Bharati Tele-ventures Ltd. Vs. Commissioner of Cen. Excise and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-01-2007

Reported in : (2007)11STJ65CESTAT(Mum.)bai

Judge : J Balasundaram, Vice, A T K.K.

Appellant : Bharati Tele-ventures Ltd.

Respondent : Commissioner of Cen. Excise and

Judgement :

1. We have heard both sides on the application for waiver of pre-deposit of Service Tax credit of Rs. 2,04,39,093 and penalty of equal amount. The demand arises as a result of holding that Towers and parts of Towers and pre-fabricated building, Printers and Office Chairs are not capital goods for the purpose of providing output service - Cellular telephone service.

2. We find that a prima facie case has been made out as regards credit on Towers and parts of Towers and pre-fabricated shelter for protecting Transmission devices in the light of the order dated 31.1.07 of the Commissioner of Central Excise, Mumbai - the Department itself has expressed different views on the availability of Service Tax credit on these items. The amount of Service Tax credit on these two items is about Rs. 1.88 crores. As regards the other two items viz. Printers and Office chairs, the ld. advocate for the applicants offers to deposit a sum of Rs. 10 lakhs. While holding that a prima facie case for waiver has been made out in respect of the credit denial on Towers and parts thereof and pre-fabricated

buildings, we accept the offer made of pre-deposit of Rs. 10 lakhs. This amount of Rs. 10 lakhs (Rupees Ten lakhs only) shall be deposited within eight weeks from today. On such deposit, pre-deposit of balance duty and penalty shall stand waived and recovery thereof stayed pending the appeal. Failure to comply with this direction shall result in vacation of stay and dismissal of appeal without further notice.