(2014) 04 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 150 Of 2007

?M/s Bharat Sanchar Nigam Ltd. APPELLANT

Vs

CCE, Jaipur RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:
Finance Act, 1994 — Section 65(105)(b), 75, 78

Citation : (2014) 04 CESTAT CK 0006

Hon'ble Judges : G. Raghuram, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Sanjeev Pandey, Govind Dixit

Final Decision : Allowed

Judgement

1. The point of dispute in this case is as to whether the inter- connectivity charges received by the appellant from other telecom service providers

during the period Â of dispute i.e. from December 2003 to March 2005 attracted service tax as service in relation to telephone connection provided by

them. The department being of the view that providing inter-connectivity to other telecom service providers is a taxable service under Section 65(105)

(b) of the Finance Act, 1994, issued a show cause notice dated 09/09/05 for demand of short paid service tax amounting to Rs.1,26,145/- for the

period from December 2003 to March 2005 alongwith interest thereon under Section 75 of the Finance Act, 1994 and also for imposition of penalty on

them under Section 78. The show cause notice was adjudicated by the Assistant Commissioner vide order-in-original dated 21/02/06 by which the

above-mentioned service tax demand was confirmed alongwith interest and penalty of Rs.2,52,290/- was also imposed. On appeal being filed to

Commissioner (Appeals) against this order, the Commissioner (Appeals) vide order-in-appeal dated 01/11/06 dismissed the appeal. Against this order

of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

3. Both the sides agree that in view of the clarification issued by the CBEC vide Circular No. 91/2/2007-Service Tax dated 12th March, 2007 during

the period of dispute, the inter-connectivity charges being charged by one telecom service provider from another telecom service provider were not

taxable and that only in the Finance Act, 2007 the inter-connectivity service has been specifically brought within the purview of tele-communication

service. We find that the Tribunal in the appellant's own case reported in 2008 (12) S.T.R. 171 (Tri. - Bang.) has held that during the period prior to

the enactment of Finance Act, 2007 inter-connectivity uses charges were not taxable under Section 65(105)(b). In view of this, the impugned order is

not sustainable. The same is set aside. The appeal is allowed.

(Operative part of the order pronounced in the open court.)