

idea Mobile Communication Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-2007

Reported in : (2008)12STJ326CESTATNew(Delhi)

Judge : S Kang, Vice, S T T.V.

Appellant : idea Mobile Communication Ltd.

Respondent : Cce

Judgement :

1. Heard both sides. The applicant filed this application for waiver of pre-deposit of amount of service tax and penalties. The demand is confirmed in respect of sale of sim cards by the applicant to their dealers. The revenue raised the demand on the ground that the sale of sim card is not a sale of goods but it is a service provided by the applicant.

2. The contention of applicant is that they were selling the sim cards to their dealers and thereafter, the dealers are selling the same to various customers and activation fee is separately charged and appellants are paying service of activation fees. The contention is that on the sale price, the appellants are also paying the sales tax.

The appellant relied upon the case of Idea Mobile Communications Ltd. v. CCE Final order No. 178/2006 dated 25.5.2006 where the payment of service on the same ground was set aside. The applicant also submitted that in the case of

Bharati Hexacom Ltd. v. Union of India, the Tribunal vide stay order dated 8.8.2006, directed the appellants to pre-deposit the amount of service tax and the Hon'ble Rajasthan High Court vide order dated 27.8.2007 was set aside the order and directed the Tribunal to hear the appeal without asking for any pre-deposit.

3. The contention of revenue is that as per the terms and conditions under which the sim cards is supplied to the customers, mobile sim card is liable to be returned to the company on termination, de-activation.

In view of this condition, there is no sale of sim cards and applicants are providing service.

4. We find that in appellants own case where demand is raised on the same ground is set aside by the Tribunal. The contention of revenue is that revenue filed appeal against that decision of the Tribunal and Hon'ble Kerala High Court granted interim stay for three months. The learned Counsel for the appellant submitted that stay has not been extended.

5. We find that in view of the decision of the Tribunal and decision of the Hon'ble Rajasthan high Court in the case of Bharati Hexacom Ltd, the appellants have a strong case in their favour. Pre-deposit of service tax is waived for hearing the appeal. The stay petition is allowed.

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