

**Shri Balaji Network Vs. C.C.E.**

**Shri Balaji Network Vs. C.C.E.**

**SooperKanoon Citation :** [sooperkanoon.com/47084](http://sooperkanoon.com/47084)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-05-2008

**Judge :** S Kang, Vice

**Appellant :** Shri Balaji Network

**Respondent :** C.C.E.

**Judgement :**

2. M/s. Shri Balaji Networks as well as Revenue filed these appeals against the order passed by the Commissioner (Appeals).

3. Demand in respect of service provided by the appellants M/s. Shri Balaji Networks as cable operator.

4. Contention of the appellants is that addition of Rs. 3.84 lakhs for the period 2004-05 was wrongly made in assessable value on the basis of statements of different cable operators. Contention is that as for the year 2004-05 the appellants are not working as Multy System Operator (M.S.O.) and that they started working as M.S.O. from year 2005-06.

Therefore, this amount was wrongly added in the assessable value for the year 2004-05. It is also submitted that for the year 2005-06 the benefit of notification No. 6/2005 was wrongly denied. The appellants also submitted that they are not liable for any penalty.

5. In the Revenue's appeal contention is that the Commissioner (Appeals) considered the security deposit as Rs. 1 lakh whereas it is Rs. 50,000/-. Revenue's contention is also that the benefit of credit in respect of service tax paid by the appellants was wrongly allowed without mentioning the service provided.

6. I find that the appellants are providing service of cable operator as well as Multy System operator. Contention of the appellants is that the amount of Rs. 3.48 lakhs has been added in the assessable value on the basis of statement of various cable operators whereas this amount was not to be added for the year 2004-05 as the appellants started as M.S. operator in December, 2005 only. I find that various cable operators made statements regarding starting of M.S.O service by the appellants in 2004-05. Further, the appellants also admitted that they have started MSO operation in December, 2004. Therefore, inclusion of amount in question is the assessable value received during the year 2004-05 is rightly made.

7. In respect of notification No. 6/2005, I find that notification provides exemption to the service provider whose turn-over is less than Rs. 4 lakhs. As turn-over of the appellants, as per Commissioner (Appeals) order for the year in dispute, is more than 4 lakhs the benefit is rightly denied.

8. In respect of Revenue's appeal, I find that as per the evidence on record produced by the appellants security deposit is & Rs. 1 lakh.

Therefore, the finding that the same is Rs. 50,000/- is without evidence, hence, the appeal of Revenue regarding this issue is allowed.

9. There is no dispute that the appellants are paying service tax, and the appellants have produced evidence regarding payment of service tax.

Therefore, the Commissioner (Appeals) has allowed the credit of service tax paid by the appellants as service recipient. In respect of penalty, I find that the appellants have not paid service tax on due date, therefore, penalty is rightly imposed. Both the appeals are disposed off in above terms.