

Nice Telecommunication Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-15-2006

Reported in : (2007)8STT159

Judge : P Das

Appellant : Nice Telecommunication Pvt. Ltd.

Respondent : Cce

Judgement :

1. In this case, the appellant availed Cenvat credit on mobile telephone used in rendering their output services. The central excise audit party advised them to reverse the said Cenvat credit because mobile phones were not installed in the premises of the appellant. As such, the appellant, as per direction of the audit party, deposited Rs. 41,211/- vide TR-6 challan dated 18.1.2006. Subsequently, the appellant filed refund claim of the said amount which was rejected by the adjudicating authority. In appeal, the Commissioner (Appeals) rejected the appeal.

3. The learned advocate on behalf of the appellant submits that the present case is squarely covered by the decision of the Tribunal in the case of Indian Rayon & Industries Ltd. v. CCE, Bhavnagar 2006 (4) S.T.R. 79 (Tri.-Mumbai) 4. I find that the Commissioner (Appeals) rejected the refund on the ground that mobile phones were not installed in the premises of the appellant, following the guideline of the Board circular dated 23.6.2003. The issue involved in this case is squarely covered by the decision of the Tribunal in the case of Indian Rayon & Industries

Ltd. (Supra) in which it has been held that service tax paid on mobile phone is available as credit to eligible service providers of output service and manufacturers in absence of any express prohibition under Cenvat Credit Rules, 2004. It has also been held by the Tribunal that Board's old Circular No. 59/8/2003-S.T., dated 20.6.2003 cannot be pressed into such service as against appellant. As such, I find that the present case is to be examined in the light of the decision of the Tribunal in the case of Indian Rayon & Industries Ltd. (Supra). Accordingly, I set aside the impugned order and remand back the matter to the adjudicating authority to decide the matter afresh in the light of the aforesaid decision of the Tribunal in accordance with law, after providing an opportunity of hearing to the appellant.

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