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SooperKanoon Citation : sooperkanoon.com/46235

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-01-2007

Reported in : (2008)9STR191

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

Appellant : intermedia Cable Communications

Respondent : Commissioner of Central Excise

Judgement :

1. We have heard both sides on the application for waiver of pre-deposit of service tax of Rs. 3,47,92,576/- and penalty of Rs. 3,44,72,073/-under the provisions of Section 78 and Rs. 100/- per day Under Section 76 of the Finance Act, 1994 (Service Tax demand for the period 16/08/2002 to 13/09/2004 is Rs. 1,90,50,609/- and for the period 01/10/2004 to 30/09/2005 the service tax demand is Rs. 1,54,21,464/-).

The demand has been confirmed against the applicants who are cable operators receiving signals from broadcasters such as ESPN, Star, Sony Entertainment Television, etc. and rendering cable services to various subscribers on the basis of their subscriber base.

2. It is the contention of the applicants the number of subscribers is not as per the figure shown in the agreement; that they did not receive any amounts over and above the amounts on which they were paying service tax. However, we find that

Shri Ejaz Inamdar, Director of the applicant company has admitted that payments are being made to the broadcasters based upon the agreed subscriber base and further the TRAI has issued a notification prescribing the procedure to be adopted for finalizing the subscriber base at the time of first agreement, namely, that wherever the actual number of subscriber is not ascertained the parties to agreement are take into account the subscriber base of the cable operator on the basis of the Subscriber Line Report (SLR) where such SLR exists and where such SLR does not exist, this shall be negotiated on the basis of evidence provided by the two parties on the subscriber base. The notification also prescribed that for finalizing the subscriber base at the time of renewal of agreement negotiations were to be made taking into account the changes in the subscriber base of the cable operators over the past 3 years as well as the change in the subscriber base of the operators operating in the area in which the cable operator is operating and its adjoining areas for the current period. Prima facie the adjudicating authority has followed the procedure prescribed in the notification issued by TRAI and, therefore, no prima facie case has been made, out for total waiver. Having regard to the totality of the facts and circumstances of the case we direct pre-deposit of Rs. 75 lakhs towards service tax within a period of eight weeks from today and on such deposit pre-deposit of the balance service tax as well as the penalties shall stand waived and recovery thereof stayed pending the appeal.

3. Failure to comply with the above direction shall result in vacation of stay and dismissal of appeal without prior notice.