- plus Rs. 1,51,334/-. This finding is contrary to the facts as amount of Rs. 5,20,871/- was dropped by the Commissioner (Appeals) under order-in-appeal no. 492/2001 dated 4-5-2001. Therefore, this order is set aside and the case is remanded back to the Commissioner (Appeals) to re-decide the issue after taking into consideration the order-in-appeal no. 492/2001 under which the amount of Rs. 5,20,871/- was dropped by the Commissioner (Appeals) for the same period.

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