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(2014) 07 CESTAT CK 0010

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 283 Of 2009

?M/s. The General Manager, Telecom, BSNL — APPELLANT

Vs

CCE, Raipur — RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:
Finance Act, 1994 — Section 76, 78

Citation : (2014) 07 CESTAT CK 0010

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Sameer Agarwal, Govind Dixit

Final Decision : Allowed

Judgement

1. The appellant filed this appeal against Order-in-Original No. Commissioner/115/2008 dated 31.12.2008 only to the extent it confirmed demand of

Rs.67,59,593/- against the appellant alongwith interest although no penalty under Sections 76 and 78 of Finance Act 1994 or under Cenvat Credit Rule

was imposed.

2. The appellant contended that they are a company with operations in the remote areas and therefore they are not able to precisely assess their

service tax liability by 5th of the month following the month for which the service tax is required be paid and so to be safer on a safer side they

estimate and pay their service tax in a manner that it does not turn out to be less than actually playable. Thereafter when the service tax actually paid

is found to be more than that actually payable, the excess amount paid is adjusted in the subsequent month. The Commissioner in his order has not

disputed the fact of excess payment and its subsequent adjustment but has

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disallowed such adjustment on ground that proper procedure has not been

followed in this regard. The appellant have contended that a mere procedural infringement should not result in denial of a substantive benefit. They

have referred to the following judgements in their support:

(1) M/s. BSNL Vs. CCE Chandigarh 2010 (17) STR 209 (Tri.-Del.) where the honâ??ble CESTAT permitted such adjustment observing that the

rules are not tyrants but servant of law and should not be read in a pedantic manner while the appellant is entitled substantial relief.

(2) M/s. Nirma Architects & Valuers Vs. CCE Ghaziabad 2006 (1) STR 305 (Tri.-Del.) in which similar adjustment was permitted.

(3) CCE, New Delhi Vs. Sentinel Security (P) Ltd. where the Tribunal observed that the assessee has paid extra tax and in the subsequent returns

they have adjusted that amount and that although they did not follow the prescribed procedure, in the interest of justice when there is no dispute with

regard to the extra payment, we do not find any infirmity in the view taken by the Commissioner (Appeal) allowing such adjustment.

(4) M/s. Bharti Cellular Ltd. Vs. Commissioner 2006 (1) STR 39 (Tri.-Del.) the CESTAT held a similar view.

3. The ld. DR did not object to the relevance of the case laws cited.

4. We have considered the facts and the submissions made in this case. As is evident from the several judgments cited above, it has been consistently

held that substantial benefit can not be denied in such cases merely because some aspects of the procedure had not been followed. Indeed, such

adjustment has been permitted by the CESTAT in BSNLâ??s own case cited in the earlier para. In the present case there has been no malafide on

the part of the appellant as is evident from the fact that the adjudicating authority refrained from imposing any penalty observing that the appellant

acted in a bonafide manner and malafide cannot be attributed to them.

2. In the light of the forgoing the appeal is allowed and the impugned Order-in-Original is set aside, to the extent it was appealed against.

[Dictated & Pronounced in the open Court].

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