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Commissioner of Central Excise Vs. Bsnl

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-30-2005

Reported in : (2007)8STT368

Judge : R Abichandani, S T T.V.

Appellant : Commissioner of Central Excise

Respondent : Bsnl

Judgement :

1. Revenue filed this appeal against the order-in-appeal dated 28-2-05 passed by Commissioner (Appeals). While passing impugned order the Commissioner (Appeals) has considered the plea made by the respondents that the demand was time barred in terms of subsection 1 of Section 73(1)(a) and thereafter, reflexed the period of demand modifying the Order-in-Original. As the SCN was issued on 11-6-2001, the Commissioner (Appeals) took into account the month of April 96 for calculating the demand since under the Service Tax Law the quarterly payment for the month between April to June is made in the month of July. In addition, the Commissioner (Appeals) in the impugned order has not made any mention about the penalty which stood imposed under the order-in-original.

2. Ld. Authorised Departmental Representation representing the appellants enumerates the ground namely: (i) In respect of the tax accrual for the month of Feb '96, for which payment has to be made on 12-4-96, Commissioner (Appeals) has not made provisions in his order for inclusion of the same; (ii) Commissioner

(Appeals) has maintained stony silence about the penalty imposable under Section 76 as well as under Section 78.

3. Sub-section 3 of Section 73 of the Finance Act, 1994 defines the words "relevant date" which reads as under: (i) In the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid; (a) where under the rules made under this Chapter a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed; (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules; (c) in any other case the date on which the service tax is to be paid under this Chapter or the rules made thereunder.

4. In this matter, SCN was issued on 11-6-2001 and therefore Commissioner (Appeals) had held that the demand for service tax for the period from July 94 to March 96 was time-barred. We also find that in the impugned order an effort has been made to include those portions of tax which are payable during the quarter April June 1996 which becomes payable in the month of July, 1996. Secondly, the silence of the Commissioner (Appeals) in respect of penalty leviable under Sections 76 and 78 has been interpreted by the Revenue as non-imposition of penalty, though it can also be construed as non-interference with the impugned order-in-original. We, therefore, do not find any reason to make any alteration as suggested by the Revenue. In the result, the appeal is dismissed.

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