CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/585-589/2008-DB

[Arising out of OIA No. 200/2008 dated 12/08/2008 passed by CCE(Appeals), Mangalore]

Bharat Sanchar Nigam Ltd
D K Telecom Distric, Mangalore — Appellant(s)

Versus

C.C.E. & S.T.-Mangalore
7TH FLOOR...TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE,
KARNATAKA
575003 — Respondent(s)

Appearance:

Shri Balachandra, A.T., Advocate — For the Appellant

Smt. Kavitha Podwal, Superintendent(AR) — For the Respondent

Date of Hearing: 04/07/2018
Date of Decision:___________

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. ______ / 2018

Per : S.S GARG

The appellant has filed these 5 appeals against the common impugned order dt. 12/08/2008 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) upheld 5 Orders-in-Original and rejected the appeals of the appellant. Since the issue involved in all the 5 appeals is identical, they are being disposed of by this common order.

2. Briefly the facts of the present case are that the appellants are engaged in providing telecommunication services all over DK telecom district and are registered service providers of telephone and telegraph services. Though the service is provided through Telephone exchanges, billing and accounting is done centrally at the District General Manager's Telecom Office. The bills along with service tax are being collected at various customer service centres, DTOs/CTOs, Banks, Post Officers scattered over the telecom district. Because of this, it is very difficult to compile and calculate the service tax collected during the month and pay the same by the due date. Hence, appellants were provisionally calculating and paying service tax on 5th of the following month and in case of shortage, they paid promptly by 25th of that month, along with interest and in the event of excess payment, they adjusted the same in the payment of subsequent months. This type of suo motto adjustment by the appellant for excess payment was objected by audit team of Central Excise Department in the month of July 2006. After continuous meetings with the departmental officers, the appellants filed the refund claim of the excess paid amount and the same was sanctioned by the Orders-in-Original, but demanded and recovered interest from the month of adjustment of excess paid amount till the date of sanction of the refund order. This is because suo motto adjustments is eligible only for centralized licencees of service tax and so the suo motto adjustment made by the appellants for the payment of service tax for a particular month becomes non-payment and it becomes

regular payment only on the day of sanction of that refund. Hence appellants are liable to pay interest for the said delayed payment. On these allegations, a show-cause notice was issued to the appellant demanding the interest for the delayed payment. After following the due process, the Assistant Commissioner denied the adjustment made by the appellant being violative of the Rule 6(4A) of the Service Tax Rules, 1994 and also demanded an amount of Rs.13,98,063/- which was paid for the month of February 2006 but sanctioned the refund of Rs.13,98,063/- being the excess service tax paid by the assessee for the month of November 2005 under Section 11B of the Central Excise Act read with Section 83 of Finance Act, 1994. Further the Assistant Commissioner appropriated the refund amount Rs.13,98,063/- being an amount paid in excess for the month of November 2005 towards the service tax due and short paid for the month of February 2006 in terms of Section 87 of Finance Act as if the said amount is adjusted and paid on the date of sanctioning the refund by passing the order and also demanded interest under Section 75 for the period by which such crediting of the tax or any part thereof to the account of the Central Government for the period of delay. Aggrieved by the Orders-in-Original, appellant filed 5 appeals for different periods and the Commissioner(Appeals) vide the impugned order upheld the Orders-in-Original and rejected all the 5 appeals.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the impugned order dismissing the 5 appeals is not sustainable as the same has been passed without properly appreciating the peculiar facts in the present case. He further submitted that the appellant is a PSU with 100% Central Government ownership. It provides services from multiple locations scattered in the Telecom District but accounting and billing of such services is done centrally at the registered location. He further submitted that suo motto adjustment made by the appellant was brought to the notice of the Department every time during the said month only and no objection was raised by the appellant until the audit objection. He further submitted that the figures has to be collected from multi locations and the same cannot be finalized and therefore every month the appellant paid service tax on a provisional amount before 5th of the following month and usually it will be in excess only and when there is short payment, same was paid by 5th of the following month with interest and when there is an excess payment, the same was adjusted in payment of subsequent month and in the present case, he submitted that the amount which was paid in advance was excess. So, the question of charging of interest does not arise. In support of his submission, he relied upon the decision in the appellant's own case Bharat Sanchar Nigam Ltd. Vs. CCE, Chandigarh [2010(17) STR 209 (Tri. Del.)].

5. On the other hand, the learned AR defended the impugned order and submitted that the appellant does not have centralized registration; therefore they are not entitled to do suo motto adjustment of excess service tax paid in the subsequent months under the provisions of Rule 6(4A).

6. On careful consideration of the submissions of both sides and perusal of the records, we find that in the present case, it is an admitted fact that the appellant on account of practical difficulties, paid the service tax in advance. Further, we find that BSNL is a Government owned company and the subscriber cannot be made to pay the service tax directly to the registration office but the payment is to be routed through the Customer Service Centres. Further we note that the BSNL pay the tax for the given month on or before 5th of the following month by making a provisional calculation and in the event of any shortage it makes the balance of payment by 25th of the following month along with the interest and if such payments are in excess, then it is adjusted towards the payment of subsequent month. This kind of an adjustment was within the knowledge of the Department as the appellant has been doing such adjustment every month and no objection was raised by the Department until the audit objection. Further we find that in the present case, it was the excess payment which was made and the same was adjustment during the subsequent months but the Department raised the objection that the same

cannot be done and therefore the Department is asking for the interest for the period until it becomes proper payment by way of sanction of refunds.

7. Further we find that the issue of suo motto adjustment was considered by the Tribunal in their own case cited supra wherein the Division Bench of the Tribunal in para 6 has observed as under:-

> ***6.*** *We are unable to appreciate that how such a demand primarily can arise without provisional assessment being concluded by a final assessment. Both sides agree with page No. 24 in the appeal folder which calls for finalisation of provisional assessments. There is no difficulty to remove the bottle neck and obstacles of the procedure when the appellant is entitled to the substantial relief and that too as a public sector. The rules are not tyrants but servant of law in aid to grant substantial relief required by law. What that is not required to be realised under law cannot be done. If the appellant-public sector is entitled to the adjustment by Rule 6(4A) and even though such adjustment was incorporated in statute book w.e.f. 16-6-05, the language of the rule does not suggest that the same should be read in a pedantic manner while the appellant is entitled to substantial relief. Therefore, it is necessary to conclude the assessment and arrive at a rational decision for appropriate application of the law. It may be stated that the appellant having proved from its conduct that its registration under Rule 4(2) of Service Tax Rules 1994 has already been granted, aforesaid letter dated 12-5-1998 shall not debar the Public Sector to get the benefit of Rule 6(4A) once that is read as having retrospective application. … …*

8. We also find that the Department should have considered the practical difficulties on account of which the appellant has devised the system of paying in advance and subsequently adjusting the excess

payment and we do not find any infirmity in the procedure followed by the appellant and the Department has also not raised objection from the very beginning. In view of this, we are of the view that the impugned order demanding interest is not sustainable in law and therefore we set aside the same by allowing all the appeals of the appellant.

(Order was pronounced
in Open Court on **…………………..**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...