

Bharati Hexacom Vs. Commissioner of Central Excise

Bharati Hexacom Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/46366

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-30-2007

Reported in : (2008)9STR474

Judge : R Abichandani, V T M.

Appellant : Bharati Hexacom

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant has challenged the order of the Commissioner made on 16-5-2007 confirming the demand of service tax credit for Rs. 16,61,582/- on the ground that it was wrongly taken and availed by the appellant and directing recovery thereof and also imposing penalty of the like amount under Section 78 in respect of the said amount. They have also challenged the demand of service tax amounting to Rs. 8,57,850/-, which is ordered to be recovered under the impugned order with the penalty imposed for the like amount under Section 78 of the Finance Act, 1994. The Commissioner has also imposed penalty (r) Rs. 100/- per day under Section 76 of the Act, besides penalty of Rs. 1000/- under Section 77 which also has been challenged by the appellant.

2. In the context of the demand of Rs. 16,61,582/-, the Commissioner found that the input service of the assessee i.e. circuit lease line fell under the category (zd) of Section 65(105) of the Finance Act, 1994, whereas their output service, i.e., telephone connection (cellular) fell within the category (b) of Sub-section (105) of

Section 65 of the Act. Since the two services did not fall under the same category credit taken by the assessee in respect of their input service for the relevant period which was prior to the amendment, was irregular and recoverable under Section 6 of the Service Tax Credit Rules, 2002.

As provided by Rule 3 of the said Rules an output service/provider could take service tax credit where input service was in the same category of taxable service as that of output service for which invoices issued on or after 16th August, 2002. As per the amended provision of Clause (b) of Rule 3(1), in other cases, service tax credit was allowable on such input service for which invoices issued on or after 14th May, 2003. In the present case, admittedly, the relevant period for which service tax credit was taken fell prior to 14th May, 2003. Therefore, prima facie, the appellant was not entitled to take service tax credit and no waiver of pre-deposit of the recovery directed on that account is called for.

3. It was contended on behalf of the appellant that earlier the service provider, namely, BSNL, was categorizing the lease circuit line service provided to the appellant as telephone service and, therefore, there has not been any mala fide intention on the part of the appellant so as to merit penalty of equal amount imposed under Section 78 by the Commissioner in respect of the said recovery. It appears that, the Commissioner has imposed penalty both under Sections 76 and 78 of the Act for the said default. The penalty worked out at Rs. 100/- per day under Section 76 would be around Rs. 2,00,000/- as stated by both the sides.

4. Having regard to the facts and circumstances of the case, pre-deposit of Rs. 2,00,000/- (two lakhs) would be sufficient in connection with the penalty imposed on the appellant for the default committed in the context of taking of service tax credit of Rs. 16,61,583/- which has been paid up, as stated by the learned authorized representative for the appellant who places on record a copy of TR-6 challan. The learned authorized representative for the department states that he has not verified the payment said to have been made as per the TR-6 challan, a copy of which has been given to him. Needless to say that if any discrepancy is noticed hereafter, the Revenue can move the Tribunal in this matter for vacating the order if the amount is not so deposited.

5. As regards the demand of service tax Rs. 8,75,000/- which was raised in the context of the value of the SIM cards, both the sides have pointed out that pre-deposit of service tax and penalty in context thereof have been waived in the appellant's own case being Service Tax Appeal No. 426 of 2007 by order dated 28-9-2007 made on Service Tax Stay Application No. 1889 of 2007 which was filed in that appeal. It is also pointed out that, the Hon'ble High Court of Rajasthan in Civil Writ Petition No. 7355 of 2006 in another matter of the appellant wherein pre-deposit was ordered in a similar context has granted interim relief by order dated 20-9-2006, a copy of which is placed on record.

6. Having regard to the facts and circumstances of the case, we, therefore, direct that on the appellant's depositing a sum of Rs. 2 lac within six weeks from today, pre-deposit of the remaining amount of duty and penalty payable under the impugned order will be stayed during the pendency of this appeal. If the amount is not so deposited, the appeal will stand dismissed. Post the matter for reporting compliance on 17th December, 2007.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com